

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application No. 256/2000

Jabalpur, this the 8th day of April, 2004

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

1. Arun Chandra Shukla
s/o Sri J.I.Shukla,
18, Gandhi Nagar,
Itarsi (MP) with 12 others.Applicants
(By Advocate: Shri S.K.Nagpal)

-versus-

2. Union of India through
Chairman,
Railway Board,
Rail Bhawan, New Delhi & two others.Respondents
(By Advocate: Shri S.P.Sinha)

C O R D E R

By Madan Mohan, Member (Judicial)

By filing this C.A. the applicants have sought the following main reliefs:

- i) to quash the order dated 6.2.1998 and 13.11.1997 Annexure A-2 and Annexure A-2 respectively.
- ii) to restrain the respondents from handing over the canteen to any co-operative society;
- iii) to direct that the canteen being a statutory canteen, the employees of the canteen are entitled to be absorbed and treated as Railway employees for the purpose of their service conditions, and grant all other consequential benefits.

2. The brief facts of the case are that the applicants (13 in number) are working in the Diesel Loco-shed Canteen at Itarsi since more than 15 to 20 years, uninterruptedly and without any break. The Diesel Shed at Itarsi is a Factory within the meaning of the provisions of Factories Act and therefore the provisions of Section 46 of the said Act with regard to maintenance of Staff Canteen is applicable to the said canteen being run by the Railway Administration through a Canteen Managing Committee consisting of officers



of the Railway. Even though the said canteen is a statutory canteen as contemplated under Section 46 of the Factories Act, the Railway Administration is treating it as a non-statutory canteen recognised by the Railway Board for the purpose of welfare of its employees.

2.1 In the year 1990, the Hon'ble Supreme Court in the case of MMR Khan vs. Union of India, AIR 1990 SC 397, laid down the law that statutory canteens being managed by the Railway under the Factories Act and as such employees working in such canteens are to be treated as Railway employees for all other purposes. It is further held that even non-statutory recognised canteens which are maintained by the Railways are to be treated as canteen run by the Railways and employees of such canteens are to be given benefit applicable to the railway employees. Even if the Diesel Shed Canteen at Itarsi is taken a non-statutory canteen the Railway Board after the judgement of the Hon'ble Supreme Court in the matter of M.M.R. Khan vs. UOI (supra) has taken effective steps for recognition of the canteens, creation of posts and absorbing the employees working in the said canteen and for granting them all benefits that accrued to a railway employee. The applicants have filed series of documents alongwith the O.A. i.e. Annexures A-4 to A-15 which relate to various correspondences entered into between the local administration and the Railway Board and the Headquarter at Bombay with regard to sanction of posts and absorption of employees of the canteen as railway employees. It is further submitted that when the entire process has been initiated and it was at the verge of finalisation, by the impugned order the Railway Board has decided to hand over the canteen to Railwaysmen Consumer Co-operative Society at Itarsi. This is highly improper and contrary to law laid down by the Hon'ble Supreme Court. Hence, this O.A. has been filed seeking the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the pleadings and other material available on record.

4. It is argued on behalf of the applicant that in the alleged canteen about 2000 persons are working continuously and the canteen is running from more than 29 years and the applicants are serving the said canteen uninterrupted and satisfactory. Hence, this canteen comes within the purview of the Factories Act and Section 46 of the Factories Act is applicable to the present case. He has drawn our attention towards various Annexures annexed with the O.A. Annexures A-1 and A-2 are the impugned orders; Annexure A-3 is the details of service in respect of the applicants and Annexure A-4 is a letter issued from the General Manager to the Secretary (E), Ministry of Railways, Railway Board, New Delhi on 27.9.1977. Our attention has drawn towards para no. 5 of the said order, which is reproduced as under:-

"5. The Ministry of Railways vide their letter No. E(LWA) 69 AT/FAC/1-7 dated 25.5.1971 have approved to the provision of canteen facilities in the loco sheds and C&W Depots. As already stated in para 2, above the Ministry of Railways have approved of the provision of a canteen in the Diesel Shed, Itarsi."

