

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1768/1999

New Delhi this 3rd day of December, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. M.P. SINGH, MEMBER (A)


1. Mahesh Prasad
son of Shri Hari
2. Gurucharan
son of Shri Shyam Lal
3. Manik Chand
S/O Shyam Lal
4. Dulare
s/o Shri Dhaneshar
5. Lalji
S/O Shri Dhaneshar
6. Rameshankar
7. Ramanand
s/o Shri Ram Kewal
8. Ramkalap
s/o Jivdhan
9. Anil
son of Shri Bharat
10. Radheshyam
s/o Shri Adhya Prasad
11. Ratan Lal
son of Shri Pyare
12. Jagarnath
s/o Firangi Lal

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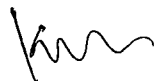
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13. Bhajuram
son of Shri Firangi Lal
14. Ram Baran
son of Shri Jokhu
15. Ram Lakhan
son of Shri Gappu
16. Manoj
S/O Shri Hardev
17. Rajendra
S/O Ram Kishan
18. Mithia
S/O Ram Kishan
19. Mithai Lal
S/O Bhagwati
20. Ratan Lal
S/O Bhagwati
21. Kailash
S/O Phunni Lal
22. Rama
S/O Phunni Lal
23. Sukhram
son of Shri Magan
24. Ram Chander
son of Shri Magan
25. Vijaya Prakash

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26. Ashok
S/O Shri Changur
27. Dilip
S/O Changur
28. Raju Prasad
S/O Pancha
29. Rajan
30. Ramesh
S/O Ganga Pandit
31. Chunni Lal
S/O Chandrabwali
32. Chandrika
S/O Phoujdar
33. Jagdish
S/O Chhedi Lal
34. Sant Lal
S/O Sheetal
35. Durga
S/O Sheetal
36. Swaminath
S/O Chamru
37. Ramakant
S/O Dubri
38. Ramdass
S/O Jagdev
39. Nathai
S/O Makhu
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40. Ram Karan
S/O Shankar
41. Amrit Lal
S/O Ram Adhare
42. Shri Prakash
S/O Ram Pyare
43. Jeetlal
S/O Radheshyam
44. Dinesh
S/O Ramdas
45. Mohan
S/O Shyamlal
46. Girja Shanker
47. Raju
S/O Medhai
48. Ram Kewal
49. Kukut
S/O Shkhram
50. Shyam Lal
51. Gajanand
S/O Ram Kishan
52. Rangl Lal
53. Ram Brickh
54. Raj Kumar
S/O Kishori Lal
55. Lal Chand
56. Sohan Lal
S/O Shyam Lal
57. Ram Prasad
S/O Shyam Behari
58. Shantulal



59. Om Prakash Rajak
60. Mohan Yadav
61. Raj Kumar
S/O Jagdish
62. Rajendra Jhan
63. Shanker Mishra
64. Jaishri Ram
65. Phulana

(All C/O North Eastern Railway

Headquarter Office,

Gorakhpur Railway Station

Forakhpur (U.P.)

....Petitioners

By Advocate: Shri Pramod Kumar Sharma.

V E R S U S

1. The Chairman,
Railway Board,
Rail Bhawan,
New Delhi.

2. The General Manager (Commercial)
North Eastern Railway Gorakhpur
Gorakhpur (U.P)

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3. The Chief Commercial Superintendent,
North Eastern Railway,
Gorakhpur (U.P).
 4. The Joint Director Traffic (Commercial)
G.I. Railway Board,
Railway Bhawan,
New Delhi.
 5. The Divisional Railway Manager (Comm1.),
North Eastern Railway,
Lucknow Division,
Lucknow (U.P.) ... Respondents

By Advocate: Shri E.X. Joseph, Sr. Counsel with Sh. Rajinder
Khatter, Counsel.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Jud1)

