

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.982/1991

Date of decision: 31.3.1993

Between

N.Sarojini

.... Applicant

a n d

1. Union of India rep. by the
Chairman, Railway Board,
New Delhi.
2. General Manager,
South Central Railway,
Secunderabad.
3. Divisional Railway Manager,
S.C.Rly., Vijayawada.
4. Senior Divisional Accounts Officer,
S.C.Rly., Vijayawada.

... Respondents

Appearance:

For the applicant : Shri G.V.Subba Rao, Advocate

For the Respondents : MR. N. R. Deva Raj S.C for Rlys.

CORAM

The hon'ble Shri Justice V.Neeladri Rao, Vice Chairman

The Hon'ble Shri R.Balasubramanian, Member (Admn.)

J U D G M E N T

(of the Bench delivered by Hon'ble Shri Justice V.
Neeladri Rao, Vice-Chairman)

This O.A. was filed praying for a direction to the
respondents to regularise the services of the applicant
as passenger guide/ticket collector with effect from

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17-2-1962, the date of her initial appointment and for all consequential benefits like arrears of salary, pension, gratuity, etc. by declaring that the non-payment of the same is illegal, arbitrary and unconstitutional and for interest at 18 per cent per annum from the dates on which the amounts are due.

2. The facts which give rise to this O.A. are as under: The Railway Board decided to have the services of women social workers of established social service organisations of repute for being utilised as an experimental measure for rendering assistance to lady passengers. Accordingly, circular No.61-TGI/134 dated 19-5-1961 (Annexure-VIII) to the effect was issued that at ~~one~~ large and selected stations on each railway, social workers should be engaged to assist during the peak grouping periods for one to three hours at a time. It is also stated therein that the social workers have to be paid for the number of hours they are present at the station upto the amount that the railways were spending on their own passenger guides calculated pro rata for the hours of work spent by them. It is also stated therein that if the passenger guides already existed in such stations, the services of the women social workers should be utilised in addition to such passenger guides. In pursuance of the same, the General Manager, South Central Railway issued proceedings No.P(S)535/III/27-A dt.28/29-11-61 (Annexure-VII) for appointing two social workers at Vijayawada and another station to work for three hours in the morning and three hours in the evening on all days other than

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Sundays and they have to be paid remuneration at the rate of Rs.2/- per day. It is also noted therein that they will not be entitled to any other payment for Sundays. The applicant was one of the persons appointed on 17-2-62 at Vijayawada under the above scheme. The Railway Board by letter dated 29-1-1965 stated that as the scheme had been generally appreciated by the public at most of the stations, the said scheme may be made permanent at those stations where it has been proved popular and it may be extended to other stations progressively wherever considered necessary and the question of replacement of social workers at the stations where it was not found popular may be considered. Thereupon the Divisional Personnel Officer, Vijayawada by memo dated 1-3-66 held that the matter regarding continuation of the social workers has been reviewed and it had been decided that the then existing arrangement at Vijayawada of engaging two social workers from social service organisations at Rs.2/- per day or six hours per day for each candidate may be continued as a permanent basis. The Board, by letter dated 14-12-1967 enhanced the remuneration to Rs.1/- per hour. It was further enhanced to Rs.1.50 per hour with effect from 1-4-78. The said remuneration was enhanced to Rs.2.50 per hour with effect from 1-3-85. The Railway Board by its letter No.E(NG)II/82/RC-1/34 dated 31-12-86 had come up with a scheme for absorption of the social workers employed as per the letter dated 19-5-61. They have to be absorbed as per the above scheme if they worked for a minimum of three years and if they were

