

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.437/2015

Dated Tuesday, the 30th day of April, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

&

Hon'ble Mr.P.Madhavan, Judicial Member

1.Thouladeen

2.S.Manimozhi

3.M.Natarajan

4.Raghavan Srinath

5.J.Kannan

6.G.Moorthy

7.R.S.Krishnakumar

8.K.Vijendra Rao

9.B.Arun

10.S.Gopalakrishnan

...Applicants

By Advocate M/s J.James

Vs.

1.Union of India,
Rep., by Railway Board,
Ministry of Railways, Rail Bhavan,
Raisina Road, New Delhi 110 001.
Rep., by its Executive Director Estt (N)

2.M/s.Indian Railway Catering &
Tourism Corporation Limited (IRCTC),
No.16, Parliament Street,
Bank of Baroda Building,
New Delhi,Rep., by its Regional Director.

3.The Chief Personnel Officer,
Head Quarters Office,Southern Railways,
Park Town,Chennai 600 003.

...Respondents

By Advocate Mr.K.Vijayaragavan (R1 & 3)

Mr.V.G.Suresh Kumar (R2)

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The applicants have filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the records relating the order Ref.No.E(NG) I-2003/TR/10/Pt III dt.02.03.2015 on the file of 1st Respondent followed with the order Ref.No.IRCTC/SZ/170/Option dated 6/3/2015 on the file of the 2nd respondent and quash the same and direct the respondents to fix the seniority as per applicants appointment date on Railway Board and to pass such other/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice.”

2. It is submitted that the applicants were working in the catering department of the first respondent till 2003 when some of the staff were deputed to the catering department of Indian Railway Catering & Tourism Corporation (IRCTC), a newly formed organization. In the year 2006 an option was given to the deputationists to return to the parent department. Some of them opted to return while others remained with the second respondent. In 2010, another option was given to the deputationists to come back to the Railways.

3. The grievance of the applicants is that the deputationists who did not return at the first instance, were offered seniority over the staff already working in the first respondent department by an order dated 02.03.2015 of the first respondent followed by an order dated 06.03.2015 of the second respondent. This affected the seniority of the applicants

who had already opted to return and hence this OA seeking intervention of this Tribunal.

4. The respondents have filed a reply contesting the claim of the applicants for seniority over persons who were earlier senior to them but had not opted to return to the parent department along with them. It is submitted that the decision to give a second option was based on Railway Board's Annexure A-11 letter dated 28.12.2010 and Annexure R-1 letter dated 27.06.2011 which were not objected to by the applicants at the relevant time.

5. The respondents have also submitted a brief history and background of the case. It is stated that the decision to hand over the Railway catering services to IRCTC, a public sector undertaking under the Ministry of Railways was taken by the first respondent's letter dated 04.02.2002. All catering and vending activities including Rail Yatri Niwases/Railway Hotels were transferred to IRCTC on as is where is basis. All Group C & erstwhile Group D staff working in various catering/vending units were transferred along with their posts to IRCTC w.e.f the date of handing over of the catering activities to the latter, on as is where is basis with the existing seniority units remaining intact. Orders were issued on 22.12.2003 and 18.08.2004 for handing over of departmental catering units and mobile catering units under second phase w.e.f 01.04.2005 and

all staff except skeleton staff were transferred to IRCTC on deemed deputation basis.

6. It is further submitted that the existing catering staff were given the facility of option either for permanent absorption in IRCTC or for reversion back to the Railways and the option had to be exercised within a period of three years from the date of handing over of catering activities to IRCTC. Such of the staff who had exercised option for reversion were intimated that they would be reverted along with the posts, treated as surplus staff and redeployed as per procedure in force. After completion of three years, about 1030 catering staff on deemed deputation to IRCTC had exercised option for reversion to parent Railway. Some opted for absorption in IRCTC. However, both type of optees continued to be in IRCTC. The accounts of those catering staff who opted for absorption in IRCTC were not settled and they were not paid settlement benefits for their service in Railways.

7. In the year 2010 a New Catering Policy-2010 was announced by the Ministry of Railways as per which all catering activities were to be taken over by the Railways (Annexure A-10 & 11). In order to revive the departmental catering activities, Railways had to ensure appropriate number of staff in various posts and grades for effective running of departmental catering services. It was noted that experienced staff were

available for deployment in catering department of Railways in the following four categories:

- a) Existing skeleton staff in the catering department
- b) Staff repatriated from IRCTC awaiting redeployment
- c) Original catering staff (who were on deemed deputation) who have returned from IRCTC and have already been redeployed in other departments and
- d) Staff who are on deemed deputation to IRCTC and awaiting repatriation.

8. In order to take advantage of their past experience, option was extended to original catering staff who at the time of formation of IRCTC opted to remain in the Railways and had been redeployed in other departments after being declared surplus. Remaining staff in categories a, b & d were not given any option and were allowed to work in catering cadre only.

9. Seniority of the staff who have been taken back from the above categories were determined with reference to the position as existed on 31.03.2003 before they were transferred to IRCTC or redeployed in other departments. In order to bring the staff of catering department at par with others, it was decided as an incentive to augment and restructure the posts in catering department as on 31.03.2003 as per the table contained in Annexure -11.