The applicants are Commissioned Vendors who are alleged to have completed more than 30 to 35 year of Railway Service but their grievance is that their services have not been regularised despite the orders of the Hon'ble Supreme Court. The applicants allege that some of the Commissioned Vendors of Railway Service have filed a petition before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India passed orders directing to the respondents to regularise the services of the petitioners and one of such order as passed on 25.8.88 is at Annexure 'B'. As per order dated 25.8.88, the Hon'ble Supreme Court ordered the implementation of the Memorandum dated 13.12.1976 issued by the respondents themselves but still the respondents are not absorbing the applicants in the catering department in terms of the OM dated 13.12.1976 but they are absorbing them in Class IV which is against the mandate of the Hon'ble Supreme Court's order dated 25.8.88, so the applicants have prayed for the following reliefs:-

- (a) direct the respondent No.1 to treat the commission vendors at North Eastern Railways as per the list annexed as Annexure A in the same manner as regular

commission vendors functioning in other railways all over the country.

(b) grant the commission vendors parity in any scales with regular vendors in Railways.

(c) direct the respondents to extend same relief to commission vendors of North Eastern Railways as have been extended to commission vendors in other parts of the country.

(d) direct the respondent to absorb the petitioners/commission vendors in regular vacancies in catering department in terms of memorandum dated 13.12.1976 and order dated 25.8.88 passed by the Hon'ble Supreme Court of India.

(e) grant all service benefits to commission vendors as are available to regularly employed vendors in the Railway Catering department and to treat them as Government Servants.

2. The OA is being contested by the respondents. The respondents have taken some technical objection that the Tribunal has no territorial jurisdiction as the applicants belong to North Eastern Railways. It is also pleaded that the applicants have earlier approached the Hon'ble Supreme Court but they withdrew the Writ Petition so the OA is hit by principles of res judicata. However, the respondents submit that the matter is not at all resintigra and the issue of absorption of commission bearers and commission vendors has been adjudicated by the Hon'ble Supreme Court and on the basis of the directions of the Hon'ble Supreme Court the Commission bearers and commission vendors should be absorbed in terms of the paragraph 3 of Memorandum dated 13.12.1976 and the orders of the Hon'ble Supreme Court is being followed. Thus in a way the respondents are admitting that they are under obligation to absorb the applicants in view of the OM dated 13.12.1976. The respondents also have themselves annexed an order dated August 25, 1988 passed by the Hon'ble Supreme Court wherein the directions were given

[Signature]

that the Memorandum dated 13.12.1976 be implemented in accordance with the directions contained thereunder.

3. As far the absorption of the Commission Vendors in Class IV (Group D) is concerned, the respondents have taken a plea that it is in the interest of the Commission Vendors because the cadre of Railway Catering service is very small resulting into very few vacancies in the catering department and, in fact, absorption in Group-IV (Group -D) category gives them better opportunity being the high number of vacancies available there. Thus we find that the respondents-Railways are implementing the orders passed by the Hon'ble Supreme Court but at the same time they are absorbing some of these employees in Group 'D' category.

4. We have heard the learned counsel for the parties and gone through the records of the case.

5. As far the petitioners right to be absorbed in the Railway Catering Service, the same is not denied but the same has to be done in accordance with the Memorandum dated 13.12.1976, as directed by the Hon'ble Supreme Court vide order dated 25.8.1988, so we find that this OA has to be allowed.

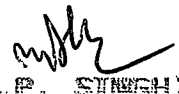
6. In view of the above, the OA is allowed and the respondents are directed to faithfully implement the memorandum dated 13.12.1976 to absorb the applicants wherever the vacancies are available within a period of 6

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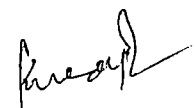
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months subject to availability of vacancies from the date of receipt of a copy of this order. For the absorption of the applicants they will follow the directions given by the Hon'ble Supreme Court issued from time to time. OA stands disposed of with the above directions. No costs.


(M.P. SINGH)
MEMBER (A)

/Rakesh


(KULDEEP SINGH)
MEMBER (JUDICIAL)