

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3334/2015 & CM APPL. Nos.5982-5983/2015**

SUBHODH CHANDRA DUTTA AND ORS. Petitioners

Through **Mr. Abhay Singh, Mr. D.R. Roy,
Ms. Veena Singh & Ms. Chiral
Dugar, Advocates**

versus

UNION OF INDIA (RAILWAYS) & ORS. Respondents

Through **Mr. Jagjit Singh, Sr. Standing
Counsel for Railways with Ms.
Shivanshu Bajpayee, Advocate**

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% 08.04.2015

KAILASH GAMBHIR, J. (ORAL)

The petitioners who are working in Mess (Canteen) of Zonal Railway Training Institute (*hereinafter referred to as the 'ZRTI'*), Bhully, Dhanbad have been fighting a legal battle since the year 1992 to claim their absorption as railway employees in terms of the decision of the Supreme Court in the case of *M.M.R. Khan & Ors. v. Union of India & Ors, reported in AIR 1990 SC 937*.

The Original Application (*in short 'OA'*) No.1496/1992 was preferred by these petitioners in the year 1992, which was dismissed by the learned Central Administrative Tribunal, Principal Bench, New Delhi

(hereinafter referred to as the 'learned Tribunal') on 14.07.1997. Challenging the decision of the learned Tribunal, these petitioners preferred a Writ Petition being No. 3416/1997 which came to be decided vide order dated 06.07.2010. In the said order, this Court felt it appropriate to allow these petitioners to submit a comprehensive fresh representation to make out a case for their absorption as railway employees and corresponding direction was given to the Railway Board to carry out necessary verification and for taking a sympathetic view in respect of the request made by these petitioners. In this petition, the Court held that it is an admitted position that the canteen where these petitioners were working is a non-statutory and non-recognized canteen and the same does not have prior approval of the Railway Board but at the same time it further held that there is no dispute that the canteen has been set up by the Railway Officers. The Court further took a view that the facts of the case of these petitioners are quite different from **MMR Khan's case (supra)** in respect of non-statutory and non-recognized canteen and the learned Tribunal did not properly appreciate the ratio of the judgment in **MMR Khan's case (supra)** in summarily rejecting the application of these petitioners. The relevant paras of this order are reproduced as under:

“The admitted position is that the canteen is non-statutory non-recognized and does not have prior approval of the Railway Board but it is not disputed that they are set up by the railway officers. In case of some non-statutory non-recognized canteens, subsequent recognition have been granted.

The petitioners had approached the Central Administrative Tribunal (CAT) which has rejected their application in terms of the impugned order dated 14.7.1997. The CAT has taken a view that the judgment of M.M.R Khan and Ors. v. Union of India AIR 1990 SC 937 comes to the aid of the respondent Nos. 1 to 3.

We have heard learned counsel for the parties and perused the impugned order and record. It is no doubt true that the judgment in M.M.R Khan’s case (supra) deals with the non-statutory and non-recognized canteens. The judgment, however, notes that the factual matrix as pleaded was that such canteens were run by the private contractors and there was no continuity either of contractors or the workers engaged by them. No facilities including the furniture, utensil, electricity and water was provided. However, in the present case, the workers are working in a canteen within the premises of the railways where all the aforesaid facilities are provided by the railways. The plea of the petitioners is that even if the contractors have changed, their employment has continued with different contractors and they have been working as on date for as long as a period of 27 years.

We are thus of the view that the facts of the present case are quite different from M.M.R. Khan’s case (supra) in respect of non-statutory and non-recognized canteens. The ratio of the said judgment has not been appreciated by the CAT in summarily rejecting the application of the petitioners specially when their application seeking recognition of the canteen was pending with the Railway Board. We are thus of the considered view that the case of the petitioners for grant of recognition and benefits should be examined in accordance with law taking a sympathetic view of the matter in view of the following facts:

- (i) Recognition has been granted to other such canteens which were non-recognized and non-statutory.*
- (ii) There has been continuity of employment of the workers for a period as long as of approximately 27 years.*
- (iii) It is the railways which provide the premises, furniture, utensil, electricity, water and other such facilities.*

We are conscious of the fact that there have been

subsequent developments and thus it is appropriate that a comprehensive representation now be filed to facilitate a better examination of the matter by the Railway Board and to facilitate absorption in employment of these petitioners. We thus permit the petitioners to make a comprehensive fresh representation within one month. Such a representation will give details about the employment period of the petitioners apart from all other relevant material so as to derive benefits of absorption in terms of the judgment in M.M.R Khan's case (supra). The Railway Board will carry out the necessary verification and take a sympathetic view in respect of such a request by the petitioners within a maximum period of three months thereafter to be duly communicated to the petitioners. The writ petition is allowed to the aforesaid extent and the impugned order stands set aside."

Pursuant to the said direction given by the High Court, these petitioners had filed their comprehensive representation dated 02.08.2010 and the same was rejected by the respondents vide their letter dated 11.02.2011. Thereafter, a fresh OA No. 1846/2011 was preferred by these petitioners to assail the said decision of the respondents and on the said OA fresh direction was given by the learned Tribunal to the respondents in the light of the direction given by the High Court vide order dated 06.07.2010. The respondents again reiterated their earlier order rejecting the case of these petitioners and the same was challenged again by these petitioners by filing another OA No. 2950/2012 and when once again the learned Tribunal gave a direction to the respondents to pass a speaking order strictly in the light of the direction given by the High Court vide

order dated 06.07.2010, fresh speaking order dated 12.03.2013 was passed by the respondents and the same again became the subject matter of challenge by these petitioners in yet another OA No. 1404/2013 and in the present Writ Petition the challenge is to the order dated 10.02.2015 passed by the learned Tribunal in the last OA preferred by these petitioners.

