

**Nani Mohan Roy Vs. Union of India Through General Manager East Central Railway and Ors**

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**Court :** Jharkhand

**Decided On :** Aug-16-2017

**Appellant :** Nani Mohan Roy

**Respondent :** Union of India Through General Manager East Central Railway and Ors

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 2576 of 2016  
--- Nani Mohan Roy --- ---- Petitioner Versus 1. Union of India through, General Manager, East Central Railway, Hazipur 2. Chief Personnel Inspector Officer, East Central Railway, Hazipur 3. Sr. Divisional Personnel Officer, East Central Railway, Dhanbad 4. Divisional Railway Manager, Dhanbad --- --- Respondents ---  
CORAM: The Honble Mr. Justice Aparesh Kumar Singh The Hon'ble Mr. Justice B.B. Mangalmurti For the Petitioner: Mr. A.M. Khan. Advocate For the Resp - UOI: M/s Pradeep Kr. Modi, Yogendra Prasad, Advocates --- 06/ 16.08.2017 Heard learned counsel for the parties.

2. Aggrieved by the order dated 21.08.2015 passed by the Central Administrative Tribunal Circuit Bench at Ranchi in O.A. No. 137/2013(R) (Annexure-8) and also rejection of the Review Application by order dated 15.12.2015 (Annexure-10), petitioner has preferred the writ petition representing himself as the Secretary of Indian Railway Coal Ash and transport Workshop Mazdoor Union. The applicant

claims to represent 110 Mazdoors who were engaged as canteen workers from 1990 to 2000 for seeking regularization of their services from the date of their initial engagement and treating them as Railway employees with all consequential benefits.

3. As per the case set up by the applicant themselves before the Learned Tribunal in the original application, they were engaged in Loco-shed directly by the contractor and not by the Railways. Due to the phasing out of steam locos, they were removed by the contractor. Admittedly, no supporting documents were enclosed to the original application by the applicants to establish their case. As a matter of fact, applicants sought to furnish documents in their support after matter has been argued.

4. From the submissions of the learned counsel for the applicant / writ petitioner, it appears that the applicant was allowed a chance as an exceptional measure to submit documents in their support by the Learned Tribunal before final order was pronounced. These five registers which were submitted by the applicant, unsupported by any affidavit, purportedly pertain to the period 1991 to 2000. Learned Tribunal after perusal of the entries made in these registers, did not find it worth reliance. It has observed that though, registers appear to be old, interior pages and entries made are too neat and clean and fresh to be genuine. All the entries claimed to cover a period of ten years, have been made in the same handwriting and same ink. The first page of these registers show a signature by the same Loco Foreman for the entire period of 1991-2000. The said signature is also quite fresh. Learned Tribunal had suspicion over the genuinity of these documents. Learned Tribunal also observed that these documents did not show what nexus said persons had with the Railways and in what capacity they worked for the Railways.

5. Respondents contested the case and took the plea that the claim for regularization has been raised after more than twelve years; the O.A. is fit to be rejected on the grounds of limitation alone. As per Railways, these persons claim regularization stating that they were engaged by the contractor and therefore, Learned CAT was not the appropriate forum to adjudicate the case of the contract

labourers. It was further contended that East Central Railway came into existence in the year 2003 by carving out Divisions from North Eastern Railway and Eastern Railway. These persons claim themselves to have worked under the contractor in Coal and Ash handling Units from 1990-2000 prior to formation of East Central Railway. They relied upon the judgment rendered by the Hon'ble Supreme Court in the Case of State of Karnataka vs. Uma Devi [(2006) 4 SCC1 in support of their contention that those employed on daily wages or temporary or on contractual basis, cannot claim a right to be absorbed in service. Learned Tribunal was not satisfied with the case set up by the applicant for regularization of these persons, either on facts or on law, more so in view of the judgment rendered by the Hon'ble Supreme in the case of Uma Devi (Supra). The review application filed thereafter has also been rejected on the grounds that there were no apparent errors on the face of record.

6. Learned counsel for the petitioner has laboured to impress that the case of these persons have not been considered in proper perspective after due application of mind to the relevant supporting documents produced on their behalf. Learned counsel has placed the case of the applicant at par with those canteen workers who were directed to be regularized in pursuance of the judgment rendered by the Hon'ble Supreme Court in the case of M.M.R. Khan & others Vs. Union of India & others [1990 (Supp) SCC191. Reliance has also been placed on the judgment rendered by the Apex Court in Writ Petition (Civil) No. 179/2010 [Ganga Prasad & others versus Union of India & others]. Learned counsel submits that these persons were discharging the functions of canteen workers and should be treated at par with those other canteen staff who have been absorbed or regularized pursuant 3. to the judgment rendered in the case of M.M.R. Khan (Supra) and also followed by Delhi High Court in the case of Mohan Singh & others vs. Chairman, Railway Board & others dated 13.01.2011 in W.P.(C) No. 6582./2003. Therefore, according to the applicant, impugned judgment deserves to be set aside and the matter needs to be remanded to the Respondent Railways to examine the case of the individual persons in accordance with law.