Learned counsel further drew our attention towards Annexure A-17 i.e. letter dated 26.4.1993 issued by the General Manager to the Secretary (E), Ministry of Railways, Railway Board, New Delhi vide which the Railway Board have approved the provision of the staff canteen facilities in the Loco Shed and C&W Depots. He has submitted that the alleged canteen may not have the status of statutory canteen but it has the status of non-statutory recognized canteen and, therefore, in view of the judgement of Hon'ble Supreme Court in the case of M.M.R. Khan vs. UOI(*supra*) the applicants are entitled to the relief prayed for and the impugned orders are liable to be set aside.



5. In reply, learned counsel for the respondents argued that the aforesaid canteen has not yet been approved by the Railway Board. It is further argued that the General Manager in his letter dated 27,9. 1977 (A/4) in para 6 has only proposed to recognise this canteen for the grant of subsidy and other privileges and concessions permitted to approved staff canteen under the extent of orders of the Ministry of Railways. Hence, it cannot be argued that by the said letter this canteen was approved by the Ministry of Railways. In Annexure A/17 also, it is proposed to recognise this shed staff canteen and accord approval as non-statutory canteen so that all requisite facilities are provided to run it smoothly with better service to working employees to their best satisfaction. This is also a proposal and it does not justify the arguments of the applicants that this railway canteen has ever been approved or recognised by the Railway Board. Hence, this canteen is still non-statutory and non-recognized and, therefore, the provisions of Factories Act are not applicable to the facts of the present case. Learned counsel has also taken the preliminary ground of jurisdiction stating that the present case does not relate to the service matters of any Civil Servant holding of Civil post under the Govt. of India. The applicants were engaged by the Selected Staff Committee from amongst the employees of Diesel Shed, Itarsi which is a Private Committee of the Employees which is running and managing the affairs of the canteen where the applicants are working and the applicants are neither under the control of Railway Administration nor employed with the Railway Administration nor the Railway Administration is in any way concerned with the working of the said canteen, hence the said canteen is not covered within the provisions of Factories Act. Merely sending a proposal to Railway Board for consideration to approve the canteen does not confer by itself

any right to the workers of this canteen to claim the status of railway employees. This canteen is not yet recognized by the Railways as it was started without the prior approval of the Railway Board. Hence, this canteen is neither approved nor recognized by the Railway Board and is not receiving any subsidy from the Railway Administration. The workers of the said canteen are neither employed by the Railways nor employed as per the Railway recruitment rules nor the other provisions and rules made applicable to them. The workers of this canteen therefore have no claim for absorption as railway employees. These workers are paid from the profit of the canteen and no railway rules whatsoever are applicable in regard to the engagement of the workers and their service conditions. In these circumstances, the workers engaged in this canteen are not entitled to claim to be the workers of the Railway's "Statutory" or "Non-statutory subsidised (recognized) canteens". So far as law laid down by the Hon'ble Supreme Court in the matter of M.M.R. Khan vs. Union of India & ors (*supra*) is concerned, it does not cover the case of the applicants as the Hon'ble Supreme Court has held that the employees in Statutory and Non-statutory Recognised Railway Canteens are entitled to be treated as railway employees but not employees in Non-statutory Non-recognized canteens. In the said judgement Hon'ble Supreme Court also held: Factories Act (63 of 1948), S.46 - Railway Canteens - Statutory and Recognized - Employees of - Are railway employees. Hence the arguments advanced on behalf of the applicants are not supported by the aforesaid ruling as the alleged canteen is neither statutory canteen nor non-statutory recognized canteen and, therefore the provisions of Factories Act are also not applicable to the present case of the applicants.

6. After hearing the learned counsel for the parties and perusing the record, we find that the applicants have not been able to establish that the alleged canteen is approved and



recognized by the Railway Board. We have also seen the annexures vide which the proposals for getting this canteen recognized were sent to the Railway Board but the Railway Board has not recognized it so far. In this view of the matter, we are of the considered view that since the alleged canteen is neither statutory nor non-statutory recognized railway canteen, the provisions of Section 46 of the Factories Act do not apply to the present case and also the judgement of the Hon'ble Supreme Court rendered in the matter of M.M.R. Khan's case does not support the case of the applicants.

7. In view of the above, the O.A. is bereft of merit and is accordingly dismissed. No costs.

(Madan Mohan)
Member (J)


(M.P. Singh)
Vice Chairman

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