

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 29th day of October 2007

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Original Application No. 1041 of 1999

Gadan Lal Kesharwani, S/o Sri Rajeshwar Prasad, R/o
Commission Vendor, Varanasi.

. . . Applicant

By Adv: Sri S.K. Mishra

V E R S U S

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Lucknow.
4. The Senior Commercial Manager, Northern Railway, Lucknow.
5. The Catering Inspector, Northern Railway, Varanasi.
6. The Assistant Personnel Officer, Northern Railway, Lucknow.

. . . Respondents

By Adv: Sri P. Mathur

Alongwith

Contempt Application 18 of 2000

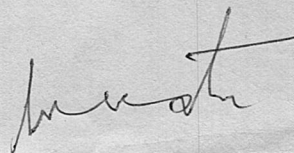
IN

Original Application No. 1041 of 1999

Gadan Lal Kesharwani, S/o Sri Rajeshwar Prasad, R/o
19/I, Nai Bazar, Varanasi Bridge, Distt: Varanasi.

. . . Applicant

By Adv: Sri S.K. Mishra



V E R S U S

1. K.K. Pandey, Divisional Railway Manager, Northern Railway, Lucknow.
2. Champa Lal Chittara, Assistant Commercial Manager, Northern Railway, Varanasi.
3. Bhopal Singh (now) Assistant Commercial Manager, Varanasi.

. . . . Respondents

By Adv: Sri P. Mathur

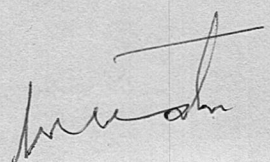
O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The applicant who was initially engaged as Commission Vender under respondent No. 3 under NR on 04.03.1982, and later was screened and regularized as Waiter Khalasi on 06.11.1997, has filed this OA praying for the following reliefs:

- "a. to issue a writ order or direction in the nature of certiorari quashing the orders dated 20.4.1999 order dated 18.8.1999 issued by the respondent No. 3.
- b. to issue a mandamus directing the respondents to place orders dated 26.2.1999 referred to in the order dated 20.4.1999 Annexure A-1 to Comp 'I' and 15.1.1998, referred to in the order dated 18.8.1999, Annexure A2 to Comp 'I', as alleged to be issued by the Railway Headquarters before this Hon. Tribunal and to quash the same being wholly illegal and contrary to law.
- c. to issue mandamus directing the respondents not to interfere in the functioning of the applicant as Waiter Khalasi in the Pay scale of 2610-3540 with all other consequential benefits and also to pay arrears of salary since 25.12.1997 when the applicant joined on the said post after his regular appointment but has not been paid any salary till date."

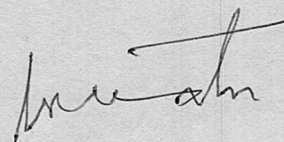
2. After his initial engagement as commission vender he was approved to work as commission vender by the appropriate authority. In 1993 the applicant



gave his option in favour of conversion of his category from commission vender to commission Waiter. This was accepted by the respondents by letter dated 08.11.1993 (Annexure A-5). An identity card giving his identity as commission vender was also issued. Later the applicant was screened for regularization as Waiter Khalasi. After the screening his name was notified as a successful candidate in panel dated 16.10.1997 at Sl No. 26. He was medically examined. Thereafter, he was appointed as Waiter khalasi on 06.11.1997 (Annexure A-16). From 25.12.1997 the applicant started working as Waiter Khalasi under the respondents.

3. The applicant however is aggrieved that suddenly on 20.04.1999 he was informed by the respondents that the panel which was made after screening for Waiter khalasi was cancelled. The panel was made irregularly in contravention of the instructions of the Railway Board which was framed by the Board and later endorsed by a decision of the Apex Court. The applicant however, is not satisfied and says that his appointment was made regularly through the due process. It was made after screening and medical examination. The plea which the respondents were taking were wrong and irregular.

4. The applicant is also aggrieved that while he worked regularly from 25.12.1997 as Waiter Khalasi

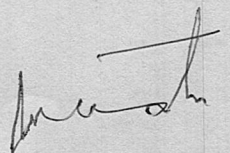


till his irregular termination by the respondents, his emolument for the period has not been paid. The applicant says that having engaged him as Waiter Khalasi through an appointment letter issued by the competent authority they cannot deny him his due emoluments.

5. The ground on which the applicant has assailed the orders of the respondents are as follows:

- a. The appointment was made through the due process and therefore was not irregular.
- b. He was not given any show cause notice before cancellation of his appointment.
- c. He has further stated that the respondents cannot cancel the option which was exercised by him for conversion of his category from Commission Vender to Commission Bearer for the reason that it was approved by the respondents at the competent level.
- d. The applicant is of the view that he had worked from 25.12.1997 regularly as Waiter Khalasi and therefore denying him his emoluments was irregular and illegal.

6. The respondents have strongly refuted the allegation made by the applicant. They have categorically stated that his appointment as Waiter Khalasi is void abinitio for the reason that his conversion from commission vender to commission Waiter was irregular. It is admitted by them that

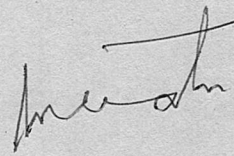


such conversion was allowed by them by the competent authority. But they said that this was due to ignorance by the rules and instruction of the Railway Board. The respondents have further stated that such conversion went against the judgment delivered by the Hon'ble Apex Court in the matter. In that decision of the Hon. Supreme Court it was decided that the Railway Board should initiate the process of regularization of the commission vendors and commission bearers, the commission bearer first and thereafter the commission vendors. The judgment of the Supreme Court in WP 6804/82 is as follows :

"After the case heard for some time Shri M.S. Gujral learned counsel for the Union of India (Railways) draw our attention to paragraph 3 of the memorandum bearing No. 76.TG/III/639/11 dated 13.12.1976 issued by the Joint Director, Traffic Commercial (G)-II, Railway Board and submitted that persons working as commission bearer/vendors would be progressively as members in permanent Railway services as stated in the above memorandum.