Assailing the legality and correctness of the order passed by the learned Tribunal, Mr. D.R. Roy, the learned counsel representing these petitioners submits that the Mess where these petitioners had been working is in existence much before the Railway Board was found in the year 1952 and therefore, there could not have been any formal approval for the running of the said Mess/ canteen in the ZRTI from the Railway Board as required under Para 283 of the Railway Establishment Manual.

The learned counsel further submits that the ZRTI falls within the provisions of Section 46 of the Factories Act, 1948 and the messing service being provided by these petitioners to the Trainees who vary between 350 to 700 in number, is a statutory obligation of the respondents to provide catering services to the Trainees and therefore, the said canteen has all the trappings of a statutory canteen. The learned counsel further submits that the case of these petitioners is squarely

covered by the decision of the Supreme Court in *MMR Khan's case (supra)*, and therefore, all these petitioners are entitled to the same benefits as have been allowed by the Supreme Court in the case of identically placed canteen employees. The learned counsel also submits that the Mess had been in existence even before the Nationalisation of the Indian Railways in the year 1952 and the formation of Railway Board and that the entire control of the Mess is in the hands of the Railway Administration and the respondents have even provided accommodation, furniture, utensils, electricity and other facilities for the smooth running and operation of the said Mess to cater to the food requirements of the Trainees in the Institute. The learned counsel also submits that even the rates of the food items are fixed by the Railway Establishment and even the accounts of the Mess are audited by the Railways and all these facts manifestly prove that the services of these petitioners and the said Mess are fully controlled by the Railway Establishment and therefore, they are entitled to be absorbed permanently with the respondent as railway employees.

We have heard the learned counsel for the parties.

This Court in its order dated 06.07.2010 clearly held that the canteen or the Mess where these petitioners have been working is a non-

statutory and non- recognized canteen and therefore, to this extent these petitioners cannot dispute this admitted position. With regard to the non- statutory and non-recognized canteen, the learned Tribunal has also referred to the relevant paras of the Hon'ble Supreme Court in MMR Khan's case (supra) where the Supreme Court took a view that the workers engaged in such canteens are not entitled to claim the status of the railway servant. For the sake of repetition, we also reproduce the said para from ***MMR Khan's case (supra)***:

“38. (iii) Non-Statutory Non-Recognised Canteens:- The difference between the non-statutory recognised and non-statutory non-recognised canteen is that these canteens are not started with the approval of the Railway Board as required under paragraph 2831 of the Railway Establishment Manual. Though, they are started in the premises belonging to the Railways they are so started with the permission of the local officers. They are not required to be managed either as per the provisions of the Railway Establishment Manual or the Administrative Instructions (Supra). There is no obligation on the Railway Administration to provide them with any facilities including the furniture, utensils, electricity and water. These canteens are further not entitled to nor are they given any subsidies or loans. They are run by private contractors and there is no continuity either of the contractors or the workers engaged by them. Very often than not the workers go out with the contractors. There is further no obligation cast even on the local offices to supervise the working of these canteens. No rules whatsoever are applicable to the recruitment of the workers and their service conditions. The canteens are run more or less on ad hoc basis, the Railway Administration having no control on their working neither is there a record of these canteens or of the contractors who run them who keep on changing, much less of the workers engaged in these canteens. In the circumstances we are of the view that the workers engaged in these canteens are not entitled to claim the status of the railway servants.”

The learned Tribunal further referred to a decision of this Court in W.P. (C) No. 3774/2011 wherein reliance was placed by this Court on an earlier decision of the Supreme Court in the case of ***Management of Reserve Bank of India v. Their Workmen & Ors., 1996 III AD (SC) 24***, and decision of the Supreme Court in the case of ***Union of India & Anr. v. Ram Singh Thakur and Ors.*** and ***Civil Appeal No. 1197/2007*** and held that the persons working in the Mess run by Trainee Officers cannot be said to be the Mess run by the Railways. It further held that the persons working therein cannot be said to be railway employees and no direction can be given for their regularisation in service of the Indian Railways. In the penultimate para of the impugned judgement, the learned Tribunal held that the Mess at ZRTI cannot be considered as a statutory canteen as the applicants/petitioners have not been able to show any statutory obligation on the part of the respondents to establish such a canteen. The learned Tribunal further held that after taking into consideration the decision of the Supreme Court in ***Ram Singh Thakur's case (supra)*** no direction can be given to the respondents for regularisation or absorption of the applicants/petitioners as their request is beyond the policy of the respondents.

The learned counsel for the petitioners although strenuously pleaded for the absorption of these petitioners as regular railway employees, but failed to impinge upon the reasoning given by the learned Tribunal finding these petitioners not entitled to be granted the status of railway servants. The said Mess for Trainees was stated to have been established much before the nationalisation of the Indian Railway in the year 1952, but, it is not the case of these petitioners that the said Mess was ever granted any approval or recognition by the Railway Board after the Railway Board formally came into existence. The status of the said Mess thus continues to be non-statutory and non-recognized. These petitioners have also not disputed the fact that the Mess is running on private basis and none of these petitioners are receiving salary/emoluments from the Railway Administration. These petitioners have also not disputed the fact that neither is there any role of the railway establishment in their recruitment and nor does the railway establishment have any control over the services of these petitioners. Railway Establishment also does not have any disciplinary control over these petitioners. The mere fact that the Railway Establishment provides facility of water and electricity or there is an involvement of the Railway Officers in the control of the Mess or the fact that the menu and the rates

are fixed with the consent of the Railway Officers can hardly afford any ground to these petitioners to claim their absorption as regular employees of the Railway Establishment.

There is no merit in the present writ petition and the same is dismissed.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

APRIL 08, 2015

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