7. Learned counsel for the Respondent Railways submits that the petitioner has tried to build up a new case that the persons were engaged as canteen workers by

a cooperative society, which was never pleaded before the Learned Tribunal earlier. As a matter of fact, these persons claim to be engaged under a contract labourer and had no basis to claim regularization under the Railways. Even as per the statement made in the O.A., the contract labourers were disengaged by the contractor due to phasing out of steam locos. There were no sanctioned post for their engagement. The case of the applicant and the persons whom he seeks to represent, have also been considered by the Respondents, but there were no factual or legal basis to allow them absorption or regularization under the employment of Railways themselves. The claim has been raised in the original application filed in the year 2013 after about 12-13 years of the alleged cause of action. Therefore, on all counts, petitioner does not have a case to succeed.

8. We have considered the submissions of the counsel for the parties and also gone through the relevant materials on record pleaded by them.

9. The narrative above leads us to two essential issues to be examined, one being on the factual score and the second being a legal right for such regularization or absorption under the services of Railways. As we have noticed from the pleadings on record and the impugned order also, the applicant had not produced any material documents in support of its claim along with the original application, but almost at the verge of conclusion of the proceedings, it was allowed to submit the documents which comprises five registers pertaining to the period 1991-2000. These documents however did not inspire confidence in the Learned Tribunal to believe them as evidence in support of their engagement under railways / contractor for such a period of nine years from 1991 till 2000. Petitioner has however brought on record certain extracts of the pages of one such register as Annexure-6 which contains the names of 120 such persons. A mere perusal of these extracts itself confirms the doubt that prevailed in the minds of the Learned Tribunal as well. The extracts contains only the name, father's name, permanent address, age, period over which they claim to have worked and in the remarks column, nature of work which they have performed. The extracts do not contain any description of any such office, place or officials of Railways under which such works have been discharged by them over a period of 9-10 years at the most. The first page of these documents shows that it has been signed by the applicant

himself as the President of Indian Railway Coal Ash and Canteen Mazdoor Union, Registration No.

8902. It also contains endorsement that they have worked as Mazdoor in canteen workshop. The instant document do not inspire confidence in us to justify the claim that these persons were engaged by the contractor under the Railways for performing the work under canteen of Railways over a period of ten years. Rather, the case set up by the petitioner in the original application was to the effect that they were engaged in Loco-shed directly by the contractor and not by the Railways and due to phasing out of the steam loco, these labourers were removed by the contractor. Therefore, on the factual score itself, the case set up by the applicant is unworthy of acceptance.

10. The Hon'ble Supreme Court in the case of Uma Devi (Supra) has clearly held that the element of equal opportunity under Article 14 and 16 of the Constitution of India should be the tenet to be followed in matters of public appointment. At para-53 of the Report, the authorities / instrumentalities of the State were allowed to frame a one time scheme for regularization of such persons who were engaged in a irregular manner, though not illegally. However, such a window of opportunity was not available to those who were engaged on daily wages, casual or temporary or contractual basis dehors the constitutional scheme of public employment. It was applicable to the cases of irregular appointment of those persons who fulfilled the eligibility criteria against the sanctioned post and had continued to work for ten years or more without intervention of any Court.

11. The judgment relied upon by the petitioner i.e. M.M.R. Khan (Supra) relates to the case of Railway Staff Canteen workers of statutory canteen and non- statutory recognized canteen wherein the Apex Court in the judgment reported in [1990 (Supp) SCC191 held them entitled to be treated as Railway employees. Railways cannot make any distinction between the statutory or non-statutory canteen in view of para-39 of the decision rendered in the case of M.M.R. Khan (Supra) which has also been profitably quoted by Delhi High Court in the case of Mohan Singh (Supra). However, for the reasons recorded herein-above, we are not convinced that the petitioner has made good a case for regularization under the 5.

ratio rendered by the Apex Court in the case of M.M.R. Khan (Supra) as they have failed to establish their status as canteen workers on facts on the basis of the documents produced by them. It is equally pertinent to observe that the ratio rendered in the case of Uma Devi (Supra) is squarely against the plea of regularization raised by these persons, that too, after a lapse of 12-13 years from the alleged cause of action in the year 2000. The judgment rendered by the Hon'ble Supreme Court in the case of Ganga Prasad (Supra), relied upon by the petitioner, relates to the case of persons who claim to have worked as Coal Handling Porters from 1984 to 1994. The Apex Court considered the judgment rendered by it earlier in the case of A.I. Railway Parcel & Goods Porters' Union Versus Union of India & others [(2003) 11 SCC590 and in such circumstances, had directed the Railways to consider the case of these persons and pass appropriate orders, in accordance with law, within a period of four months. The case of A.I. Railway Parcel & Goods Porters' Union (Supra) relates to the absorption of contract labour. They had sought implementation of the orders passed by the Supreme Court earlier directing absorption and grant of consequential benefits. The Apex Court, in the aforesaid case, had directed the Labour Commissioner to file a fresh report with an opportunity to the Respondents to scrutinize the claim and cross-examine the claims of the petitioners in the light of the provisions contained in Section 10 of Contract Labour (Regulation and Abolition) Act, 1970. The ratio of this judgment also cannot come to the aid of the petitioner herein as the applicant and the persons whom he seeks to represent, failed to establish their engagement in a perennial nature of work by the Railways through the contractor in terms of section 10 of C.L.R.A. Act, 1970.

12. Having given anxious consideration to all these aspects of this matter, we do not find any reason to interfere in the impugned order passed by the Learned Central Administrative Tribunal. Accordingly, writ petition being devoid of merit, is dismissed. (Aparesh Kumar Singh, J) (B.B. Mangalmurti, J) Ranjeet/R.S.

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