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found suitable by the screening committee. The age was relaxed. The applicant was subjected to the screening and she was empanelled in 1987 for the post of Ticket Collector and she was actually appointed as Ticket Collector on 24-1-1989. She retired from service on 31-12-1989 on reaching the age of superannuation.// Senior Divisional Personnel Officer, Vijayawada issued proceedings No.B/P.407/1/REP dated 18-6-90 conferring temporary status and granting rate of pay in scale Rs.110-180 (AS) with effect from 16-8-62. It further states that ~~and~~ she is entitled to draw monthly rate of pay as long as she was engaged on the same type of work. But the Sr.Divisional Accounts Officer, Vijayawada by his letter dated 21-9-90 informed the Sr.DPO Vijayawada that the Railway Board's letter dated 31-12-86 did not envisage conferment of temporary status after the expiry of six months from the date of engagement and that the action contemplated was absorption of such persons as TC/Booking Clerk and hence the SR of the applicant was returned. Thereafter, the applicant submitted representation dated 15-12-90 to the General Manager, S.C.Rly., Secunderabad ^{and} also to the Chief Personnel Officer, S.C.Rly., Secunderabad. When there was no response she preferred this O.A. on 18-10-91. The Sr.DPO Vijayawada by letter dated 31-10-91 informed the applicant that the temporary status granted as per their office memorandum dated 18-6-90 was treated as cancelled and as she was absorbed as Ticket Collector on 24-1-89 and retired as thus on 31-12-89 and ~~she~~ worked for a short period she

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was not entitled to retirement benefits. She was further informed by the said letter that ~~the~~ verification would be made in regard to the claim for difference in honorarium with effect from 1-3-85 and it would be paid to her shortly.

3. The learned counsel for the applicant urged that the applicant worked as passenger guide and as such she is entitled to the salary prescribed for passenger guide at pro-rata basis and her appointment should be treated as casual labourer passenger guide and she acquired temporary status on completion of 180 days of service and as she was absorbed in the category of ticket collector, her entire service has to be regularised and as such she is entitled to the difference in pay for the entire period and also pension, gratuity and other retirement benefits. It was also contended that as she is entitled to the above benefits the Sr.DPO Vijayawada rightly issued memorandum dated 18-6-90 and it is now being falsely stated that the remuneration paid was only by way of honorarium and in order to deprive the applicant of the various benefits it is stated that the applicant was not an employee of the Railways till she was absorbed as Ticket Collector. Section 2(10) of the Railway Establishment Code defines honorarium as a recurring or non-recurring payment granted to a railway servant from the Consolidated Fund of India or Consolidated Fund of a State as a remuneration for special work of an occasional or intermittent character. Thus, it means that the amount paid for the regular work cannot be held as honorarium.

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labour passenger guides. So the question of conferment of temporary status does not arise. The regular service is only from the date on which she was absorbed as ticket collector. Earlier service prior to that does not count as she was not a regular employee of the railways prior to her absorption as Ticket Collector. Hence the memorandum dated 18-6-90 was cancelled.

5. In order to appreciate the respective contentions, it is necessary to read the relevant portions from the letters dated 19-5-61 and 31-12-86 of the Railway Board and they are as under:

Lr.dt.19-5-61:

"Sub:- Employment of Women social workers from social service organisation to work as 'Passenger Guides' at stations for assisting lady passenger.

Ref:- xx xx

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It has been decided by the Board that at one large and selected stations on each railway, the services of women social workers of established social service organisation of repute be utilised as an experimental measure for rendering assistance to lady passengers on the following basis.

2. The social workers should be requested to assist during the peak grouping periods only for one to three hours at a time.

3. The social workers may be paid for the number of hours they are present at the station, upto an amount that the railways are spending on their own Passenger Guides, calculated pro rata for the hours of work spent by the social workers. At stations where passenger guides already exist the services of women social workers should be utilised in addition to such 'Passenger Guides'."

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Lr.dt.31-12-86

"The question of absorption of passenger guides on your railway against regular posts was discussed by NFIR during the PNM meeting held with Board on 21/22-7-86. After taking into account various aspects of the case, the Ministry of Railways have decided that the passenger guides referred to in your letter cited above who have been engaged on certain rates of honorarium per hour or per day, may be considered by your Railway for absorption against regular vacancies in Group 'C' posts provided they have the minimum qualification required for direct recruitment to the Group 'C' posts concerned and have also put in a minimum of three years as passenger guides (Where their engagement is in broken spells, such spells can be aggregated but the periods of breaks themselves will not be counted).

