

(RESERVED ON 18.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **01ST** day of **JUNE 2018**.

ORIGINAL APPLICATION NO. 878 OF 2016

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Surendar Yadav S/o Sri Udai Bhan Yadav, aged about 48 years, working as Service Boy, Railway Employees Consumer, Co-operative Canteen/stores, D.R.M. Office, North Eastern Railway, Lahartara, Varanasi, R/o-Village-Apardiya, Post – Gotha, District-Mau.
2. Mohd. Misbahuddin Khan aged about 44 years son of Shri Mohd. Daud Khan, working as Casual Service Manager, Railway Employees Consumer Co-operative Canteen/Stores, D.R.M. Office, North Eastern Railway, Lahartara, Varanasi, R/o – Village & Post – Usiyan, District- Ghazipur.
3. Lal Bahadur Singh Yadav S/o Sri Ram Krit Yadav, aged about 42 years, working as Service Boy, Railway Employees Consumer Co-operative Canteen/Stores, D.R.M. Office, North Eastern Railway, Lahartara, Varanasi, R/o – Villag- Kandar, Post Yuwarujun, District-Ghazipur.
4. Kapil Deo Yadav S/o Shri Laujari Yadav, aged about 32 years, working as Service Boy, Railway Employees Consumer Co-operative Canteen/Stores, D.R.M. Office, North Eastern Railway, Lahartara, Varanasi, R/o Village Chak Musaiyad, Post-Ghosi, District-Ghazipur.
5. Ajay Kumar Yadav S/o Sri Ram Kishun Yadav, aged about 32 years, working as Service Boy, Railways Employees Consumer Co-operative Canteen/Stores, D.R.M. Office, North Eastern Railway, Lahartara, Varanasi, R/o Village-Chak Musaiyad, Post – Ghosi, District-Mau.
6. Pawan Kumar S/o Sri Bhola, aged about 26 years, working as Service Boy, Railway Employees Consumers Canteen/Stores, D.R.M. Office, North Eastern Railway, Lahartara, Varanasi, R/o Village-Bharthara, Post-Lohta, District Varanasi.

.....Applicants

VERSUS

1. Union of India, through General Manager, North Eastern Railway, H.Q.'s Office, Gorakhpur
2. The Chairman, Ministry of Railways (Railway Board), Rail Bhawan, New Delhi-111001.
3. Divisional Railway Manager, N.E. Railway DRM's Office, Varanasi.

4. Divisional Personnel Officer (Co-ord), N.E. Railway, DRM's Office, Varanasi.

.....Respondents

Advocate for the Applicant : Shri Shiv Kumar
Shri Sudama Ram

Advocate for the Respondents : Shri P N Rai

ORDER

By means of the present original application, six applicants have prayed for a direction to the respondents to regularize their services and to quash the order dated 11.3.2016 (Annexure A-1) rejecting the claim of the applicants. A Misc. Application No.2374/2016 has been filed to permit the applicants to file single OA under the provisions of the Administrative Tribunals Act, 1985 and rules. The OA has been filed with the prayer for the following reliefs:-

- "(i) This Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 11.3.2016 passed by DPO, N.E. Railway, Varanasi/Respondent No. 4(Annexure A-1) and direct the respondents to regularize the services of applicants working in DRM's Office Canteen Varanasi on vacant posts following the settled Law laid down by the Hon'ble Supreme Court in case of Mohan Singh Ors. Vs. The Chairman, Railway Board and Ors. Decided on 3.8.2015.*
- (ii) Any other suitable order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case, be issued.*
- (iii) Award cost in favour of the applicant."*

2. The facts according to the applicants in their pleadings are that they have been appointed in DRM office canteen, Varanasi which is run by the Railway Employees Consumers Cooperative Society (referred hereinafter as 'Society') on 'no loss no profit' basis.

