

IN THE HIGH COURT OF JUD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

Tuesday the twelfth DAY OF May
ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

: PRESENT :

THE HON'BLE MR. B. N. JAYA SIMHA: VICE-CHAIRMAN
AND

THE HON'BLE MR. D. SURYA RAO: MEMBER.

ORIGINAL APPLICATION NO. 315 and 316 / 87

BETWEEN:-

IRISET Mess Bharatya Karmika Sanghan.
(Reg. No B-1581) repto by its General Secretary
Mr R. Dan, the Indian Rlys Institute of Signal
Engineering and Telecommunications, Lalaguda
AND Sec'bad. (in both Applications) APPLICANTS.

- 1) The Rly Board, repto by its chairman, Rly Mantralaya,
Ministry of Rlys, Govt of India, New Delhi.
- 2) The Indian Rlys, Institute of Signal Engineering
and Telecommunications, repto by its Director
Lalaguda, Sec'bad.
- 3) The Indian Rlys Institute of Signal Engineering and Tele-
communications mess repto by its Officer-in-charge,
President, Lalaguda, Sec'bad.

O. A. NO 315/87

.....RESPONDENTS (Respondents in
Both Both Applications)

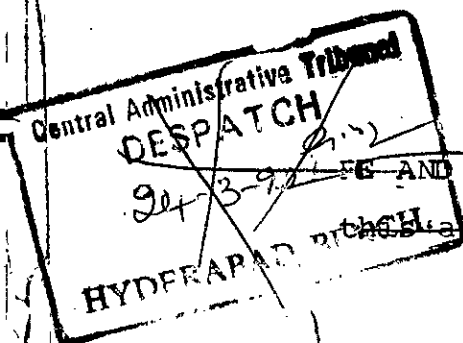
Application under Section 19 of the Administrative
Tribunals Act, 1985, praying that in the circumstances stated
therein the Tribunal will be pleased to declare the
impugned notice dated 2/4/87 issued by the
President, IRISET mess. as illegal without
jurisdiction, without authority and sanction of law,
and ab initio void and in consequence direct
the respondents to reinstate the retrenched
employees (except N. C. Srinivasa) without continuity
of service, full back wages and all other attendant
benefits and to place the workmen, who are sought
to be reinstated to their original posts and the
grades with effect from 11-4-87.

The Application coming on for orders, upon perusing the application and upon hearing the arguments of Mr. E. D. Nathan ^(in both Applications) Advocate for the Applicant and of Mr. N. R. Devraj, S.C. for ^{Rlys.} on behalf of the respondents. ^(in both Applications)

~~IT IS ORDERED THAT~~

The Tribunal delivered the following Judgment:—

(separate sheet attached).



~~AND HERE BY ARE STAYED, pending further orders on this application.~~

S. Venkatar
DEPUTY REGISTRAR. 15/5/97

- TO the chairman,
- 1) The Railway Board, Railway Mahabalaaya, Ministry of Railways, Govt. of India, New Delhi.
 - 2) The Director, Indian Railways Institute of Signal Engineering and Telecommunications, Lalaguda, Secunderabad.
 - 3) The officer-in-charge / President, Indian Railways Institute of Signal Engineering and Telecommunications, Lalaguda, Secunderabad.
 - 4) one copy - to Mr. E. D. Nathan, Advocate, H. No. 3-h-340/2, Balakrishna, Hyderabad.
 - 5) one copy to Mr. N. R. Devraj, S.C. for Railways.

3.
~~IN THE HIGH COURT OF JUD~~

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AND

THE HON'BLE MR. D. SURYA RAO: MEMBER.

ORIGINAL APPLICATION NOS. 315 & 316 / 87

BETWEEN:-

I. R. I. S. E. T Mess Bharatiya Karmika Sangham
(Reg. No. B-1581) reptd. by its General Secretary
Mr. R. Dass, The Indian Railways Institute of
Signal Engineering and Telecommunications APPLICANTS.
AND Lalaguda, Secunderabad. (in both the
1. The Railway Board reptd. by its

C.A. NO. 316 / 87

.....RESPONDENTS.