2. For deciding their suitability for such absorption they will be subjected to screening which will include a written test. This screening will be done by a committee of three JA grade officers one of whom shall be the chairman or Member Secretary of one of Railway Recruitment Boards catering to your railway. Those eligible and found suitable on the basis of such screening and other formalities required may be absorbed as Ticket Collector in grade Rs.260-400/950-1500 (p.s.) or as Booking Clerk in grade Rs.260-430/975-1540 (PS) as may be found appropriate, subject to availability of vacancies."

It is evident from the Railway Board's letter dated 19-5-61 that the services of women social workers have to be utilised for one to three hours at a time to assist the lady passengers. The remuneration had to be paid for hours of work spent by the social workers. It is made clear that the remuneration should not exceed the pro-rata of the amount spent in regard to passenger guides. ^{it is} ^{only} The very fact that ^{the} enlistment of ^{social} workers suggests that the services of those who can spare some time from their normal vocation can be utilised for the scheme envisaged. It is common knowledge that services of Home Guards are utilised to assist the police either for traffic regulation or

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However, the honorarium referred to thereunder is payable to only a railway employee. While in one breath it is stated that the applicant was not a railway employee so long as she worked as social worker passenger guide and at another breath it is stated that the remuneration paid to her is honorarium. Further in ATR 1986(2) CAT 7 (Samir Kumar Mukherjee & Ors. Vs. General Manager, Eastern Railway & Ors.) it was held that the remuneration paid to those who are engaged as volunteers to assist the railway/ticket checking staff for short period and which was extended from time to time, cannot be called as honorarium or out of pocket allowance but wages and it had to be held that they were engaged as casual employees and as they worked for more than 180 days they were entitled to be treated as temporary employees.

4. It was submitted for the Respondents as under:
The scheme as per the Railway Board's letter dated 19-5-61 contemplates employment of women social workers. The arrangement should be for one to three hours ^{at a time} during peak grouping periods. It envisages payment for the hours of work on pro-rata basis. The very fact that it is the services of social workers that have to be utilised means that those who can spare time from their normal avocation can be asked to perform these duties. It never contemplated that the remuneration paid for the hours of work is the main or sole source of income of such social workers. Hence it cannot be stated that they were appointed as casual

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in case of 'melas' where there will be huge gatherings. Similarly, honorary magistrates are appointed to dispose of summary cases. From the nature of duties entrusted to them and the time that had to be spent by them it can be stated that the remuneration that may be paid for such work will not be the main or sole source of income for them. It cannot be stated that social workers will spend their entire time for social work only, unless it is a case where they get their income from properties or where they are supported by their or children. spouses/ When the workers are qualified with the word 'social', it means that the intention is to serve instead of having it such job as source of income. It does not envisage that the services of the same person should be utilised both in the forenoon and the afternoon or on all the days. A social worker employed under the above scheme cannot claim that so long as she prepares to work, she alone had to be entrusted with that duty and no other social worker shall be engaged. But in the case of casual labour, the same worker had to be engaged so long as there is work and his services cannot be dispensed with when there is work. While referring to the scheme of the Railway Board whereby the services of volunteers from amongst the students^{who are} sons/daughters and dependents of railway employees as mobile checking clerks to work outside their college hours on payment of some honorarium during peak season or short spell periods were requisitioned from 1973 and when a decision was