The Society is paying the wages to the applicants and no assistance or subsidy is given by the respondents. It is stated that the applicants are getting the medical benefit and privilege pass. It is stated in the OA that a notification dated 1.7.1996 (Annexure A-4) was issued by the respondents attaching the staff of the Society with the concerned AEN for regularization. A representation dated 17.6.1998 (Annexure A-5) was moved by the applicants to regularize them. The respondents vide letter dated 1.8.2006 (Annexure A-8) called for information regarding approval of DRM for initial appointment of the canteen staff. Then another representation dated 16.02.2016 (Annexure A-10) was submitted by the applicants to extend the benefits of the judgment of Hon'ble Apex Court in the case of **Mohan Singh & Ors. v. Chairman Railway Board (in Civil appeal No. 5854-5875 of 2015 decided on 3.8.2015)** to the applicants, which was rejected by the respondents by the order dated 11.3.2016 (Annexure A-1), which has been impugned in this OA.

3. It is also stated in the OA that as per the para 2223 of the Indian Railway Establishment Manual, prior approval of Railway Board is necessary before opening of a Railway Canteen. Accordingly, approval should have been taken for Canteen in DRM office, Varanasi. Hence, it should have been treated as non statutory recognized canteen. As per the decision of Hon'ble Apex Court in the case of **MMR Khan vs. Union of India, reported in**

1990(Suppl.) SCC 191, the applicants should also be extended similar benefit. In pursuance to the judgment in *MMR Khan (supra)*, the respondents issued a letter dated 1.7.1996 (Annexure A-4) attaching the staffs of the Canteen including the applicants to AEN, Varanasi. Accordingly, some of the canteen staff were regularized by the respondents, but the applicants' case was not considered. Further, the respondents failed to designate the Canteen as Model Canteen in spite of the provisions in the Indian Railway Establishment Manual. It is further stated that the case of the applicants are identical to the case of the employees in the case of *Mohan Singh (supra)*. Action of the respondents to issue the order dated 11.03.2016 (Annexure A-1) is illegal, arbitrary and discriminatory.

4. The respondents have contested the OA by filing the Counter Reply mainly on the following grounds:-

- The authorities had issued order to engage canteen worker from the list of casual workers. But Secretary of the Society (not included as a respondent in the OA) employed 6 workers in the canteen from out sourcing without approval of the DRM (respondent no.3) and he allowed medical and other privileges irregularly.
- The applicants were engaged while the ban imposed by the respondent no.1 was in force. Hence, the Railway Board in letter dated 2.05.2003 (Annexure CR-2 to the Counter) for regularization of canteen staff did not cover the case of the applicants.

- There is no directive of the Railway Board regarding appointment/engagement of the canteen workers.

In the Supplementary Counter Reply, no separate pleading has been submitted except for routinely denying the contentions of the applicant in the Rejoinder affidavit.

5. Heard the learned counsel for the applicant, who submitted that the applicants are entitled for similar benefit as in the case of Mohan Singh (supra) as the cases are similar/identical. However, in the impugned order dated 11.03.2016, the ground taken is that the judgment in Mohan Singh case is not applicable and this ground is incorrect. He also submitted that the status of the canteen at Varanasi is same as the canteen at Moradabad in Mohan Singh case, hence, the later judgment will also be applicable to the applicant. Learned counsel also submitted copy of judgments in the following cases:-

- (i) K.C. Sharma and Others Vs Union of India and others 1998 SCC (L&S) 226
- (ii) Ramchander and others Vs Additional District Magistrate and others 1998 SCC (L&S) 228
- (iii) State of Punjab & Anr Vs Suresh Kumar Sharma – Civil Appeal No. 7872 of 2004
- (iv) Savita Rani and Ors Vs Union Territory, Chandigarh and Ors – OA No 274/CH/2002 and 362/CH/2000 2003 (2) (CAT)

