



**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01418/2016

Date of order: 20.1.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Fatik Mahata,  
Son of Late Ram Mahata,  
Aged about 51 years,  
Working as Canteen Helper,  
Bearing No. 816, under the Canteen Manager,  
South Eastern Railway, Catering, Rourkela,  
Chakradharpur Division and  
Residing at Village & P.O. Tulibar,  
P.S. Jamboni,  
District : Paschim Medinipur,  
West Bengal, Pin - 721503.

..... Applicant.

-Versus-

1. Union of India,  
Service though The General Manager,  
South Eastern Railway,  
Garden Reach,  
Kolkata - 700043.
2. The Chief Commercial Manager  
(Catering & P.S.),  
South Eastern Railway,  
14, Strand Road, 9<sup>th</sup> Floor,  
Kolkata - 700001.
3. Chief Catering Manager (Catering),  
South Eastern Railway,  
14, Strand Road, 9<sup>th</sup> Floor,  
Kolkata - 700001.
4. Senior Divisional Commercial Manager,  
South Eastern Railway,  
Chakradharpur, Adra Division,  
Chakradharpur, Pin - 833102.
5. Divisional Commercial Manager,  
South Eastern Railway,  
Chakradharpur, Adra Division,  
Chakradharpur, Pin - 833102.

6. Senior Divisional Personnel Officer,  
South Eastern Railway,  
Chakradharpur, Adra Division,  
Chakradharpur, Pin - 833102.

.....Respondents

For the Applicant : Mr. B. Chatterjee, Counsel

For the Respondents : Mr. P. Prasad, Counsel

ORDER (Oral)

Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) To quash and set aside the Order dated 08.02.2016 passed by the respondent authority;
- (b) An order do issue directing the Respondents authority to absorb the applicant in the permanent post considering his last 33 years services as Regular Canteen Staff forthwith alternatively the respondents authorities be directed to engage the applicant as Commission Bearer in any Unit of South Eastern Railway and save the applicant and his family member;
- (c) An order do issue directing the Respondents to give appointment to the applicant in the permanent post of Canteen Staff and/or in Group "D" post under the Indian Railways forthwith;
- (d) An order do issue directing the respondent authorities to take immediate steps to given appointment to the applicant in the permanent post of Canteen Staff and/or in Group "D" Post under the Indian Railways forthwith;
- (e) An order do issue directing the respondent authorities to produce the record of this case so that concessionable justice may be rendered in giving appointment to the applicant in the permanent post of Canteen Staff and/or in Group "D" Post under the Indian Railways forthwith;
- (f) Any other order or further order or orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

*[Signature]*

3. Ld. Counsel for the respondents would rely on the decisions in WPCT No. 2178(W) of 2003 (**Pradip Dutta & ors. Vs. Union of India & ors.**) as well as the orders in O.A. No. 810 of 2004 in the matter of (**Shri Pradip Dutta & ors. V. S.E. Railway & ors.**) in support of their arguments.

Ld. Counsel for the applicant would submit that the applicant has been working as a Commission Vendor helper since 1982 in Chakradharpur Division, and, that he was identified since 28.7.1984 as No. 816 catering staff of the said Division. He was also issued a License No. RR R04 with requisite certificates of the Divisional Medical Officer, S.E. Railway.

The applicant had represented to the authorities since 1990 for his appointment in a permanent post, but, not having received any favourable decision thereupon, had approached this Tribunal earlier in O.A. 1483 of 2013, which the Tribunal disposed of by directing the respondent authorities to issue a speaking order. The respondent authorities issued such speaking order on 8.2.2016 (**Annexure A-13 to the O.A.**) vide which they had rejected his claim, and, accordingly, being aggrieved, the applicant has approached this Tribunal praying for the above mentioned relief.

Ld. Counsel for the applicant would offer the following grounds in support of his claim:-

- (i) That, the applicant has rendered continuous 33 years of service and was a regular Canteen Staff bearing No. 816 of the Chakradharpur Division.
- (ii) That, juniors to the applicant have been absorbed to the permanent posts and promoted to higher grades, and, hence, the respondents have treated the applicant in an arbitrary and discriminatory manner.

*[Signature]*

(iii) The speaking order dated 8.2.2016 is bad in law and should be quashed and set aside.

4. Ld. Counsel for the respondents, per contra, would argue:

(a) That the Railways engaged the Commission Vendors and the said Commission Vendors sometimes engaged helpers for their own convenience, without recourse to any rules or procedure of the Railways.

(b) Identification cards and medical examination certificates are issued to helpers in order to ensure requisite hygiene as they are engaged in handling food products in the Railway Canteens.

(c) Ld. Counsel for the respondents would support his arguments by stating that the issue has been settled conclusively by the Hon'ble High Court at Calcutta in WPCT No. 2178 (W) of 2003 (*supra*) whereby vide orders dated 7.7.2004 the Hon'ble High Court had laid down as follows:-

"..... Simply because the identity cards were issued by the Railways, no obligation of the Railways ever arose for making payment of commission to the helpers engaged by the commission vendors. If the petitioners are entitled to get any commission, they are entitled to get such commission only from the vendor who engaged them. There is absolutely no merit in the submission that since the petitioners worked as helpers engaged by the commission vendors, they should be considered for permanent employees by the Railways. There is no legal basis of the claim. Moreover, with such a prayer the petitioners are not entitled to approach this court by filing the writ petition without first approaching the competent Tribunal established under the Administrative Tribunals Act, 1985.

