

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.210/686/2011

Dated this Friday the 8th day of _____, 2019

Coram: R. Vijaykumar, Member (A).
R.N. Singh, Member (J).

1. Meena Prasad
Working in Western Railway,
Bandra Handicraft Center,
Welfare Center, Bandra (West),
Mumbai-400 050.
Residing at-
Ram Nath Gasai Kichal,
Pipe Line, Jai Hind Nagar,
Khar East,
Mumbai-400 051.
2. Subhadra Sarjerao Karwar,
Working in Western Railway,
Bandra Handicraft Center,
Welfare Center, Bandra (West),
Mumbai-400 050.
Residing at-
183107, S. V. Road,
Bandra West,
Mumbai-400 050.
3. Chandravati Rajak,
Working in Western Railway,
Bandra Handicraft Center,
Welfare Center, Bandra (West),
Mumbai-400 050.
Residing at-
149/K, Western Railway Colony,
S. V. Road, Bandra (West),
Mumbai-400 050.
4. Smt. Lajja Kumari Saroj,
Working in Western Railway,
Bandra Handicraft Center,
Welfare Center, Bandra (West),
Mumbai-400 050.
Residing at-
Western Railway Colony Bldg
No.170/9, S. V. Road,

Bandra West,
Mumbai-400050.

5. Laxmi Yellappa Bansode,
Working in Western Railway,
Bandra Handicraft Center,
Welfare Center, Bandra (West),
Mumbai-400 050.
Residing at-
Western Railway Colony Bldg
No.170/15, S. V. Road,
Bandra West,
Mumbai-400 050.

...Applicants.

(By Advocate Sh. R. G. Walia).

Versus

1. Union of India through,
General Manager,
Western Railway,
Headquarter Office,
Churchgate,
Mumbai-400 020.

2. Divisional Railway Manager,
Divisional Office,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai-400 008.

... Respondents.

(By Advocate Sh.V. S. Masurkar).

Order reserved on: 24.06.2019

Order pronounced on: 09.08.2019,

O R D E R
Per : R. N. Singh, Member (Judicial)

1. We have heard Sh. R. G. Walia, learned counsel for the applicant and Sh. V. S. Masurkar, learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

2. The applicants five in numbers have filed the aforesaid original application under Section 10 of the Administrative Tribunal's Act, 1985.

3. In the present OA the grievances of the applicants are that even though they have been constantly working for about 20 years. However, the Railway Administration has not taken any step to regularize their services or for grant of proper pay scales or service benefits to them. The applicants in the present OA have prayed for the following reliefs:

"(a) This Hon'ble Tribunal be pleased to call for the records of the case and after going through the same, be pleased to order and direct the Respondents to regularize the Applicants in service and to regularize Applicant's service from their initial dates of his appointment as mentioned in the chart as above with consequential benefits.

(b) This Hon'ble Tribunal be pleased to hold and declare that the Applicants are entitled to be placed in regular scale of pay w.e.f. their date of appointment or any other date as this Hon'ble Tribunal may deem fit and necessary and the Applicants are entitled to arrears of salary, fixation of pay consequent thereto.

(c) This Hon'ble Tribunal be pleased to hold and declare that Applicant is also entitled to count his whole service, i.e. from their appointment, as qualifying service for the purpose of pension and other retirement benefits.

(d) Cost of this Original Application be provided for.

(e) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case."

4. The precise facts as contended by the applicants are that they were initially appointed by Western Railway Handicraft Center situated in Bandra (West) and they were engaged to do tailoring /stitching work for making uniforms for the Railway employees of different posts and the departments. The applicant no.1 was appointed w.e.f. 07.12.1987, applicant no.2 was appointed w.e.f. 07.06.1989, applicant no.3 was appointed w.e.f. 12.09.1994, applicant no.4 was appointed w.e.f. 22.09.1994 and applicant no.5 was appointed w.e.f. 22.10.2001. It is further contended that General Manager, Western Railway had issued a letter dated 05.06.2006 (Annexure A-3) regarding absorption of staff working in Quasi Administration Offices/Organization connected with Railway Group 'D' posts. The applicants contend that despite the said letter dated 05.06.2006 the Railway Administration did not take any step to regularize the services of the applicants. The applicants also alleges that the Western Railways have always exploited the applicants

in the matter of their pay and wages.