6. Shri P.N. Rai, learned counsel for the respondents submitted that the canteen at Varanasi has not been recognized by the Railway Board, where as Moradabad canteen in Mohan Singh case

was a recognized canteen. He submitted that since the status of the canteens is different, the applicants do not qualify for similar benefits as in Mohan Singh case. It was further submitted that as per the order dated 2.5.2003 of the Railway Board, the criteria for regularization in quasi-administrative establishments have been specified with the cut-off date of 10.06.1997 by which they should have completed three years of service and the applicants do not fulfil these criteria. He pointed out that the work certificate at annexure A-2 of the OA shows that the applicants have been engaged by the cooperative Society, who are running the canteen, not by the Railways as in case of Moradabad. He also drew the attention to the contention in para 12 of the Counter that the Secretary of the Society had engaged the applicants from outside in violation of the instructions vide the order dated 4.09.1997, copy of which is enclosed in Annexure CR-1 of the Counter reply filed by the respondents and also, the approval of the competent authority was not taken before engaging the applicants.

7. Learned counsel for the applicant explained that the Moradabad canteen is similar to Varanasi canteen, for which the judgment in Mohan Singh case is applicable to the case of the applicants also. He submitted that the applicants were selected through a Committee. He also pointed out to the contentions in para 6, 10, 14 and 15 of the Rejoinder filed by the applicants denying the contentions in the Counter.

8. The pleadings as well as the submissions of the parties in this case have been considered by me. The main issue to be resolved is whether the judgment of Hon'ble Apex Court in the case of MMR Khan (supra) and Mohan Singh (supra) will apply to the case of the applicants in this OA. Respondents contend that the judgement in the case of Mohan Singh (supra) will apply only for Moradabad Canteen, not for Varanasi Canteen. But the applicants have argued otherwise.

9. As far as the canteen and the workers in question in Mohan Singh case, Hon'ble Apex Court has observed the following:-

"6. It cannot be controverted that the subject Canteen has been running since 1940 within the precincts of the office of the DRM, Moradabad and has been under the direct control and supervision of the DRM. The Management Committee appointed for administration of the subject Canteen comprises office bearers of the Canteen Management Committee, duly elected in union elections held from time to time. Further, no private contractor or co-operative society has ever been engaged for running or operating the subject Canteen. The Appellants contend that the joining and leaving the canteen staff has always been sanctioned and regulated by the Controller, i.e. the Assistant Personnel Officer of the Northern Railways. The prices of the food items supplied in the subject Canteen as well as the salaries of the staff are also fixed by the said Assistant Controller Personnel Officer. Even the renovation of the Canteen, in 2005, was carried out at the directions of the Northern Railways, which bore all the expenses incurred in this exercise. It further appears that the Appellants have been provided with uniforms, medical aid, free travelling passes, residential accommodations, privileged ticket orders etc. by the Railways. Thus, it seems amply clear from this factual matrix that the Respondents have remained in control of the management and operation of the subject Canteen."

10. From above it is clear that the canteen at Moradabad was working under direct supervision of the Railway authorities since

1940, where the price of food items and salary of the staff were being decided by the Assistant Personnel Officer. In the representation dated 16.02.2016 (Annexure A-10), the applicants have not explained how the canteen at Varanasi DRM office is similar to the canteen at Moradabad. In the pleadings of the applicants, it is stated in para 4.7 of the OA that the canteen should have been treated as a statutory canteen as it is the only canteen in DRM office Varanasi, catering to the needs of more than 700 staffs, which is a statutory responsibility of the Railways under the Factories Act, 1948. Whether approval of the Railway Board has been obtained for opening of the canteen in Varanasi, is not clear from the pleadings of the applicants or the respondents, although learned counsel at the time of hearing had argued that Varanasi canteen is not a recognized canteen as no approval of Railway Board has been obtained before opening of the canteen.

11. In case of the canteen in Mohan Singh case, it was held by Hon'ble Apex Court to be 'Statutory Canteen' required under the Factories Act, 1948 as would be revealed from the Para 16 of the judgment in Mohan Singh (supra), which states as under:-

"16.....It must, therefore, be held that all the requirements of the term "factory" as defined under Section 2 (m) of the Act are satisfied on the facts of the present case. Thus, the premises of DRM, Moradabad must be also treated as a factory under the Factories Act, 1948 in which case Moradabad Canteen shall ipso facto corresponded to a "Statutory Canteen" within the meaning of Section 46 of the Act."

