IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/882/2018

Reserved on: 06.06.2019
Pronounced on: 10.06.2019

Between:

P. Sreenivas Rao, S/o. Sri P. Surya Rao,
Aged about 49 yrs, Occ: Cleaner,
(Loco Power Canteen, Waltair),
R/o. H. No. 2-135/B, Paidimamba Colony,
Vepagunta, Visakhapatnam – 530 047.

… Applicant

And

1. Union of India, Rep. by its
General Manager, East Coast Railway,
Chandrasekharpur, Bhubaneshwar – 751 023.

2. The Chief Personnel Officer,
East Coast Railway, Chandrasekharpur,
Bhubaneshwar – 751 023.

3. The Divisional Railway Manager,
East Coast Railway, Waltair Division, Waltair.

4. The Senior Divisional Mechanical Engineer &
The Chairman/ President, Staff Canteen at Loco Shed,
At Waltair, East Coast Railway, Waltair Division, Waltair.

5. The Senior Divisional Personnel Officer,
East Coast Railway, Waltair Division, Waltair.

… Respondents

Counsel for the Applicant … Mr.R. Mahanty

Counsel for the Respondents … Mrs. A.P. Lakshmi, SC for Rlys

CORAM:
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed by the applicant for not regularizing his services in the respondent organization by impugned order dt. 26.04.2018.

3. Brief facts of the case, as stated by the applicant, are that the applicant was appointed as casual labourer on 1.1.1989 along with Mr. N. Ramana, Mr. P. Narayana Murthy vide common proceedings dated 10.9.1993, in the Loco (Power) Staff Canteen, which is a non-statutory recognised canteen serving Waltair Division of the respondent organization. Sri N.Ramana along with P. Narayana Murthy and Mr. V. Umamaheswara Rao filed OA 75/2010 in this Tribunal seeking relief for being absorbed on a regular basis in the respondent organization as per Hon'ble Supreme court verdict in M M R Khan v Union of India dated 27.2.1990. The OA was partly allowed by directing the respondents to absorb N. Ramana and P. Narayana Murthy in the respondent organization. Exhorted by the outcome in OA 75/2010, when the applicant moved the Tribunal in OA No. 153/2018, respondents were directed to dispose of the representations made by the applicant on 07.08.2017 and 12.08.2017 in regard to regularization of his services, by keeping in view the orders of the Tribunal in OA 75/2010. However, respondents rejected applicant's claim leading to the emergence of the present OA.

4. Applicant contends that he is similarly placed like the other two employees namely N. Ramana and P. Narayana Murthy and therefore, his services too are to be regularised. Further, the Divisional Personnel Officer vide letter dt 20.4.1993 has directed that the staff of loco shed canteen/Waltair who were on the rolls as on 1.4.1990 should be treated as Rly Servants w.e.f 1.4.1990. Besides, applicant cited judgment of the Hon'ble Supreme Court dt. 27.02.1990 in M.M.R. Khan & Others Vs.

Union of India & Others, AIR 1990 SC 937 to buttress his case. One another contention of the applicant is that he has been appointed in the year 1989 after following the due procedure and as per extant rules and regulations. The award passed by the Asst. Commissioner Labour, Vishakapatnam confirms that they have been engaged as casual labour from 1989 by the respondents. Applicant further contends that since he has passed 7th standard, he was appointed on the basis of minimum educational qualification being prescribed as 6th standard vide letter dated 29.6.1978. The various correspondence made by the Secretary of the canteen with the DPO/DRM, educational qualification of the applicant was adduced and that no objection was raised by the respondents any time in regard to educational qualifications. Applicant reiterates that based on the judgment of this Tribunal in OA 75/2010, his service ought to be regularised.

5. Respondents while contesting the claim of the applicant, point out that, in order to be to be regularized, minimum educational qualification required is 8th standard, whereas the applicant posses only 7th standard qualification. Further, the canteen in which the applicant is working is not recognized by the respondent Railway organization. Hence, on the two spinal grounds, services of the applicant cannot be regularized.

6. Heard learned counsel from both sides and perused the records submitted by them in detail.

7 (I) The respondents defense hinges on two grounds namely applicant is working in a non statutory non recognised canteen and does not have the requisite educational qualification of 8th standard.