For the foregoing reasons, I find no merit in the writ petition. It is hereby rejected."

And, that, this Tribunal had, vide O.A. No. 810 of 2004 dismissed a similar prayer on 5.4.2005 relying on the abovenoted judgment of Hon'ble High Court at Calcutta.

*Kechn*

5. The speaking order issued by the respondents and impugned in the O.A. is extracted as below:-

"  
S.E. Railway

Office of the  
Sr. Divisional Commercial Manager  
Chakradharpur

No. Com/98/CAT/Kol/OA/1483/2013

Date: 08.02.2016

To,

Sri Fatik Mahata,  
Village & P.O. - Tulibar,  
P.S. - Jamboni,  
District - Paschim Medinipur,  
West Bengal

Sub: Speaking order in compliance to the judgment  
passed in O.A. No. 1483 of 2013.

In compliance to the direction passed by the Hon'ble CAT, Kolkata in O.A. No. 1483 of 2013 dated 06.1.2016, the speaking order on behalf of the undersigned is passed on the following grounds:-

That, the judgment so passed in the captioned case is received by this office on 1.2.2016 and after scrutiny of the relevant records, it is stated that you have got no locus standi to claim anything against the Railway administration since you have never worked as a Commission Vendor nor the Railway has ever engaged you in any contractual or perennial job. When there is no agreement between yourself and Railway administration, you have got no legal right to claim anything against the Railway. Further, it is for your information please that in the similar cases the Hon'ble High Court, Kolkata in W.P. No. 2178 (W) of 2003 (Pradeep Dutta and others vs. UOI) has already settled the dispute issue which was raised by you before the Hon'ble CAT, Kolkata wherein Hon'ble High Court, Kolkata inter alia has verdicted that the commission vendors were engaged by the Railway and as such vendors were free to engage their helpers according to their own choice. Hence, your case fully falls within the ambit of the judgment so mentioned above. As you were working as vendors' helper, you have neither been engaged by the Railway nor any engagement letter to that extent has ever been issued. Had it been so, you could have produced the relevant documents before the Hon'ble CAT during the course of hearing of the captioned O.A. but you have miserably failed to establish your position in the Railway.

Therefore, you have got no legal right to claim anything from the Railway. For the sake of argument, it is stated that if you have got any authentic document in support of your claim, your case could have taken another turn. So far the annexure A-8 is concerned, it is clarified that your representation being devoid of any merit was discarded in limine since the said representation (annexure A-8 of the O.A.) is fully misconceived and fabricated.

Further, it is stated that as per the judgment passed by the Supreme Court, all the eligible commission vendors having the requisite qualification have already been engaged in group 'D' category of Railway. But, as your case did not fall within the ambit

*[Signature]*

of the criteria fixed by the Railway administration, your case was not considered and your claim for employment in Group 'D' is non est in the eye of law.

That, it is settled principle of Law that the onus of proof in favour of the claim so made by you lies upon you and your have never produced any document before the Court of Law to establish your alleged position in the Railway. As you have never been engaged by the Railway, no record regarding your engagement/appointment is available in the OP's office. The question of producing the documents in your case on behalf of the OP does not arise at all.

Therefore, your entire claim is not in accordance with the Railway rules whereby the same being devoid of any merit is herewith discarded.

-sd/-  
Divisional Commercial Manager  
Chakradharpur

Copy to: Sr. DPO/CKP for information and necessary action please.

-sd/-  
Divisional Commercial Manager  
Chakradharpur"

We infer from the above order that:

- (a) The non-justifiability of the applicant's claim have been settled by the Hon'ble High Court of Calcutta in **WPCT No. 2178 (W) of 2003 (supra)**.
- (b) The applicant could not furnish any authentic documents in support of his claim.
- (c) Eligible Commission Vendors with requisite qualification have been engaged in Gr. 'D" posts of the Railways but the applicant, not having been a Commission Vendor with requisite qualifications, did not merit consideration as a Gr. 'D' employee.

Hence, his allegation that the respondents have discriminated against him, fails to succeed.

and, (d) The applicant, having failed to prove that he had ever been engaged by the Railways, his claim is neither substantiated by the facts or law as reiterated in the speaking order.

*[Signature]*

6. Having inferred as above, and, having referred to the settled issue as per WPCT No. 2178 (W) of 2003 (*supra*), we are of the considered opinion that the speaking order dated 8.2.2016 requires no intervention. Hence, the applicant's claim fails and, accordingly, this O.A. is dismissed on merit.

There will be no orders on costs.

*(Dr. Nandita Chatterjee)*  
*Administrative Member*

*(Bidisha Banerjee)*  
*Judicial Member*

*SP*