12
Application under Section 19 of the Administrative
Tribunals Act, 1985, praying that in the circumstances stated
therein the Tribunal will be pleased to issue an appropriate
order or direction directing Respondents herein to accord
to the workmen of the I. R. I. S. E. T. Mess all rights,
Privileges and benefits, the same pay and allowances
medical facilities and Railway Passes and also
the same conditions of service as are being received
by the workmen of the Railway Administration
and / or by the workmen of the I. R. I. S. E. T
Canteen and club; and pass such other or
further order or orders as may be deemed
fit and proper in the circumstances at

(23) The Dy. Registrar (Judl.) Hyderabad Bench, CAT. Hyderabad
24. one spare copy.

- 7 The Deputy Registrar,
Central Administrative Tribunal,
Madras Bench, Tamil Nadu Text Book Society Building,
D.P.I. Compound, Nungambakkam, MADRAS-600 006.
- 8 The Deputy Registrar,
Central Administrative Tribunal,
Calcutta Bench, CGO Complex, 234/4-AJC Bose Road,
Nizam Palace, Calcutta-700 020.
- 9 The Deputy Registrar,
Central Administrative Tribunal,
Bombay Bench, CGO Complex (CBD), Ist Floor,
NEW BOMBAY -400 614.
- 10 The Deputy Registrar,
Central Administrative Tribunal,
Allahabad Bench, 23-A, Thorn Hill Road,
ALLAHABAD - 211 001.
- 11 The Deputy Registrar,
Central Administrative Tribunal,
Chandigarh Bench, SCO NO:102-103, Sector-34,
CHANDIGARH.
- 12 The Deputy Registrar,
Central Administrative Tribunal,
Gawahati Bench, Rajgarh Road, Off. Shilong Road,
GAWAHATI - 781 005.
- 13 The Deputy Registrar,
Central Administrative Tribunal,
Banglore Bench, Commercial Complex (BDA),
Indira Nagar, BANGLORE 560 030.
- 14 The Deputy Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Kandamkulathil Towers, 5th & 6th
Floor, Opposite Maharaja College, M.G. Road,
Ernakulam, COCHIN - 682 001.
- 15 The Deputy Registrar,
Central Administrative Tribunal,
Jabalpur Bench, CARAVS Complex,
15-Civil Lines, JABALPUR (MP).
- 16 The Deputy Registrar,
Central Administrative Tribunal,
Patna Bench, 32-A, B.M. Enterprises,
Shri Krishna Nagar, PATNA - 800 001.
- 17 The Deputy Registrar,
Central Administrative Tribunal, Jodhpur Bench,
7/0 Rajasthan High Court, Jodhpur, RAJASTHAN.
- 18 The Deputy Registrar, Central Administrative Tribunal,
Ahmedabad Bench, Navrang Pura, Near Sardar Patel Colony,
Usmanpura, AHMEDABAD.
- 19 The Deputy Registrar, Central Administrative Tribunal,
Cuttack Bench, Dolmandai,
CUTTACK - 753 001.
20. Sri Sanjeev Mahotad, All India Services, Law Journal
89. Halki Kal Nagar, Mal Road, New Delhi - 110009.
21. M/s. Eastern Book. Co., 36, Lal Bagh, Lucknow,
22. M/s. Delhi Law Times. 5335 Jawahar Nagar, Kolhapur

P. 12.8

illegal and without jurisdiction and to reinstate all of them excepting one Sri.Sreenivasa (who has filed a separate application as P.A.No.217/87). The matter came up for hearing on 30.4.87 on which date the learned Standing Counsel for Central Government took notice before admission and thereafter the matter was argued at length by both sides.

4. It is the contention of the applicant that the employees of the various Railways in India and of several foreign Railways undergo various courses of training ranging from 15 days to 9 months at the ITISET. The Institutes provide hostel facilities for the trainees including Mess. ^{the} Mess was started in the year 1956 and caters to the needs and requirements of all the hosteliers, trainees, officers and staff of the Institute. Until September 1967 ^{the} Mess was under the direct control and supervision of the Principal/Director of the Institute. After 1967 Mess was placed under the control of the Officers comprising of the following :-

- (a) President.
- (b) Vice-President.
- (c) Secretary.
- (d) Treasurer.
- (e) Member-purchase.
- (f) Member -Store.
- (g) Member-Account.

O.A.No. 315 of 1987
O.S.No. 316 of 1987

(Judgment of the Bench delivered by Hon'ble Sri.D.Surya Rao,)
Member.

