

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.Nos.542 & 543 of 1999.

DATE OF ORDER: 30-7-1999.

Between :

1. Syed Pattasab
2. M. Badarinath
3. Jeevalinga

..Applicants
in O.A.542/99

1. Suresh T.Hullur
2. N.M.Bharamappa
3. C.B.Somannavar
4. B.S.Naikar
5. V.Janardhan
6. Anil S.Katkar
7. U. Kullayanna
8. A.D.Kulkarni
9. Mahesh N. Navale
10. M.M.Belgaum
11. B.B.Tadas
12. S.V.Hugar
13. S.N.Marshi
14. Sunil S.Bommigatti
15. Khaleel Ahmed

..Applicants
in OA No.543/99



A N D

1. UOI represented by
the Chairman
Railway Board,
Rail Bhavan,
New Delhi-110001.
2. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager,
South Central Railway,
Guntakal Division,
Cuntakal.

.. Respondents
in OA 542/99

1. The Chairman
Railway Board,
Rail Bhavan,
New Delhi-110001.
2. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.

4. The Divisional Railway Manager,
South Central Railway,
Hubli Division, Hubli.

5. The President,
South Central Railway Employees
Consumer Cooperative Society Ltd.,
Hubli.

.. Respondents
in OA 543/99

Counsel for Applicants : Mr.G.Sanyasi Rao
(in both OAs.)

Counsel for Respondents : Mr.V.Rajeshwara Rao,SC
(in both OAs.)

Coram:

The Honourable Mr.Justice D.H. Nasir, Vice-Chairman

The Honourable Mr.H.Rajendra Prasad, Member(Admn.)

O R D E R.

Justice D.H.Nasir, VC:

1. There were 3 applicants in OA No.542/99 and 15 in OA No.543/99. The respondents are sought to be directed to treat the applicants as regular employees of Railways with effect from 1.7.1990 on the same basis as it was done in case of the Southern Railway Cooperative Society staff.

2. The applicants are working under South Central Railway Employees Consumers Cooperative Society Ltd. for the last more than 10 years on a meagre salary of Rs.250/- per month, which is far less than the Group 'D' staff of Railways. It is the applicants' case that as per the Railway Board's letter dated 26.8.1977, the recruitment of staff in quasi administrative offices connected with Railways was done for absorption after screening them from time to time, but the Railway Board's

orders were not implemented by the Railway Administration. The recognised labour organisations, therefore, made a representation to the Railway Board and after taking the same into consideration, according to the applicants, the Railway Board issued instructions by letter dated 11.6.1997 stating that the staff working in the Administrative offices or organisations connected with Railways had to compete along with other eligible candidates for recruitment to the Railway service. The applicants were called several times but they were not selected for regular appointment to Railway service and were thus deprived of their legitimate right of securing employment under Railway service, according to the applicants.

3. The learned counsel Mr. G.Sanyasi Rao for the applicants, during the course of his arguments, attempted to persuade us that the Supreme Court had decided that the canteen employees were railway servants and were entitled to the same status under the Consumer Cooperative Stores as the objects of both the Canteen and the Stores were identical. The learned counsel further submitted that in the case of NATIONAL FEDERATION OF RAILWAY PORTERS v. UNION OF INDIA (AIR 1995 SC 709) the Supreme Court directed the Railways to absorb all the staff working on contract labour basis for a long period as regular employees and therefore, according to the learned counsel Mr. Sanyasi Rao, the staff of the Cooperative Societies could not be denied the same benefits on regular basis. The counsel also submitted that the Apex Court in Civil Appeal No.2932 of 1991 dated 7.9.1994 in UNION OF INDIA v. SOUTHERN RAILWAY EMPLOYEES COOPERATIVE STORES WORKERS UNION held that in view of

what is stated in the Indian Railway Establishment Manual in paras-2901 to 2909 the employees working in the Cooperative Stores were in fact and in law the employees of the Railway establishment. When a Review Petition was moved by the Ministry of Railways by filing Civil Appeal No.2932 of 1991, the same was rejected by the order passed on 1.3.1995 by a Bench comprising two Hon'ble Judges of the Supreme Court. It is further submitted by the learned counsel Mr. Sanyasi Rao that in Civil Appeals Nos. 2492 2493 of 1998 arising out of SLP(C) Nos.6155-6156 of 1997 between UNION OF INDIA AND OTHERS v. SOUTHERN RAILWAY EMPLOYEES COOPERATIVE STORES WORKMEN UNION in OA No.305/98 of the CAT, Madras Bench (reported in 1998 SCC(L&S) 1415) it was clearly mentioned that the order of the Tribunal as confirmed by the Supreme Court was final and binding and that in a similar matter arising out of the order of the Central Administrative Tribunal, Hyderabad Bench, the Supreme Court had taken a view that such workmen could not be treated as direct employees of the railways. However, the Supreme Court held that the decision of the Hyderabad Bench of CAT could not be of any avail in the proceedings. The appellants cannot attempt to whittle down the effect of the order of the Tribunal which stood confirmed as binding between the parties especially when the review proceedings had been dismissed by the Supreme Court. In paragraph-7 of the said judgment, the Supreme Court held that there were other similarly situated workmen working in different Railway Cooperative Employees Societies under Southern Railway. If that was so, those who were left out may pursue their legal remedies in accordance with law. The learned counsel Mr. Sanyasi Rao for the applicants laid emphasis on the views expressed by the Supreme Court in the above decisions and urged that the Supreme Court had disposed of the appeals in favour of

the Railway Employees' Cooperative Society to absorb all 171 employees; to give status of regular railway employees and to give them pay and allowances as given to the regular servants in the corresponding posts with effect from 1.7.1990. Thus, according to the learned counsel Mr. Sanyasi Rao, there was no reason why the benefit of the said decisions be not given to the present applicants and why not the ratio emerging from the aforesaid decisions of the Supreme Court should not be followed in the instant cases before us. Since the above decisions were the decisions of the Apex Court, there was ^{as 1st} ~~as such~~ no constraint why the same benefit should be denied to the present applicants, according to Mr. Sanyasi Rao.