(II) Let us attempt an answer to the first objection by dealing with a casual labourer working in a canteen which is non statutory recognised canteen. As per Hon'ble Supreme Court judgment in M.M.R. Khan and Ors. etc vs Union of India and Ors. etc reported in 1990 AIR 937, 1990 SCR (1) 687, dt. 27 February, 1990, employees working in non statutory recognised canteen have to be treated as railway employees. Extract of the relevant para is presented here under:

> *Non-Statutory Recognised Canteen*
> *(8) These canteens are run in the establishments which employ 250 or less than 250 employees; and are established with the prior approval and recognition of the Railway Board. There is hardly any difference between the statutory canteens and non-statutory recognised canteens. The only material difference is that while one is obligatory under the Factories Act, the other is not. However. there is no difference in the management of the two type of canteens.*
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> *(10) If that is so, then these employees would also be entitled to be treated as railway servants. A classification made between the employees of the two types of canteens would be unreasonable and will have no rational nexus with the purpose of the classification. Surely it cannot be argued that the employees who otherwise do the same work and work under the same conditions and under a similar management have to be treated differently merely because the canteen happens to be run at an establishment which employees 250 or less than 250 members of the staff.*

Applicant claimed that he is working in Non statutory recognised Loco staff canteen of the respondents organisation. His colleagues Sri N. Ramana and Sri P. Narayana Murthy, who were recruited by a common order dated 10.9.1993 to the same canteen were regularised by the respondents as per their own admission in para 12 of the reply statement. Further, respondents have admitted in OA 75/2010 filed before this tribunal, that the canteen in question is a non statutory recognised

canteen. Therefore the objection raised that the applicant worked in a non recognised non statutory canteen does not hold water. A model employer, which the respondent organisation is, has to be fair in presenting facts as they are and not state diametrically opposite facts on the same issue in different OAs.

In fact, regularisation of the 2 other employees referred to was consequent to the order of this Tribunal in OA 75/2010 which was upheld by the Hon'ble High Court in WPMP 44301/2012 of WP no 33448/2011 and the Supreme Court by dismissing SLP (C) no 1970/2013 filed by the respondents. Thus the matter has impliedly attained finality in regard to the status of the canteen.

III) Now turning our attention to the second objection of educational qualification, it must be adduced that the applicant was recruited as a casual labourer which required a minimum qualification of 6th standard at the time of his recruitment. The required qualification for regularisation of services is 8th standard. Applicant acquired the qualification of 10th standard in 2013 through Andhra Pradesh open School Society vide certificate dated 11.6.2013. Respondents have regularised the other two similarly situated employees Sri N.Ramana and P. Narayana on 30.8.2013 to comply with the orders of the Tribunal in OA 75/2010. It is thus evident that before 30.8.2013, applicant has also acquired 10th class qualification on 11.6.2013, against the prescribed 8th standard. Therefore, even in respect of educational qualification applicant is as mush eligible as the other 2 other similarly situated employees, to be considered for regularisation.

IV) Respondents mulishly argue that the applicant did not acquire the educational qualification as on the date on which screening committee met to regularise casual labourers as per railway board order 103/2000. The Railway Board order 103/2000 dtd. 30.5.2000 has given a one-time relaxation using its discretion on the request of the staff unions, but it did not fix a cut off date in the order. Cut of date has to be specific and clear. Respondents have not produced any document to state that a specific date has been fixed as the cut off date to consider applications. A clear communication has to be given to the aspirants so that they are well aware of the requirement. Respondents only state that they have taken the date of screening as the last date but that has to be backed by an authentic document to evidence the assertion. In the absence of such a document the Tribunal will not be able to uphold the submission of the respondents. Further, respondents have failed to produce any statutory rule which has prescribed the cut off date nor does the executive instruction of the Railway Board order 103/2000 contain any cut off date. Board having not fixed the cut off date, if different screening committees in different zones fixing different cut off dates for educational qualification would directly and proximately infringe the doctrine of equality. The career/fate of the applicant cannot be left to the vagaries of the screening committee as there is no fixed date for the screening committee to meet. There is only one railway and not many railways. The policy laying body is the Railway Board. It was for the board to fix the cut off date and not allow different zones having similar canteens with similar issues to fix different cut off dates since it will grievously injure the essence of equality as per article 16 and 14 of the constitution.