The applicant in both ^{these} applications

is the Indian Railway Institute of Signal Engineering and Tele-communication Mess (IRISET-Mess) Bharatiya Karmika Sangham represented by its General Secretary. The applicant is a Union of the employees/workmen. It is registered under the Trade Unions Act.

2. O.A.No.316/87 is filed for a direction to the Respondents viz; Railway Board, Government of India, Director, IRISET and Officer-in-charge through the President to accord to the workmen of the IRISET all rights, ~~xxx~~ privileges, benefits, the same pay and allowances, medical facilities and Railway passes and also the same conditions of service as are being received by the workmen of the Railway Administration and /or by the workmen of the IRISET Canteen and Club.


3. O.A.No.315/87 is filed ^{for a declaration} that the notice dated 2nd April 1987 issued by the President of the IRISET Mess seeking to retrench 14 workmen of the Mess ^{is}

the affairs of the Mess are issued by the Principal/
Director. Attendance of the employees is recorded in the
manner prescribed in the Indian Railway Attendance Register.
The staff of the Mess is incharge of utensils, crockery,
cutlery and gas etc. The Director of ^{the} Hostel/ Superintendent
^{the} ~~an~~ Estate Officer of the Institute and Officer-in-charge
of the Railways who are employees exercise control over
the Mess and all the estimates are to be approved and
sanctioned by or under the authority of these Officers .
The trainees have no control over the property of the Mess
and they only decide what should be the daily Menu and
provisions to suit their daily requirements. The workmen
are not under the control of the trainees. Gas cooking
connection and ration card stand in the name of the hostel.
The staff of the Mess hostel are inter-changeable and
form one integral establishment. Casual employees sought to
be retrenched by the notice dated 2.4.1987 have completed
120 days/4 months service as casual labourers and have
attained the status of the Railway Servants. All the workmen
including the casual labourers were appointed under the
authority of the Principal of the Institute and till
March 1979 the Principal himself initiated disciplinary

In March 1979 running of the Mess was entrusted to the ^a Committee nominated/or appointed by the Principal/Director of the Institute. It is contended that all the assests and properties including the premises where Mess is run belongs to Railway Board. Replacement of furnitures and utensils etc., is made by the Railway Board. Two Bank Accounts have been opened viz; ^a running account to meet the day to day expenditure and ^a ~~the~~ reserve fund account for payment of wages to employees and workmen. It is the contention of the applicant that the funds for both the accounts is provided by the Railway Board through the Principal/Director. Their financial control is exercised by the Officer-in-charge of the Mess who makes all payments by or under the authority of the Principal. All estimates and day to day expenditure in connection with the running of the Mess is approved and sanctioned by the Officer-in-charge of the Mess. Repairs, maintenance etc., is under the control of the Hostel Superintendent. Excepting the day to day expenditure, all other expenditure like water charges, electricity charges, repairs and maintenance etc., is borne by the Railway Board. All orders and instructions governing

Railway employees but not the workers of the Mess.

Thus there is discrimination in that some workers are treated as Railway employees and others like the workmen of the Mess, are not treated as Railway employees, though all of are part of the IRISSET Establishment and render service to the IRISSET Organisation and trainees. This discrimination violates the rights guaranteed to the applicants under Articles 14, 16, 21, 23 and 39(a) of the Constitution of India. Hence the applicants in the two applications request to treat the workmen of IRISSET Mess as Railway employees and to quash the order of retrenchment dated 2.4.1987 issued by the President of the IRISSET Mess.

5. The questions ^{that arise} for decision are whether the Mess  run for the benefit of the trainees of the IRISSET is a domestic Mess run by trainees themselves or whether it is a Mess run by the Railway Establishment and also whether the employees of the Mess are holders of Civil Posts so as to be covered by S.14(1) of the Administrative Tribunals Act 1985.