4. Ordinarily we would not have ventured to probe this question any further in view of the directions given by the Apex Court in the above decisions. However, the learned Standing Counsel Mr. Rajeshwara Rao also pressed into service the decisions of the Supreme Court which according to him had a greater force as they were latest in point of time and the decisions were given by the larger Bench of the Supreme Court.

5. The Hon'ble Three-Judge Bench of the Supreme Court in the case of UNION OF INDIA v. J.V. SUBBAIAH AND OTHERS (1996 SCC (L&S) 558), held that the order of the Two-Judge Bench of the Supreme Court had upheld the order of the Central Administrative Tribunal, Madras Bench which had become final. It is further observed that the Bench of the Supreme Court merely stated thus :

"... The Tribunal has examined in detail Chapter XXIX of the Indian Railway Establishment Manual and has preferred to paras 2901 to 2909. Based on the provisions of the Railway Manual and taking into consideration the actual working of the Stores, the

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Tribunal has come to the conclusion that the employees working in the Cooperative Stores are in fact and in law, the employees of the Railway Establishment. We have been taken through the judgment of the Tribunal and other relevant material on record. We see no ground to interfere with the reasoning and the conclusion reached by the Tribunal. .."

Supreme Court further observed that

6. The Madras Bench had merely referred to the provisions in the Manual and proceeded on the premises that they gave rise to a legal basis to treat the employees of the Stores as the Railway employees. The Supreme Court, ^{however} held that the reasoning was wholly illegal and unsustainable for the reasons stated in the judgment. The Bench also observed that the principle of equality enshrined under Article 14 of the Constitution did not apply since it was already held that the order of the CAT, Madras Bench was clearly unsustainable in law and illegal which could never form basis to hold that the other employees were invidiously discriminated offending Article 14. The employees covered by the order of the Madras Bench were directed to be dealt with by the Railway Administration appropriately but that could not form foundation to plead discrimination. The Hon'ble Bench of the Supreme Court, therefore, had no hesitation to hold that the officers, employees and servants appointed by the Railway Cooperative Stores/Societies could not be treated on par with the Railway servants under paragraph-108 of the Railway Establishment Code nor could they be given parity of status, promotions, scales of pay, increments etc. as ordered by the CAT, Hyderabad Bench. The appeals filed by the Railways were accordingly allowed and the OAs were dismissed. Subsequently, the Two-Judge Bench of the Supreme Court in Civil Appeal No.1271 of 1999 (Railway Board & others v. M.V.Nagabhushan Rao and another) by order dated 26.2.1999 held that the view expressed by the Three-Judge Bench of the Supreme Court in UNION OF INDIA v. J.V.SUBBAIAH AND OTHERS (1996(2) SCC 258) wherein the

Court came to the conclusion that the employees under the Consumer Cooperative Stores could not be regularised as regular railway servants and that the judgment and order dated 16th November, 1994 of the Central Administrative Tribunal, Hyderabad Bench in OA No.739/90 was quashed and set aside and the order dismissing the said OA No.739/90 filed by the respondents before the Supreme Court in the above appeal was directed to be substituted in place of the decision of the Bench of the CAT in OA 739/90.

7. Giving our anxious consideration to the rulings of the Hon'ble Supreme Court of India referred to above, we humbly and respectfully believe that the views expressed by the Three-Judge Bench of the Supreme Court in the case of UNION OF INDIA v. J.V. SUBBAIAH (supra) which has been subsequently followed by the Two-Judge Bench of the Hon'ble Supreme Court in Civil Appeal No.1271 of 1999 decided on 26.2.1999 could be legitimately and lawfully applied to the facts of the cases before us. Apart from the decision of the larger Bench of the Supreme Court, it is also pertinent to note that the subsequent decision dated 26.2.1999 of the Supreme Court Bench comprising two Hon'ble Judges also took into consideration the views expressed in J.V.Subbaiah's case (supra). Therefore, it will not be in order for us to deviate from the law laid down by the Hon'ble Supreme Court in the aforesaid cases of 1995 followed by a case of 1999. Since the issue before us in these O.As stands answered by the decisions of the Hon'ble Supreme Court in J.V.Subbaiah's case and in Nagabhushana Rao's case (supra) as discussed earlier, we thought it fit to abstain from looking into the merits of the case, because such exercise would be an

exercise in futility and in that view of the matter, therefore, there could be no alternative but to dismiss the OAs before us.

8. Since the questions of law and facts involved in both these OAs are similar and the reliefs sought by the applicants in both the cases are also the same in nature, we have thought it fit to dispose of both these OAs by this common order.

9. The O.As. are accordingly dismissed; however, with no order as to costs.

केत संख्या	CASE NUMBER.....
निर्णय का तारीख	Date of Judgement
प्रति तथ्यार किया गया दिन	Copy Made Ready on.....
अनुप्राप अधिकारी(भाविक) उप रजिस्ट्रार(भाविक) Section Officer (J)/Dy. Registrar (J)	

DJ/