5. In response to the notice, the respondents have filed written statements. They have quoted para 2239 of IREM Vol.II (Chapter XXII, Section G) and have submitted that the same specified the 'Handicraft Center' as under:

"2239. Handicraft Centers.

(i) Handicraft Centers should be set up for the benefit of the families of the Railway men for imparting training to women members of Railway men families in handicrafts such as weaving, knitting, spinning tailoring of garments, etc. during their spare time with the object of helping them in learning some trade to augment the family income.

(ii) Expenditure on this scheme should be met from the staff benefit fund.

(iii) Accommodation for Handicraft Centers should be provided in spare Railway buildings free of rent. No new building for this purpose should be constructed without prior approval of the Railway Board.

(iv) Charges for electricity ad water consumed by the Handicraft Centers located in Railway buildings should be borne by the Railway revenue. Where the handicraft Centers are housed in a Railway Institutes these charges should be borne by the Institutes.

(v) Railway Administrations should patronize and encourage the Handicraft Centers by placing order for the supply and fabrication of

articles required by Railways."

6. The respondents in para 7 of their written statements have stated that the Handicraft Centers are run as a welfare measure to help families of Railwaymen to learn some trade to augment the family income. The applicants joined the center voluntarily by virtue of being family members of Railway employees. Details of relationship with Railway employees is given below:

Sl. No.	Name of the applicant	Particulars of the Railway employee	Relation -ship
1	Meena Prasad	Sh. Jagdish Prasad Shrivastav, Senior Section Engineer (OHE) Kurla.	Wife
2	Subhadra S. Karwar	SH. Sarje Rao Karwar, RPF-Dadar	Wife
3	Chandravati Rajak	Sh. GK Rajak, Head Booking Clerk-Bandra.	Wife
4	Smt. Lajja Kumari Saroj	Sh. Ram Awadh S. Saroj working under Senior Section Engineer (RAC) Bandra Terminus.	Wife
5	Laxmi Yellappa Bansode	Smt. Kalavati Bansode Safaiwali working in Catering Department Mumbai Central.	Wife

7. It is further contended by the respondents that the aforesaid rules i.e.2239 of IREM consequently indicates that the Handicraft Centers are not quasi-administration but run as a welfare

measure to help the family of Railway employees to learn some trade to augment the family income. They further have clarified that the Railway Board's letter dated 30.05.2000 (Exhibit R-1) provides that only those staff of a quasi-administrative offices/organizations were eligible to be absorbed to the Railway service who fulfill the conditions of recruitment whereas the present applicants are not the staff of quasi-administrative offices/organizations of the Railways. It is further contended that the applicants were not being paid salary on monthly basis instead they were being paid depending upon the quantum of work done by them and this Tribunal has no jurisdiction to try and entertain the present OA. The applicants were not engaged as employees by such quasi-administrative offices/ organizations of Railway. Work at Handicraft Center is voluntary and subject to availability of material for fabrication. The respondents have also taken objections that the OA is barred by limitation and the same suffers from delay and latches and in this regard they have mentioned a catena of case laws in para-9 of their written statements.

8. We have heard the learned counsels for the parties. While concluding his submissions, Sh. R. G.

Walia, learned counsel appearing for the applicant have placed on record a copy of the judgment of Hon'ble Apex Court in Phool Badan Tiwari & Ors. Vs. Union of India & Ors. reported in 2004(1) ATJ 377.

9. We have gone through the pleadings on record. We have also considered the submissions made on behalf of the parties which were reiteration of the contentions made in their respective pleadings. We have also gone through the judgment of Hon'ble Apex Court in Phool Badan Tiwari (supra).

