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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 106 OF 1994.
Cuttack, this the 7th day of February, 2000.

RABI SAHU.

....

APPLICANT.

- Versus -

UNION OF INDIA & ORS.

....

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

7.2.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.106 OF 1994.

Cuttack, this the 7th day of February, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

...

RABI SAHU,
S/O. SANKAR SAHU,
At: Ramachandrapur,
PO/PS: Khurda Road,
DIST. KHURDA.

..... Applicant.

By legal practitioner : M/s. S. S. Mishra, 1, S. N. Mishra,
S. K. Nayak-2, B. Dash,
A. N. Misra, A. Rajguru,
Advocates.

- VERSUS -

1. Union of India through the
Divisional Railway Manager,
S. E. Railway Division,
At/PO: Khurda Road,
Dist: Khurda.

2. Divisional Commercial Manager,
S. E. Railway Division,
At/PO: Khurda Road,
Dist: Khurda.

3. Manager,
Pantry Cart,
Nilachala Express,
At/PO: Puri,
Dist: Puri.

... ... RESPONDENTS.

By legal practitioner: Mr. D. N. Mishra,
Standing Counsel (Railways),

....

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the Respondents to re-instate the petitioner as a bearer or to allow him to work as such with continuity from his original date of appointment or to appointment him in any other suitable post available for the purpose.

2. Applicant's case is that he was working as a bearer in the Pantry Car of Neelachal Express being appointed as such by Respondent No. 2. He was being paid his remuneration monthly on commission basis calculated on the basis of sale through him. He was also engaged for some period in Utkal Express. Besides the regular pantry car bearers there are some casual pantry car bearers in every train. As a practice, such casual bearers are absorbed in regular service according to their length of service, as and when occasion arises. Applicant was issued with identity Card and besides working as Pantry Car Agent, he was also sent by his authorities to collect the stores from different places. Applicant has been working in this fashion from 1987. His grievance is that the Manager of the Pantry Car with a view to employ some of his favoured candidates did not enter his name in the Muster roll/Register maintained for the catering staff and after the end of

S. Som

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the year 1991 and the Manager, Pantry Car, Neelachal Express, Res. No. 4 did not allow him to work. He was initially told that he would be given some alternative duty but inspite of approaching the Respondents repeatedly no alternative duty was given to him and that is why he has come up in this Original Application with the prayers referred to earlier.

3. Respondents in their counter have mentioned that the application is not maintainable as applicant was not a Railway employee. Respondents have stated that besides regular employees, Railways also hires the services of Agents/Bearers/vendors who are paid commission on their sale/services provided to the Railway. Such bearers/vendors are not regular employees of the Railway, and their service conditions are not governed by the Indian Railway Establishment Manual. Respondents have further stated that the applicant has never been engaged by the Railways as regular employee nor any salary has been paid to him. The applicant has been hired as an commission bearer helper and for the sale/services, he has been paid his commission. Respondents have further stated that at present the catering Division is no longer maintained by the Railways but the Division has been handed over to the Private Agencies. Therefore, appointment /continuance of commission bearers/helpers do not arise. On the above grounds, Respondents have opposed the prayer of applicant.

S. J. V. M.

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4. We have heard Mr. B. Mishra-1, learned counsel for the applicant and Mr. D. N. Mishra, learned Standing Counsel appearing for the Departmental Respondents and have also perused the records.

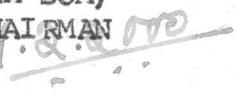
5. From the recital of facts mentioned by the applicant himself, in his original application, it is clear that the applicant is not a regular employee of the Railways. He has not enclosed any order of appointment issued to him to any post in the railways. He has, on the contrary specifically averred that he was being paid on commission basis on the sales made by him. As he was merely working as a Commissioned bearer there is no question of having any service under the Railways and break in his service as also his prayer for continuity in service. As the applicant had never been appointed as a Railway service, question of his continuing in the Railways do not arise. We therefore, see no merit in the prayers made by the petitioner in this O.A.

S. J. M.

6. It has been submitted by Mr. D. N. Mishra, learned Standing Counsel for the Railways that the system of having Commissioned bearers have been done away with privatisation of the Catering Division. In case after privatisation, such Commission bearers have been provided with any alternative employment or any other form of benefits, then the petitioner will also be entitled to be considered for the same.

7. with the above observations ,we reject the
Original application but without any order as to costs.


(G. NARASIMHAM)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN


KNM/CM.