Thus, Moradabad Canteen was held to be a statutory canteen. The applicants in the OA as well as in the Rejoinder have taken the plea that Varanasi canteen is a non-statutory recognized canteen. In this regard, the Para 6 of the Rejoinder states as under:-

"6.....It is admitted position that DRM's Office Staff Canteen, Varanasi is a Non-statutory Recognized canteen run by the Consumer Co-operative society Ltd., Varanasi on 'No profit, no loss' basis for welfare of the DRM's Office Staff, Varanasi....."

Similarly, in para 10 of the Rejoinder, the canteen at Varanasi is claimed to be a "non-statutory recognized canteen". In para 4.5 of the OA, it is also contended that the canteen at Varanasi should have been treated as a non-statutory recognized canteen. In the para 4.7 of the OA, which states as under, it is contended that it should have been treated as s statutory canteen:-

"4.7.....It is submitted that the decision in M.M.R. Khan case has settled the issue regarding statutory obligation of the Railways under the Act and the IREM where the number of employees exceeds 250. The Railways cannot take advantage of their failure to comply with the requirements of Section 46 of the Act and treat the only canteen at Varanasi as a non-statutory canteen. For all practical purposes, the said canteen is in fact the statutory canteen. The so called non-approval by the Railway Board to such canteen makes no difference to this legal position."

Thus, the applicants are claiming the benefit of the canteen being either a statutory or non-statutory recognized one, for which the employees of the canteen should be treated as Railway servant as per the decision in the case of MMR Khan (supra). These

contentions have not been specifically contradicted in the pleadings of the respondents. There is no specific contention in the pleadings of the respondents that Varanasi canteen is a non-statutory and non-recognized canteen and that is not a reason mentioned in the order dated 11.03.2016 (Annexure A-1 of the OA) which is impugned in this OA.

12. Regarding the status of the employees, the contention of the respondents that the Secretary of the Society appointed the applicants in violation of the letter dated 4.9.1997 (Annexure CR-1) of the authorities has not been specifically denied by the applicants with necessary evidence. Hence, it is clear that the applicants are irregularly recruited. There is nothing on record to show that appropriate action has been taken by the respondents against the Secretary of the Society, who violated the instructions of the respondents while appointing the applicants or to take corrective action by cancelling the irregular appointment allegedly made by the Secretary of the Society. The applicants have stated that vide the letter dated 1.7.1996 (Annexure A-4 of the OA) of the respondents, attaching the canteen workers to the AEN's office for the purpose of regularization. It is seen that as per the information furnished in the OA, the applicants have been appointed from 1997 till 2003 as per the certificates at Annexure A-2 of the OA. Hence, the letter dated 1.7.1996, prima facie, does not appear to be

covering the case of the applicants, who have been appointed after 1.7.1996 by the Secretary of the Society.

13. It is seen from the para 6 of the Rejoinder that some employees of the consumer cooperative society in the canteen at Maunath Bhanjan junction station and Bhatni station have been regularized by the respondents and such contentions have not been specifically explained or contradicted in the Supplementary Counter Reply filed by the respondents. In other words, some of the employees of the cooperative society in the canteens have been regularized by the respondents.

14. It is seen that regarding the status of the employees as per the judgment in the case of Mohan Singh (supra), Hon'ble Apex Court has held as under:-

"17. Once that conclusion is reached, the result with respect to status of workers employed therein becomes obvious. In M.M.R. Khan, this Court has held - "Since in terms of the Rules made by the State Governments under Section 46 of the Act, it is obligatory on the Railway Administration to provide a canteen, and the canteens in question have been established pursuant to the said provision there is no difficulty in holding that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2829 of the Railway Establishment Manual recognises the obligation on the Railway Administration created by the Act and as pointed out earlier paragraph 2834 makes provision for meeting the cost of the canteens. Paragraph 2832 acknowledges that although the Railway Administration may employ anyone such as a Staff Committee or a Co-operative Society for the management of the canteens,

