

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1597 OF 2002

Abhay S. Dighe	.. Petitioner
Vs.	
The Union of India and ors.	.. Respondents

Mr.Sandeep V. Marne, for the Petitioner.
Mr.Suresh Kumar a/w Ms.Mohinee Chougule, for Respondents.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 02nd FEBRUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. By this Petition filed under Article 226 of the Constitution of India, the petitioner challenges the judgment and order dated 12/10/2001 passed in OA/823/2000 by Central Administrative Tribunal, Mumbai Bench (for short 'Tribunal').

2. The petitioner approached the Tribunal with the case that he is entitled to regularization of his services in view of the judgment of the Hon'ble Supreme Court in the case of

M.M.R.Khan Vs. Union of India AIR 1990 SC 937. The petitioner claimed benefit of regularization with effect from 01/01/1990 with all consequential benefits.

3. The petitioner's case before the Tribunal was that he was an employee of the Railway canteen. Learned Counsel for the respondents - Railways invited our attention to the order impugned before the Tribunal dated 07/11/2000 wherein it is stated that the petitioner has always been working as Salesman in the Railwaymen's Consumer's Co-operative Society Ltd., Lonavla since 05/03/1986. According to the respondents, the petitioner was therefore an employee of Apna Bhandar run by the said Society. The Tribunal noted from Audit Report dated 11/07/2000 of Railwaymen's Consumer's Co-operative Society Ltd., Lonavla that the name of petitioner appears at serial no. 16 in the list of permanent staff still working with that Society. In these facts therefore the Tribunal did not find merit in the OA and consequently dismissed the same.

4. During the pendency of this Petition there were subsequent events which were brought on record by the petitioner. By order dated 15/09/2002, the petitioner's services came to be terminated by the Society which order of termination is also challenged in this Petition.

5. Learned Counsel for the petitioner urged that though he had engaged an Advocate before the Tribunal to represent him, unfortunately went unrepresented at the time of hearing of the OA. The petitioner's case could not be pleaded effectively before the Tribunal. Learned Counsel for the petitioner further submits that as of today the petitioner has lost his vision. He is entitled to protection of his rights as per the provisions of the Rights of Persons with Disabilities Act, 2016.

6. Learned Counsel invited our attention to the copy of the communication dated 30/05/2000 wherein it was decided that as a one time relaxation, the Railways may consider absorption of only those staff of quasi administrative

offices/organizations who were on roll continuously for a period of at least three years as on 10/06/1997 and are still on roll, subject to fulfillment of prescribed educational qualification required for recruitment to Group 'D' posts. Though his date of termination is said to be 2002, by a communication dated 20/01/2004 issued by the Divisional Railway Manager (P), Mumbai CST, the petitioner was found suitable for absorption and his name finds place at serial no. 19 in the said communication. By office note dated 04/03/2004 it was indicated that the petitioner is unfit for all categories in view of his medical condition. Learned Counsel for the petitioner therefore submits that the petitioner is entitled to protection of his rights under Rights of Persons with Disabilities Act, 2016. In any case, according to learned Counsel the petitioner is entitled to avail of the benefits of the law as it stood prior to the enactment of the 2016 Act for his medical condition arose in the course of employment. The action on the part of respondents to deny absorption in services on account of his medical condition is unfair and arbitrary.

7. Learned Counsel for the petitioner invited our attention to the 38th yearly report of the Railwaymen's Consumer's Co-operative Society Ltd., Lonavla. In the said report, the name of the petitioner is shown as an employee of the canteen department. On the basis of the decision of the Apex Court in the case of **M.M.R.Khan** (*supra*), 10 employees shown along with the petitioner in the canteen department have been regularized.

8. Learned Counsel for the respondents supported the order passed by the Tribunal. In his submission, the decision in **M.M.R.Khan** (*supra*) has been considered by the Apex Court in the case of **Union of India and ors. Vs. J.V. Subhaiah and ors. (1996) 2 Supreme Court Cases 258**. He invited our attention to paragraph 18 of the decision of the Apex Court wherein it is observed that if the employee 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's** case was decided. In his submission therefore the petitioner's case is not covered by the decision of the Apex Court in the case of **M.M.R.Khan** (*supra*).

9. In our opinion, having regard to the fact that 10 employees in the canteen department under the Railwaymen's Consumer's Co-operative Society Ltd., Lonavla working with the petitioners who are similar situate have been regularized in service, the question whether the petitioner is also entitled to similar benefits will have to be gone into by the Tribunal. The petitioner was not represented at the time of hearing, it is therefore necessary in the interest of justice that one opportunity should be given to the petitioner to plead his case on merits. We also find that there are subsequent events which have come on record in this Court. It has also come on record that though the petitioner's case was considered for absorption, he was found unfit on medical grounds. The certificate dated 30/12/2006 issued by the B.J. Medical College & Sassoon General Hospital, Pune indicates that the petitioner is visually disabled and there

is 100% permanent visual impairment in relation to his ocular condition. In the interest of justice therefore in our opinion it is necessary to give an opportunity to the petitioner to place this material before the Tribunal. In these circumstances, we are inclined to set aside the order passed by the Tribunal and remit the matter back to the Tribunal for a fresh decision on merits. The Tribunal may however consider the question of limitation sympathetically having regard to the fact that the petitioner was prosecuting his challenge before this Court. Hence we are inclined to pass the following order.

ORDER

- i) The judgment and order dated 12/10/2001 passed by the Tribunal in OA/823/2000 is quashed and set aside.
- ii) OA is remitted to the Tribunal for a fresh decision on its own merits.
- iii) Liberty is granted to the petitioner to apply for amendment of OA to raise appropriate challenges including the challenge to the order of termination.
- iv) The Tribunal to consider the application for condonation

of delay on its own merits and the question of limitation is kept open.

- v) The Tribunal is requested to make endeavour to decide the OA as expeditiously as possible and preferably within a period of 6 months from today.
- vi) It is made clear that we have not expressed any opinion on merits of the matter or on the question of limitation.

10. Rule is partly made absolute in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)