6. Admittedly, even according to the application of the applicants, in 1967 Mess was under the direct administrative control and supervision of the Principal/Director and in March 1979 running of the Mess was entrusted to a Committee nominated/ or appointed by the Principal/Director of the Institute. This is clear from sub-paras 6 and 7 of para-6 of the applicant's application in

action against the workmen. Though the Mess purports to be under the charge of the Officer-in-charge of the Mess ^{he} is a nominee of the Principal and agent of the Institute as ^{he} Mess is run and managed by ~~the Agency of the~~ IRISSET and is serving the Institute including the Officers and employees of the Railway Board. Ownership of the Mess rests with the Railway Board/IRISSET owning the Mess and despite it appearing as though Mess is a domestic Mess. It is in fact a Mess under the control of the Railway Board/IRISSET as the hostels/Mess form an integral part and parcel of the Institute. The services rendered by the workmen are for the business of the Institute or Railway Board. Both the Institute and Railway Board have control i.e., administrative and ~~non~~-managerial control over the workers of the Mess and all the workers of the Mess are Railway employees. It is further stated that there is a canteen located in the premises of the Institute and that the employees of the canteen are treated as Railway employees. Though the Board/Mess/ Canteen cater to the ^{employees of Canteen are alone are} needs of the Institute, the ~~former~~ ^{employees of the Mess.} is treated as Railway employee, and not the ~~latter~~. Similarly employees attached to IRISSET, Club and Women's Organisation are treated as

^{the} letter dated 7.3.1979 referred to supra. This ~~it~~ letter states clearly that the trainees who are eligible for D.A. have ~~to~~ make their own arrangement for ^{food} ~~Mess~~. It is also made clear that monies will not be advanced by the Financial Advisor and Chief Accounts Officer, South Central Railway for messing charges since ^{the} ~~Mess~~ will entirely be run by the trainees. This makes it clear beyond doubt that no funds are being contributed or given by the Railway Administration for running the Mess. The fact that the Railways contribute towards capital investment viz; crockery, cutlery, gas, building etc., will not necessarily render ^{the} ~~Mess~~ as a Railway ~~an~~ Establishment and not ^a private Mess. The further fact that the Principal nominates one of the Officers of the IRISCT to be an Officer-in-charge to supervise the work of the Mess will not render the Mess as being ^{or} ~~run~~ by the Railway Establishment. It is common knowledge that in various hostels students run the Mess on Cooperative basis and ~~may~~ that they are assisted by ^a lecturer/Warden. Such Messes can never be deemed to be part of the main Establishment. The fact that some of the other Establishments like canteen etc., are being run by the Railways does not necessarily mean that the employees ^{of the} ~~Mess~~ are also Railway employees. Though we have

D.A.No.316/87. This position is also clear from a D.O.letter issued by the Principal of the IRISSET Organisation dated 7th March 1987 drawing the attention of the Railway Board's letter No.E(Trg)-77(35)/4 dated 9.2.1979 which reads as follows :-

" Please refer to your letter No.HCM/II dated 2.1.1976 on the above subject.

2. The proposal for revising upwards the ceiling rate for supply of food or to fix a provisional ceiling rate for the messing charges and to pay the difference between the actual messing charges determined at the end of the month and the D.A. to which the trainees are entitled, has been considered by the Board carefully in all its aspects, but they regret their inability to agree to the same.

3. The trainees may be allowed daily allowance as admissible in lieu of free messing and 20% Daily Allowance, as per extant practice and left to make their own arrangements for food or they may be allowed to start a cooperative mess. If necessary, the question of engagement of a private contractor for supply of food may also be considered and necessary action taken."

P12
This Railway Board's letter dated 9.2.1979 makes it clear that IRISSET Mess is to be run as a Cooperative Mess by the trainees and, if necessary, engagement of a private contractor for supply of food may also be considered. Apart therefrom it has been contended by the learned counsel for the applicant that the funds for day to day expenditure and for payment of salary comprising of running account and reserve fund ~~xxxxxx~~ account are provided by the Railway Board. This has been denied by the learned counsel for the respondent who has produced

a test for determination who is a workman and employer,
the Supreme Court held that where a worker or a group of
workers labour to produce goods or services and these
goods are ~~for~~^{or} ~~add~~^{are} services ~~or~~ for the business of another
that other is in fact the employer. It is sought to be
contended that since Mess ^{the} is run for the benefit of the
Railway Administration ^{the} employees of the Mess are employees
of the Railway. This decision ~~has~~ has obviously no
application to the instant case as it is one rendered under
the Industrial Disputes Act and not for determination whether
the employees are holders of civil posts ^{as in the instant case - Fullin} or otherwise. Since
Mess is run for the benefit of the trainees as individuals
and not for the Railway Administration ⁽¹⁻ cannot be held that
employees of the Mess are employees of the Railway. ^{The Letter D/9.2.79} Mess
^{confirms that the Mess} is purely a voluntary organisation run by the trainees ^{for their benefit -}
^{and the} Railway ^{administration} cannot be made responsible or liable for the employees
welfare in any manner.