10. In the case of Phool Badan Tiwari (supra) the applicants have claimed that they were employees of Northern Railways and were working as Supervisors in the Handicraft Centers and they were selected and appointed as Supervisors by the Railway Authorities; they have been working as Railway employees and as such they were entitled for reliefs sought by them in the original application before the Tribunal. The OA No.1014/1993 was filed by the applicants and one more person seeking the relief that their services be regularized with all the consequential benefits, and to declare them as Railway Servants and for directions to the respondents to pay them regular pay scales with all allowances and to quash such policy/policies which may come in the way of seeking

regularization of their services. The original application before the Tribunal and their further petition before the Hon'ble High Court failed. Then they were before the Hon'ble Apex Court. The Hon'ble Apex Court after considering the matter at length ordered as under:

"8. ... The scheme under which the appellants were appointed was a beneficial scheme intended to help the wives and daughters of the Railway servants. The appellants were only given an opportunity to work as supervisors. In this situation, it is not possible to hold by virtue of such appointments that the appellants were regular Railway employees. Once it is concluded that they are not Railway employees, irresistible conclusion that follows is that the Tribunal had no jurisdiction to entertain their applications. The judgment of this Court in the case of M. M.R. Khan (supra) in our view, does not help the cause of the appellants as is evident from the position made clear in paragraph 30, in which it is stated thus;

"We express no opinion on the subject as to whether the employees engaged in other welfare activities will or will not be entitled to the status of the railway employees, since neither they nor the facts pertaining to them are before us. Our conclusion that the employees in the statutory canteens are entitled to succeed in their claim is based purely on facts peculiar to them as discussed above. If by virtue of all these facts they are entitled to the status of railways employees and they cannot be deprived of that status merely because some other employees similarly or dissimilarly

situated may also claim the same status. The argument to say the least can only be described as one in terrorem, and as any other argument of the kind has to be disregarded.

9. That was a case relating to the employees working in a statutory canteen. From the very portion extracted above, it is clear that this Court did not express any opinion as to whether the employees engaged in other welfare activities will or will not be entitled to the status of the railway employees. The position as to the scope of the M.M.R Khan's case is explained by a three-Judge Bench of this Court in Union of India and Ors., v. J. V. Subhaiah and Ors., [1996] 2 SCC 258. Paragraph 18 of the judgment reads:

"In other words, there is a dual control over the staff by the Society and the Registrar. In that behalf, the Railway Administration has no role to play. If the subsidy is considered to be a controlling factor and the Societies/Stores as an intervening agency or veil between the Railway Administration and the employees, the same principle would equally be extendible to the staff, teachers, professors appointed in private educational institutions receiving aid from the appropriate State/Central Government to claim the status of government employees. Equally, other employees appointed in other Cooperative Stores/Societies organised by appropriate Government would also be entitled to the same status as government servants. Appointment to a post or an office under the State is regulated under the statutory rules either by direct recruitment or appointment by promotion from lower ladder to higher service or appointment by transfer in accordance with the procedure prescribed and the

qualifications specified. Any appointment otherwise would be vertical transplantation into services de hors the rules. Appointment through those institutions becomes gateway for back - door entry into government service and would be contrary to the prescribed qualifications and other conditions and recruitment by Public Service Commission or appropriate agencies. As contended, if the employees of the societies like cooperative canteens are declared to be Railway servants, there would arise dual control over them by the Registrar and Railway Administration but the same was not brought to the attention of the Court when M. M. R. Khan case was decided. "

10. In All India Institute Employees' Association v. Union of India, [1990] 1 SCR 594, this Court held that there is a material difference between the canteens run in the railway establishment and institutes and clubs and the benefit given to the railway employees were not extended to the employees working in the railway clubs. In the case on hand, the appellants are working in Handicraft Centres under a scheme of the Railway Department but that does not make them the railway employees. Be that as it may, on the facts of these cases, as already observed looking to the appointment orders of the appellants and the nature of work and the scheme, it is not possible to say that the appellants are railway employees. This being the position, the Tribunal was right and the High Court rightly did not interfere with the orders passed by the Tribunal. Under the circumstances, we do not find any merit in this appeal. As such it is dismissed but with no order as to costs."

11. It is found that as the facts and the

issues in the present OA are similar to the facts to those in the matter of Phool Badan Tiwari (supra) and therefore in view of the law laid down by the Hon'ble Apex Court in Phool Badan Tiwari (supra) the issue raised in the present OA stands settled.

12. In view of the aforesaid, we are of the considered view that the OA is devoid of any merit. Accordingly, the OA is dismissed. However, in the facts and circumstances, no order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

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29/8/19