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taken by the Railway Board in 1982 for regularisation and absorption of those mobile checking clerks against regular vacancies, it was observed in para 5 in ATR 1989(1) CAT 380 (Principal Bench) (Miss Neera Mehta & Ors. V. Union of India & Ors.) "that the mobile checking clerks had no legal right as such in terms of their employment for regularisation and absorption against regular vacancies." It is evident that even in the scheme of 1973 whereby the services of mobile checking clerks were requisitioned the remuneration paid is referred to as honorarium. It was, further stated therein, that in terms of their employment they are not entitled for regularisation or absorption against regular vacancies. That scheme ~~also~~ envisages the utilisation of services of ~~university~~ students. It cannot be stated by no stretch of imagination that such students are casual labourers, in the category of checking clerks. They may be attending to the duties of checking clerks. But as it is a case of utilising the services of their spare time, they cannot be held as the employees of the railways. Such persons are being remunerated for their services. As it is not a case of employment in the usual sense, the same is not termed as wage or salary and it is called as honorarium. The same thing can be stated in regard to Home Guards, Scouts or the honorary magistrates. In view of the terms in which they are engaged or employed, they cannot be treated as employees in the usual sense. The same thing can be stated even in regard to the women social workers employed under the scheme referred to in letter

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dated 19-5-1961. The point that was adverted to in ATR 1989(1) CAT 80 is as to whether even the mobile checking clerks engaged subsequent to 21-4-82 were also entitled to the benefit of the scheme of regularisation and absorption. In view of the material placed before the Tribunal it was held that there are no relevant grounds to exclude the mobile checking clerks employed subsequent to 21-4-1982 from the scheme. But it was not stated therein that their services have to be regularised on absorption from the date on which they are engaged.

6. The Calcutta Bench of the Central Admn. Tribunal had considered in ATR 1986(2) CAT 7, the case of the volunteers engaged to assist the railway ticket checking staff. Initially they were engaged for a short period and later their employment was extended from time to time and when their services were sought to be dispensed with after they completed a period of more than one year, they moved the Tribunal. The applicants therein were paid at a fixed rate of Rs.8/- per day regularly. In those circumstances, it was observed that the remuneration paid cannot be held as honorarium and they have to be held as casual employees and by working continuously for more than 180 days they are entitled to be treated as temporary employees. But as per the scheme referred to in letter dated 19-5-61 the social worker who are having spare time have to assist the lady passengers during peak hours. In view of the same the social workers cannot be penalised for absence. Such social workers also cannot claim that she alone had to be

preferred to other social workers. In view of the above scheme, it is open to the concerned authority to engage ^{social} the workers in turns and to dispense with the services even if such social workers worked for more than 180 days, when her services are not found to be effective. In view of the ~~xxxx~~ scheme, it has to be stated that the social workers that have been enlisted are such social workers who can spare time and hence the remuneration that is paid to them can be held as honorarium. The word 'honorarium' ought to be ^{considered} ~~substituted~~ in contra distinction to wage or salary. The honorarium referred to in section 2(10) of the Indian Railway Establishment Code is different from ~~for~~ the honorarium paid for the work taken from one who is not an employee. We feel that in view of the scheme as envisaged in the Railway Board's letter dated 19-5-61 the respondents are right in treating the remuneration paid to these social workers as honorarium. We cannot accede to the contention that as these social workers also attended to the duties of passenger guides, they have to be treated as casual labour passenger guides. The question of conferment of temporary status does not arise as they are not casual labour. As such, the following passage:

"We would be guilty of turning a blind eye in a situation apart from being highly unethical, wholly contrary to constitutional philosophy of socio-economic justice if we fail to point out that Rule 2501 which permits a man serving a man for 10, 20 or 30 years at a stretch without break being treated as a daily rated servant is thoroughly opposed to the notions of socio-economic justice and it is high time that the Railway Administration

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brings this part of the provision of the Manual, antiquarian and antidiuvian in conformity with the directive principle of State Policy as enunciated in Part IV of the Constitution. It may be necessary for big employer like the Railways to employ daily rated workmen. But even here it is made distinctly clear that in the case of casual labour the daily wage is fixed by dividing monthly minimum wage by 26 so as to provide a paid holiday."