As to when, the choice of a cut-off date can be interfered was opined by Holmes, J. in Louisville Gas & Electric Co. v. Clell Coleman 72 L ED 770 (1927) by stating that if the fixation be "very wide of any reasonable mark", the same can be regarded arbitrary. In the present case the issue is, whether the date of screening or the date of regularisation of the other 2 similarly situated employees has to be taken as the cut off date. Respondents having failed to produce any document fixing the cut off date or cited any statutory rule, their claim that the date of screening is the cut off date, is wide of the reasonable mark and hence arbitrary. More so, when the other 2 similarly employees have been regularised in 2013 by which year the applicant too got qualified. Had the Board fixed a clear cut off date, then the story would have been different.

Order of regularisation of similarly situated employees Mr Sri N.Ramana and Sri P. Narayana was issued on 30.8.2013. Applicant is similarly situated like them in all respects as expounded here under:

1. **Applicant was appointed in the respondent organization on 1.1.1989 along with Mr. N. Ramana, Mr. P. Narayana Murthy vide common proceedings dated 10.9.1993.**
2. **Applicant worked in the same canteen like the other 2 whose service were regularised.**
3. **Applicant was on the rolls of the canteen before 1.1.1991, the cut off date prescribed to be eligible for regularisation by the respondents.**
4. **Applicant has acquired 10th class qualification before the other 2 employees were regularised as on 30.8.2013.**

5. **Applicant did the same work as the other two in the same canteen and has put in nearly 30 years as casual labour like the other 2 employees.**

Even the respondents have admitted in the impugned order that the applicant is similarly situated like the 2 other employees except for the educational qualification. The question of educational qualification has been dealt with in the paras supra, concluding that the applicant does also possess the requisite educational as on date of the order of regularisation of the other 2 similarly situated employees.

V) Once the applicant has been established to be similarly situated based on the merits of the case, the respondents cannot discriminate the applicant by not extending the same benefit of regularisation of services, as has been extended to other 2 employees referred to in the OA. If discriminated, it will violate article 14 and 16 of the constitution. Similarly situated employees have to be extended similar benefits is the direction of the Hon'ble Supreme Court in :

Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :

> *"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."*

Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:

> *"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are*

otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

By application of the law laid down by the Supreme Court to the issue on hand , request of the applicant has to be conceded to lock, stock and barrel.

VI) Before parting, an observation reflecting the happenings in the job world, if adduced, would be apt and appropriate. As a model employer, respondents need to encourage employees climb the career ladder by acquiring higher qualifications. Many Govt of India organisation like ISRO, DRDO, DAE, Dept. of Posts etc encourage employees to acquire additional qualifications for seeking promotions/ increments. The objective is that an employee with higher qualifications would not only be able to serve the organisation effectively but it would serve as a motivating factor for the employees to acquire higher qualification for widening their knowledge base to be of profound value to the mother organisation they serve. It is indeed a win a win situation. Respondents organisation is as important and as famous like the organisations cited, in the public domain. Therefore, these positive trends in Govt. of India organisations do provide the cue to encourage employees like the applicant in the present OA, rather than constricting the interpretation of this Tribunal orders in a narrow plane defeating the very object of the judgment of OA 75/2010. True to speak, Tribunal draws inspiration from the insightful direction of the Hon'ble Supreme Court in 1974 (3) SCR 12 Murthy Match Works vs Coll. Ex. as under:

> *17) The legislative project and purpose turn not on niceties of little verbalism but on the actualilities or rugged realism and so, the construction of ... must be illumined by the goal, though guided by the word.*

The actuality is to consider regularising the services of the applicant on par with the other similarly situated employees rather than harping on issues lacking legitimacy.

VI) Therefore based on the law laid down by the Hon'ble Supreme court as elaborated in paras supra and the merits of the case being in favour of the applicant, the OA succeeds. Consequently, impugned order dated 26.4.2018 is quashed.

VII) Resultantly, respondents are directed to consider as under:

i) To regularise the services of the applicant as was done in case of the applicants 1 and 2 in OA 75 of 2010 from the date the employees referred to, have been regularised.

ii) Time allowed to implement the order is 3 months from the date of the receipt of this order.

iii) With the above directions the OA is allowed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 10th day of June, 2019

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