

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**OA NO.1450/2015
MA NO.1305/2015
MA NO.1928/2015**

Order reserved on 16.02.2017
Order pronounced on 21.02.2017

HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

1. Pradeep Kumar Srivastava,
Aged about 57 years,
S/o Shri Kalika Prasad Srivastava,
R/o J-39, Sector 22, NOIDA,
Working as Dental Mechanic in
Northern Railway,
Central Hospital, New Delhi.

2. Vivek Kumar Mishra,
Aged about 42 years,
S/o Shri T.N. Mishra,
R/o 267, IIInd Floor, DDA Flats,
Mansarovar Park, Shahdara,
Delhi-32,
Working as Dental Mechanic in
Northern Railway,
Central Hospital, New Delhi.Applicants

(By Advocate: Mr. Yogesh Sharma)

VERSUS

1. Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Chief Personnel Officer/Chairman,
Central Staff Benefit Fund Committee,
Northern Railway, Headquarters,
Baroda House, New Delhi.

3. The Medical Director,
Northern Railway, Central Hospital,

New Delhi. ...Respondents
 (By Advocate: Mr. Shailendra Tiwary)

:ORDER:

MA No.1305/2015

The MA filed under rule 4(5)(a), CAT (Procedure) Rules 1987 stands allowed.

OA No.1450/2015

This is the second round of litigation by the two applicants, working as Dental Mechanics in the Central Railway Hospital, New Delhi and contesting the respondents' decision to withdraw benefits of tuition fee and bonus, earlier paid to them on a par with railway employees. This Tribunal's order dated 15.07.2014 in their earlier OA No.1558/2013 (vide Annexure A-13) is reproduced hereinunder:

'The applicants before this Tribunal in the present Original Application were appointed as Dental Mechanic in Central Staff Benefit Fund (CSBF) Committee on 17.4.1984 and 6.3.1995 respectively. On their such appointment, the respondents paid them, *inter alia*, the tuition fee and bonus, like other railway employees. When such benefits were not paid to them with the salary for the month of March 2013, they made separate representations to the Secretary, CSBFC (SPO/Welfare), New Delhi on 25.3.2013 and thereafter preferred joint representation to the General Manager, Northern Railway, New Delhi on 6.4.2013. Having received no response to the said representations, they filed the present Original Application praying therein:

- "(i) direct the respondents to stop the recoveries of Tuition Fees and Bonus from the Applicants.
- (ii) direct the respondents to continue payment of the same to the Applicants.

(iii) direct the respondents to consider all the service benefits including the pensionary for the Applicants at par with Railway servants/employees.

(iv) Declare the said Rules Viz. 'Terms and conditions for the Staff of Staff Benefit Fund' (Annexure 'G') of the N.R. Staff Benefit Fund Rules as unconstitutional.

(v) pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. During the course of hearing, Mr. A.N. Singh, learned counsel for applicants espoused that in terms of condition No.7 of the 'terms and conditions' for the staff of Staff Benefit Fund, in all matters other than those specifically covered by the said condition, the rules, as prescribed for the railway employees, are applicable to the staff of Staff Benefit Fund.

3. On the other hand, Mr. Shailendra Tiwary, learned counsel for respondents read out the reply filed on behalf of the respondents and submitted that since the tuition fee and bonus are not specifically covered by the 'terms and conditions' applicable to the staff of CSBF Committee, the same paid to the applicants from time to time, had to be discontinued from March 2013 and excess amount has to be recovered from them.

4. It is not in dispute that before discontinuing the tuition fee and bonus from the applicants the respondents did not give them any notice to show cause to enable them to put forth their stand. It is settled position of law that any governmental action entailing civil consequences should follow principle of natural justice, i.e., notice to show cause to the concerned person, likely to be affected by such action, which is in consonance with the principle of *audi alteram partem*.

5. Though after filing of the reply by the respondents we could have taken decision in the present Original Application on merits, but when the respondents have taken a blanket stand that the tuition fee and bonus are not granted under the Rules to CSBF Committee, they have not specifically commented upon the contents of condition No.7 of the 'terms and conditions' for the CSBF Committee wherein it has been provided that in all matters other than those specifically covered by the said condition, the rules, as prescribed for the railway employees, are applicable to the staff of Staff Benefit Fund.

6. In the circumstances, I dispose of the present Original Application with direction to the respondents to take decision regarding entitlement of the applicants to tuition fee and bonus only after giving them show cause notice. Till then the respondents will continue paying the said benefits to the applicants. No costs.'