the legal responsibility for the proper management rests not with such agency but solely with the Railway Administration.....We are, therefore, of the view that the employees in the statutory canteens of the Railways will have to be treated as Railway servants. Thus the relationship of employer and employee stands created between the Railway Administration and the canteen employees from the very inception." 18 Therefore, in the light of the settled principle enunciated hereinabove, we hold that the subject Canteen is a 'Statutory Canteen' under the Factories Act, 1948 and that the learned Single Judge had arrived at the correct conclusion. In our opinion, the Division Bench of the High Court was not correct in taking a contrary view. We, therefore, allow these Appeals. We set aside the impugned Judgment passed by the High Court, and direct the Respondents to treat the subject Canteen at Moradabad as a Statutory Canteen either under Section 46 of the Act or the relevant clauses of the Indian Railway Establishment Management. However, so far as the Appellants are concerned, we find it difficult to condone or ignore the fact that they were not appointed as per the regular recruitment procedure. To pass an order regularizing the services of all workers employed therein would necessarily imply ratification of appointments given outside the Constitutional scheme. We, therefore, direct the Respondents to consider regularizing the services of the Appellants presently serving as canteen workers in consonance with the principles laid down in Secretary, State of Karnataka v. Uma Devi AIR 2006 SC 1806 and take requisite action within six months of the receipt of this Judgment. Further, as and when the subject posts fall vacant the Respondents shall be bound to fill the posts by a regular process of selection. The Appellants in the present case shall be allowed to compete in the regular recruitment and the Respondents shall grant to them appropriate age relaxation as well as grant proper weightage for their having worked in the subject Canteen."

19. There cannot be any cavil that the necessity for canteen amenities to be available where more than 250 workmen are engaged, is an essential facet of human or labour rights. Managements and employers are duty bound to provide these basic facilities."

From above, it is clear that in the case of Moradabad Canteen, in the above case, irregularly appointed employees were allowed the benefit of being considered for regularization in consonance with the principles laid down in the case of **Secretary,**

State of Karnataka v. Uma Devi AIR 2006 SC 1806. The case of the applicants in this OA, who are irregularly appointed by the Secretary of the Society, should also be considered as per the principles decided in the case of Uma Devi (supra), since Varanasi canteen, being the only canteen for DRM's Office, Varanasi, is considered either as a statutory canteen or as a non-statutory recognized canteen. As per the judgment in the case of MMR Khan (supra), the applicants will not be entitled for regularization, if the canteen in question is proved to be a non-statutory non-recognized canteen. Hence, I am not able to agree with the contentions of the respondents that the applicants are not entitled to be considered for regularization since there is no specific pleadings of the respondent in this OA that Varanasi canteen in question is a non-statutory and non-recognized canteen. The issue framed in para 8 is, therefore, answered accordingly.

15. In the circumstances, I am of the considered view that the case of the applicants is covered squarely by the judgments of Hon'ble Apex Court in the case of MMR Khan (supra) and Mohan Singh (supra) and even if they are irregularly appointed by the Secretary of the Society in violation of the instructions of the respondents, they are entitled to be considered for regularization in the same manner as the applicants in the case of Mohan Singh (supra), since the concerned canteen for Varanasi DRM's Office is not a non-statutory and non-recognized canteen as discussed in

para 11. Accordingly, the OA is allowed and the impugned order dated 11.3.2016 (Annexure A-1) is set aside and quashed and the matter is remitted to the respondents to re-consider the case of the applicants as per the rules and in the light of the observations in this order.

16. Before parting with the case, it is observed that the respondents have contended in the Counter reply that the Secretary of the Society in irregularly appointing the applicants in the canteen being run by the Society has violated the instructions of the respondents. It is not on record if any action has been taken against the concerned Secretary of the Society, who has also not been made a party in this case. If advised, the respondent no. 1 and 2 may get the matter investigated and if the allegations are found to be correct, suitable deterrent action as per law should be taken against persons responsible for violation of the instructions of the authorities on the matter.

17. The OA is allowed as above. No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

Arun..