It is obvious from the above memorandum that the Railway Board first absorb all the Bearers who are registered in accordance with the Memorandum and thereafter the Vendors who are registered accordingly and that until all the bearers and vendors are accordingly absorbed, the Railway cannot appoint any person either as bearer or vendor on permanent basis in Railway service from any other source. In view of the above clarification no orders are called for. The petitioners are disposed of accordingly. We hope that the Government would take steps to absorb all the bearers/vendors as mentioned above as early as possible."

7. The respondents have further stated that the regularization which was allowed by the respondent was not in keeping with the Railway Board letter dated 13.12.1976. The initial conversion of the applicant from Commission Vender to Commission Waiter was also in complete disregard of the rules

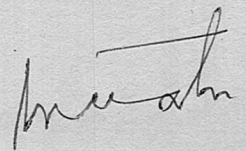


laid down by the Railway Board. The applicant therefore could not derive any benefit out of mistake which was verified by the respondents at the appropriate level and thereafter cancelled.

8. The applicant, the respondents say, was not allowed to lose his seniority in the panel of Commission Venders after cancellation of the order for appointment as Waiter Khalasi. The respondents have stated that after the cancellation the name of the applicant was interpolated in the list in the position which was due to him in terms of his seniority. Therefore, the applicant is not likely to lose anything vis-à-vis his juniors when the matter is taken up afresh for regularization as per his term and in accordance with the rules.

9. The respondents have also stated that by irregularly granting the applicant conversion from commission vender to Commission Waiter the respondents allowed the applicant to leapfrog a large distance towards regular appointment. This was not admissible as it deprived a large number of other candidates from being considered for regular appointment in their turn as per rules. Therefore, the respondents could not do anything but cancel such irregular appointment.

10. The respondents have also stated that in this case no show cause notice was considered necessary before cancellation as the appointment as Waiter



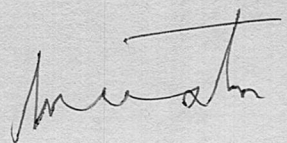
Khalasi was ab-initio wrong as it transgressed the declared policy of the Railway Board regarding absorption of Commission Venders. The respondents have also cited the judgment of the Hon'ble Supreme Court in Civil Misc Petition No. 1670 of 1987 T.I. Mahdwan Vs. U.O.I. & Ors in support of their decision. The relevant portion of the judgment is as follows:

"We accordingly direct that all persons working as commission bearers and vendors on various railway platforms belonging to the Central Railway and the South Central Railway would be absorbed progressively as members of the permanent Railway Catering Service as per the terms of paragraph 3 of the Memorandum No. 76 TG III/639/11 dated December 13, 1976 issued by the Joint Director, Traffic Commercial (C) II, Railway Board, New Delhi, as and when vacancies to the posts of bearers in the Railway Catering Service occur. As directed by this Court in Saital Singh's case, the concerned Railway Administration would first absorb all the bearers who are registered in accordance with the aforesaid memorandum, therefore the vendors who are so registered and until all the bearers and vendors are accordingly absorbed, the Railway Administration shall not recruit or appoint any person either as a bearer or vendor on permanent basis in Railway Catering Service from any other sources.

In view of this, we must necessarily modify the direction contained in this Court's order dated March 10, 1986 as to payment of salary. In modification of the earlier direction, we direct that the vendors and bearers so absorbed in the Railway Catering Service shall be entitled to salary as from the date of their absorption and not from December 1, 1983.

The writ petition and the connected civil miscellaneous petitions are disposed of accordingly."

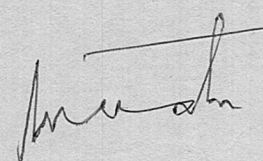
11. Having gone through the rival submissions, written and oral we have applied our mind to the same. The respondents have shown as the decision of the respondents in first converting the applicant's category and secondly in giving him regular appointment as Waiter Khalasi was against



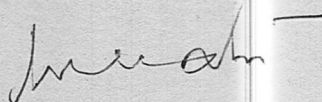
the relevant orders of the Railway Board. Not only that it went against the direction of the Hon'ble Supreme Court in the two cases cited above. Obviously the applicant could not have been allowed to gain an undue advantage over other Venders/Bearers. The respondents have also stated that while canceling the orders the applicant has not been made to lose his seniority as Commission Vender. Therefore, his eligibility for consideration for regular appointment has not been altered. Only the mistake committed by the respondents in granting an undue advantage to the applicant has been rectified. We therefore, do not find any illegality in the order and decision of the respondents. The OA therefore, does not deserve to be allowed. Accordingly it is dismissed. No cost.

12. The applicants had filed contempt application No. 18/2000 alleging that the interim order passed by the Tribunal on 22.09.1999 staying the operation of the orders of the respondents dated 20.04.1999 was not complied with by the applicant.

13. The respondents however, contradicted the allegation made by the applicant through a counter affidavit in which it was stated that in pursuance of the order passed by the Tribunal the applicant was being paid his regular dues onwards (Para 8 of the reply).

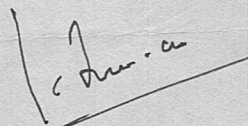


14. In view of the position and also taking into account the fact that the OA has been finally disposed of, the notices issued to the respondents in the CCA are discharged.



Member (A)

/pc/



Vice-Chairman