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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.505/94 Date of order: 1/2/2000

Raja, S/o Shri Mithu, Harijan, R/o Lal Phatak Crossing, Ajmer.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Mumbai.
2. Chief Work Shop Manager, W.Rly, Ajmer.
3. Divisional Railway Manager, W.Rly, Ajmer.

...Respondents.

Mr.Arjun Karnani - Counsel for the applicant

Mr.M.Rafiq - Counsel for respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

The applicant has filed this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, praying that he should be deemed to have been regularised as Class IV employee and he be paid arrears of salary of Class IV employees with retrospective effect on completion of his 240 days of service.

2. Facts of the case as stated by the applicant in the instant case are that he was appointed as Sweeper (Class IV) in the Senior Railway Institute, Western Railway, Ajmer since 1.6.1976. He is rendering 8 hours daily service but he is being paid only Rs.350/- per month. It is stated that he is also given one Privilage Pass, two sets of P.T.O and medical facility from the Railway administration but he is not being paid the salary of Group-D employees of Railway. It is stated that Senior Railway Institute is part and parcel of social activities controlled by the Railway administration. Therefore, there cannot be any discrimination with the applicant qua other class IV employees of the respondents. The applicant submitted representation but with no result. It is stated that he has not been given appointment on Class IV post. The applicant is in service of Senior Railway Institute, Ajmer, since long and performing the work of Class IV employee/Sweeper, therefore, the applicant is entitled to regularisation and equal pay of equal work. Therefore, this O.A has been filed for the relief as mentioned above.

3. Reply was filed. A preliminary objection was raised by the respondents regarding maintainability of this O.A on the ground that Senior Railway Institute is engaged in recreational activities and not controlled by the Indian Railways. It is also stated that

the applicant is not a railway servant, therefore, this Tribunal is having no jurisdiction to entertain this O.A. It is also stated that the applicant has approached this Tribunal without exhausting the remedies available to him and merely that Privilage Pass, PTOs are issued and medical facilities are given to the applicant, does not mean that he is a Railway employee. At this stage it is stated that casual labourers employed in the Senior Railway Institute are not Railway servant. It is denied that the applicant was appointed on the post of Safaiwala and he is only a part-time worker. It is also denied that the applicant's duty is 8 hours a day. Regarding payment he was used to be paid a sum of Rs.150/- per month. Sr.Railway Institute are merely a Recreational Club of railway servant, therefore, casual labourers working in this Institute cannot be regarded as railway servant. Their salary, etc. are determined by separate rules meant for this purpose. Therefore, this O.A is devoid of any merit and is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The law on the subject has been consistently for consideration before Hon'ble the Supreme Court of India and before different Benches of the Tribunal and High Courts from time to time. In Parimal Chandra Raha & Ors Vs. Life Insurance Corporation of India & Ors (1995) 2 Suppl.846, Hon'ble Supreme Court has held that where provision and maintenance of Canteen is a statutory obligation and canteen becomes a part of the Establishment and canteen employees will be employees of management. Even where there is no statutory obligation but an obligation outside statute to provide canteen and it has become a part of the service conditions of the employee, the same result will follow. However, if the obligation is not for providing canteen, only facilities to run canteen are provided, the canteen would not become a part of the establishment.

6. In M.M.R.Khan & Ors Vs. UOI & Ors, 1990 SCC(L&S) 632 it has been held that the workers engaged in Statutory Canteens as well as those engaged in non-statutory recognised canteen in Railway Canteens are Railway employees, but the employees in non-statutory non-recognised canteens cannot be considered to be Railway employees. The judgment given in Parimal Chandra Raha (supra) has also been followed in Employers In Relation to the Management of Reserve Bank of India Vs. their Workmen, JT 1996(3) SC 226.

7. Madras Bench of the CAT has also given a judgment on 29.6.90 in O.A No.305/88 by which it was held that the workers of

Southern Railway Co-op. Stores should be treated as regular Railway servants and be given all consequential benefits. The SLP of the Railway against the above judgment was also dismissed. The judgment of the Madras Bench of the Tribunal was followed by few more Benches but three Judges Bench of Hon'ble Supreme Court of India while delivering the judgment in Civil Appeal No.12148 of 1995 arising out of SLP No.14446 of 1995, held that officers, employees and servants appointed by the Railway Co-op. Stores/Societies cannot be treated on par with Railway servants nor they can be given parity of status, promotions, scales of pay, increments, etc. as ordered by CAT Hyderabad Bench and that the judgment of the CAT Madras Bench in O.A No.305/88 dated 29.6.90 is illegal and unsustainable.

8. Hon'ble Supreme Court in the aforesaid judgment also made a reference of All India Railway Institute Employees Association Vs. UOI through the Chairman (1990) 2 SCC 542. In this case question was whether the employees appointed in the Institutes or Club maintained by the Railway Employees as welfare measure would be treated as railway employees on par with Railway canteen employees (Statutory or non-statutory recognised canteens) and it was held by the Supreme Court that the establishment of the institutes or clubs, though recognised by the Railway, was only a selfare measure and held that formation of the institutes or clubs was not mandatory. They are established as a part of the welfare measure for the Railway staff and the kind of activities they conduct, depends, among other things on the funds available to them. The activities have to conform to the object since by their very nature the funds are not only limited but keep on fluctuating. The institutes or clubs and the benefits that would flow on them will depend upon the budgetary provisions for the institutes and clubs and keep flowing from time to time. If the employees working in the institutes or clubs are recognised as Railway employees it will have snow-bolling ;effect on other welfare activities carried out by the Railway and similar activities carried on by all other organisation. In the light of those factual matrics, it was held that there was no relationship of employer and employee between the Railway Administration and the employees engaged in the institutes and clubs. Neither law nor facts spell out such relationship.

9. On the basis of the above legal proposition as laid down by the Apex Court in relation to Railway Institute, we reach to the conclusion that casual employees of Senior Railway Institute at Ajmer cannot be regarded as Railway employees, therefore, this Tribunal is having no jurisdiction to entertain this O.A. It has

also become abundantly clear that the applicant has not exhausted the remedies available to him by way of representation before approaching this Tribunal. Therefore, we are of the considered opinion that this application is not maintainable in view of the provisions of Sec.20(3) of the Administrative Tribunals Act, and the applicant has no case for interference by this Tribunal.

10. We, therefore, dismiss this O.A with no order as to costs.

11. However, we make it very clear that this order shall not preclude the applicant to file representation for redressal of his grievance to the competent authority and the competent authority is expected to consider the grievance of the applicant sympathetically.

(N.P.Nawani)
Member (A).

(S.K.Agarwal)
Member (J).