In SLR 1982(1) SC 864 (L. Robert D'Souza Vs. The Executive Engineer, Southern Railway & anr.) relied upon for the applicant, has no bearing for consideration of this case.

7. The scheme as per the Railway Board's letter dated 31-12-86 is intended for absorption of the suitable social workers employed as per the scheme envisaged under Railway Board's letter dated 19-5-61. Such social workers who had put in minimum ^{of} three years were eligible for absorption under the said scheme. The suitability was being considered on the basis of requisite qualification and screening test. It is necessary to consider about the status of a social worker who was not absorbed under the scheme referred to in Railway Board's letter dated 31-12-86 either on the ground of non-suitability or for want of qualification. Can it be stated that such employee was entitled to the temporary status of a passenger guide? We already observed that such social workers cannot be held as casual labour passenger guides. Thus, it is a case of persons who are receiving honorarium alone for the hours of work for which they rendered the work. It follows that even on absorption under the above scheme referred to in letter dt. 31-12-86, they are not entitled to claim the service earlier to

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such absorption as service in any category. Even the scheme contemplated under letter dated 31-12-86 does not envisage the regularisation of service for any period prior to the date of absorption. Hence we feel that Shri N.R.Devaraj, learned Standing Counsel for Railways is right in urging that the services of the applicant as Ticket Collector alone has to be treated as regular service and as it is for ^a short period, she is not eligible for any retirement benefits.


8. It is evident from the Railway Board's letter dated 31-12-86 that the Railway Board ^{intended to} ~~regularly~~ absorbed the social workers when it was brought to their notice that they were continuously working. But thereby it cannot be inferred that the Railway Board intended to treat them as employees of the Railways even before the date of their absorption.

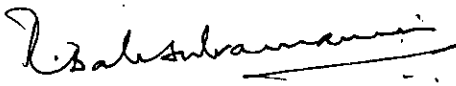
9. It is unfortunate that even though the applicant worked as a social worker passenger guide for about 27 years, she is not getting any retirement benefits. The non-entitlement is ^{in view of} ~~not~~ the scheme as envisaged by the letter dated 19-5-61. If in fact the applicant was not a social worker, she ^{should} ~~would~~ not have opted for the same. But if she was a social worker who was interested in attending to these duties in spare time, then she cannot complain when she could not get retirement benefits.

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10. One of the grievances of the applicant is that she was paid only at the rate of Rs.9/- per day even from 1-3-85 though the same was enhanced to Rs.15/- per day (at the rate of Rs.2.50 per hour for six hours in a day). Even the Senior Divisional Personnel Officer Vijayawada by his proceedings dated 31-10-91 stated that she would be paid the said ^{difference in} amount if she was not paid at the enhanced rates with effect from 1-3-85. If ~~xxxx~~ in fact the applicant was ~~not~~ paid at the rate of Rs.9/^{only} per day from 1-3-85, ^{if} and ^{the} difference from that date has not been paid, the same has to be paid by the respondents within three months from the date of receipt of this order. That is the only relief to which the applicant is entitled to and the O.A. in regard to the rest is dismissed. No costs.


(V. Neeladri Rao)
Vice-Chairman


(R. Balasubramanian)
Member (A)

Dated: 31st day of March, 1993.

mhb/


Deputy Registrar(J)

To

1. The Chairman, Railway Board, Union of India, New Delhi.
2. The General Manager, S.C.Rly, Secunderabad.
3. The Divisional Railway Manager, S.C.Rly, Vijayawada.
4. The Senior Divisional Accounts Officer, S.C.Vijayawada.
5. One copy to Mr. G.V.Subba Rao, Advocate, CAT Hyd.
6. One copy to Mr. N.R.Devraj, SC for Rlys, CAT.Hyd.
7. ~~one copy to P.S. to Honble. the Vice Chairman, CAT Hyd.~~
8. One copy to Deputy Registrar (J) CAT.Hyd.
9. ~~One~~ Copy to All Reporters as per standard list of CAT.Hyd.
10. One spare copy.

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