10. A revised seniority list of catering staff was circulated on the above basis duly deleting the names of those catering staff who had opted to remain in IRCTC.

11. The first respondent took a further policy decision to call for options from the catering staff who were on deemed deputation to IRCTC and who had not been paid any pensionary benefits due to administrative reasons to come back to Railways with their seniority as existed on 31.03.2003 by an order dated 27.06.2011 (Annexure R-1). This was subject to the condition that their consequential promotion should not lead to reversion of the existing catering staff and the redeployed staff. 47 out of 55 deemed deputationists (DDOs in short) on the rolls of IRCTC/South Zone had opted for repatriation to Railways and 6 DDOs had opted to serve in IRCTC. 16 out of the 47 optees had retired from service during the period 11.08.2011 to 28.02.2015 and the balance of 31 DDOs were to be repatriated back to Railways.

12. Learned counsel for the applicant would submit that the applicants had exercised their option after completion of three years of service in IRCTC and returned to their parent department. While doing so, they had weighed the advantages and disadvantages of continuing in IRCTC on the one hand and reverting to parent department on the other and made a choice. The applicants had decided to revert to the parent department with the legitimate expectation of better promotional avenues in the parent department as many employees might opt to continue as

deputationists and be absorbed in IRCTC. Once they had exercised an option to stay with the IRCTC they could not be given a second option a few years later to revert without any loss of seniority and with all the benefits of the parent department which would have been available to them, had they returned in 2006 itself. The second option given to the deputationists was violative of the principles of natural justice as the respondents could not neutralize the advantage of the option exercised by the applicants at the first instance to favour the persons who wished to enjoy the benefits at both ends.

13. Learned counsel for the respondents would, however, point out that the first respondent's decision to extend the option to persons continuing in IRCTC to revert back was in terms of the New Catering Policy-2010 under which all catering activities were to be taken over by the Railways. The matter had been considered carefully in consultation with the vendors and a decision was taken to appoint experienced hands on the posts that were available to the first respondent following the revival of the catering activity. It was a conscious decision to incentivise experienced persons to revert to the department. As a part of the policy it was also decided to restructure and increase the number of posts under various categories from the levels approved in 1993.

14. The applicants had exercised option to revert to the parent department at a time when there was no such decision to revive the catering activity. As the respondents had to get the services of

experienced persons, a policy decision was taken to protect seniority of the persons who would opt to revert in pursuance of the policy. However, while doing so it was stipulated that such revertees would be eligible for consequential promotion as per the revised percentage of posts issued by Board's letter dated 28.12.2010 (RBE No.187/2010) subject to the condition that the consequential promotion of such repatriated employees should not lead to reversion of the existing catering staff and the redeployed staff. As such, the interests of the applicants were in no way compromised by the grant of seniority to the newly repatriated persons as their promotion would only happen against clear vacancies with the previously reverted employees continuing on their promotion posts. The applicants could not dictate what the policy of the first respondent should be as their interests have not been compromised.

15. We have considered the pleadings and submissions made by the rival counsel. The action of the respondents is clearly in pursuance of the New Catering Policy-2010 by which the catering posts transferred to IRCTC were restored to the parent Railways. It is also seen from the impugned order dated 02.03.2015 (RB Estt No.13/2015) that consequent on the framing of the New Catering Policy-2010, options were called in terms of Board's letters dated 28.12.2010 and 27.06.2011 from such of the catering staff under the second respondent who had not been paid any pensionary/retirement benefits due to administrative reasons, to revert to Railways with seniority as existed on 31.03.2003 subject to the condition that their consequential promotion should not lead to reversion

of the existing catering staff and redeployed staff. Clearly in taking the impugned decision the respondents had been guided by the need to appoint experienced persons consequent on the revival of the catering activity and also address the issue of non-payment of pensionary/retirement benefits to such of the staff as were continuing under the IRCTC.

16. The policy decision to get the staff reverted with their seniority intact appears to have been taken to address the above two objectives and could not be termed as arbitrary. The applicants' interests have been protected by stating that none of the existing staff would be reverted consequent upon the reversion of their seniors from IRCTC. It is true that loss of seniority consequent upon reversion of senior persons who had remained with IRCTC might affect the future promotional prospects for the applicants. However, it must also be acknowledged that the persons who have made a fresh option now were in any case senior to the applicants prior to 2003 and the applicants are not worse off than they would have been, if there was no transfer of catering activity to IRCTC and subsequent revival of the same in the first respondent department.

17. The decision of the respondents appears to have been taken in public interest and it is not for the Tribunal or any court to go into what better options might have been available for the respondents. The bonafides of the action seems to be reinforced by the decision to restructure and augment posts at certain levels which would mitigate the

effect of the new policy on certain individuals. The Tribunal cannot also interfere merely because the advantages secured by the applicants on account of certain circumstances have been neutralized to some extent by the occurrence of certain other developments, both of which were beyond the control of the parties to the dispute.

18. The OA is misconceived in as much as it prays for interference by this Tribunal in a matter of policy of the respondent department without any allegation of malafide. OA is dismissed. No costs.

(P.MADHAVAN)
MEMBER(J)

(R.RAMANUJAM)
MEMBER (A)

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M.T.