8. The further question that arises is whether the
employees are holders of civil posts and whether this
Tribunal may entertain applications or ~~has~~ have jurisdiction
in regard to their grievances.

9. Under Section 14(1) of the Administrative
^{lays down that} Tribunals Act all matters concerning recruitment to All India

asked the learned counsel for the applicant to produce the appointment order to show that the employees have been appointed by the Railway, he could not do so, obviously as there is no appointment order by the Railway. Another fact to be noted is that the employees are not governed ^{by the} ~~under~~ ^{applicable} ~~rules pertaining~~ to Railway employees. It has been brought to our notice that every employee appointed to the Mess is appointed by the President of the Mess and not by the Principal of the Institute. The conditions and terms of service and other rules and regulations ^{Governing service condition of the} ~~of the Mess~~ employees are governed by rules called ^{of the Mess} "Rules regulating the conditions of service of employees of IRISSET Mess run by the Mess Managing Committee of Hostel Nos. 1 to 5." The conditions of employment service are governed purely by these rules. Thus it is clearly established that the appointment of the employees is not by the Railways but by the President of the Mess Committee and that none of the Rules governing the Railway employees are applicable at all to the applicants.

7. The learned counsel for the applicant, however, relies upon a decision reported in AIR 1978 SC 1410 Hussain Bhai vs. Alath Factory wherein in laying down ~~stare decisis~~

not created by the Railway nor are they being
abolished by the Railway. The conditions of service
of posts are governed or regulated by the rules framed
by the General Body of the Mess. The duties of the
applicants are not in connection with the affairs of the
Railways but for the benefit of the trainees in their
private capacities and the salaries are not proved to ~~be~~
have been paid from out of revenues of the Railways.
While these tests referred to in the decision cited supra
are only some of the tests and as held by the Principal
Bench are neither exhaustive nor inflexible, the applicants
are not ~~being~~ able to satisfy ^{us} that their employment is
by the Railway for the benefit of the Railway. The
applicants are clearly employees of Mess run on cooperative
basis by the trainees who are not bound to avail of the
Mess facilities. The appointment and conditions of
service of the applicants are governed wholly and solely
by the Mess Committee or the President of the Committee.
Thus it is clear that the employees of the Mess ^{do} will not
hold civil posts under the Union and as such this Tribunal
has no jurisdiction to entertain the present applications

Service or to any civil service or post under the Union or to any post connected with the Defence or any Defence Services being in either case ^a of post filled by civilian, all service matters pertaining to the service of such an employee in connection with the affairs of the Union or of a State or of any local or other authority within the territory of India or under the control of Government of India or of any Corporation or Society owned or controlled by the Government of India come within the purview of the Act. It has been held by the Principal Bench of Central Administrative Tribunal in 1986(2) CAT - 396 Sri. Narender Gupta vs. Union of India and others, that while there is no definition of the expression "Civil Post" the following tests could be applied to determine whether an employee is a member of the civil post :

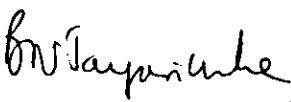
- (1) Is the post created by the Government and may be abolished by the Government?
- (2) Are conditions of service of such posts prescribed, regulated and controlled by the Government?
- (3) Are the duties attached to the post connected with the affairs of the State?
- (4) Are the salary and other emoluments attached to the post paid out of the Revenues of the State?


None of the above conditions are applicable to the case of the applicants before us in this case. The posts are

whereby the applicants seek to ventilate their grievances.

We see no reason to admit these applications as we are of the opinion that we do not have jurisdiction to entertain these applications. We accordingly dismiss these applications.

But in the circumstances of the case, there would be no order as to costs.

176

(B. N. Jayasimha)
Vice Chairman


(D. Surya Rao)
Member

Dated this the 12th day of May 1987

mdj*