2. The respondents issued show cause notices to the applicants on 26.08.2014 (vide Annexure A-2) and after considering the applicants' replies (Annexure A-3), sent to them the following communication dated 18.11.2014 (Annexure A-1):

"Your reply dated 08/09/2014 against show cause notice dated 26/08/2014 has been examined and not found tenable on the following grounds mentioned hereunder: -

1. Your claim that you have been appropriate as per the Indian Railway Establishment Volume-1 is wrong as there is no such provision in IREM. However, there is a chapter on staff benefit fund in IREC-Volume-I in which procedure is laid down for sources and expenditure of the fund for the benefit of non Gazetted Railway Employees. In this chapter, the procedure is laid down for running of the staff benefit fund for various welfare activities through a committee of various levels i.e. Headquarter, Division, Workshop level etc. It is nowhere mentioned in the Establishment code that Dental Mechanics or any other person will be appointed as Railway Servant by this Committee.

It is further mentioned that the recruitment to various posts is made on regular basis as per the provision made in Para 217 of IREC & IREM.

You were engaged by the Committee to run the Staff Benefit Fund which is for the welfare of the Railway Employees. The norms for engagement are made by the Committee of the Staff Benefit Fund and there is no provision for appointment of regular employees under Staff Benefit Fund in IREC or IREM.

2. The various benefits extended to the persons engaged by the Staff Benefit Fund Committee are covered by the terms and conditions envisaged by the staff benefit fund Committee for running of the various welfare activities and not covered under the statutory rules under the IREC or IREM.

3&4. As already mentioned in Para-1 that your engagement as Dental Mechanics under SBF is not the statutory provision under the IREC or IREM but you were engaged by the SBF Committee under the Rules framed by them for running of the fund for the welfare of the Railway Employees which is not be statutory provision under the recruitment rule for the Railway Employees.

5. Your plea is not correct, as it is clearly mentioned in para-2 of your appointment letter issued by the CSBFC Committee that you will not be treated as Railway Servants and will not be entitled for any privileges admissible to Railway Employees. It is mentioned in Para-3 that the services will be treated purely temporarily and you will be governed by the decision of the Central/Divisional Staff Benefit Fund Committee.

6. As per the terms and conditions laid down by the Staff Benefit Fund Committee for the welfare of staff. Some Pay and allowances have been fixed by the committee from the Staff Benefit Fund, which so not include Bonus, Tuition Fees and Pension etc. The payment of bonus & tuition fees has erroneously been made to you.

7&8. As per Para 7 of the Terms and Conditions the connotation that "they will be under the Chairman, D.S.B.F.C., Secretary, DSBFC and appeals will lie against the decisions to the Chairman, C.S.B.F.C. are applicable for the Disciplinary and appeal rules only.

9. You have accepted that you are different from Railway Employees and getting benefits under the applicable rules of Central Staff Benefit Fund Committee.

In view of the above facts, you are not entitled for the payment of Bonus & Tuition fee as per the terms and conditions of Staff Benefit Fund and the amount already paid to you will be recovered in installments."

(sic)

3. Through the instant OA, the applicants pray that the aforesaid SCN (Annexure A-2) and the respondents' decision in the aforesaid communication (Annexure A-1) be quashed and that the respondents be directed not to discontinue grant of the benefits of tuition fee and bonus to the applicants on a par with railway employees. They further pray that the respondents' rules, viz., "Terms and Conditions for the Staff of Staff Benefit Fund" (vide Annexure A-12) be declared as unconstitutional.

4. I have heard the learned counsel for the parties, perused the pleadings and given my thoughtful consideration to the matter.

5. The stand of the respondents is that the applicants were engaged by the Central Staff Benefit Fund Committee and they

are not railway employees and, therefore, they are not entitled to all the benefits extended to the railway employees, and that their "terms and conditions" (vide Annexure A-12) do not include the benefits of tuition fee and bonus.

6. Per contra, it is contended on behalf of the applicants that the post of Dental Mechanic is not only included in the Indian Railway Medical Manual (vide Annexure A-10), they have throughout been treated as any other railway employee in terms of salary, allowances and privileges.

7. It is seen that the "Terms and Conditions for the Staff of Staff Benefit Fund" (vide Annexure A-12) are not part of any statutory rules and they, made in 1964, have not been updated. The inaction can only be ascribed to the respondents. The applicants, recruited in 1984 and 1995, respectively, had been treated on a par with railway employees and only suddenly in March 2013 they were denied entitlement to the benefits of tuition fee and bonus. This, in my view, appears to be arbitrary and discriminatory. Moreover, the said "Terms and Conditions" also lay down as under:

"In all other matters, rules as prescribed for the Railway employee will be followed."

8. In the light of the above, the instant OA deserves to succeed. The applicants are held entitled to the benefit of tuition

fee and bonus on a par with railway employees. The decision in the impugned communication (Annexure A-1) is set aside. Any amount recovered from the applicants shall be refunded within four weeks from the date of receipt of a copy of this Order.

9. The OA is allowed accordingly. No order as to costs. MA No.1928/2015 stands disposed of.

**(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)**

/jk/