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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO. 562 OF 1995
Cuttack this the 19th day of August/2003

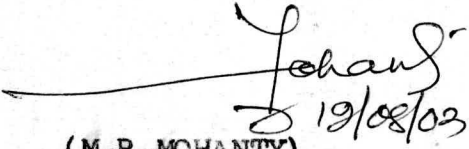
Upendra Kumar Dash ... Applicant(s)

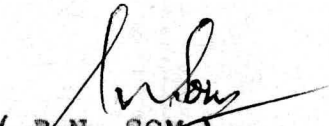
VERSUS

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

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


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE CHAIRMAN

9

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 562 OF 1995
Cuttack this the 19th day of August/2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

Sri Upendra Kumar Dash, aged about 34 years,
S/o. Sri Kashinath Dash of Vill-Chandrakoot
PO: Pattanaikia, Dist-Puri

...

Applicant

By the Advocates

M/s. B. Mohanty
S. Patra,
P. K. Majhi

-VERSUS-

1. Union of India represented through General Manager
South Eastern Railways, Garden Reach, Calcutta
2. The Divisional Railway Manager, South Eastern
Railways, Khurda Road Division, At-Khurda Road,
PO-Jatni, Dist-Khurda
3. The Divisional Commercial Manager, South Eastern
Railways, Khurda Road Division, At-Khurda Road,
PO-Jatni, Dist-Khurda

...

Respondents

By the Advocates

M/s. D. N. Mishra
S. K. Panda

ORDER

MR. B.N. SOM, VICE-CHAIRMAN : This Original Application under Section 19 of the A.T. Act, 1985, has been filed by Shri Upendra Kumar Dash, formerly Commission Agent, S.E. Railways, Khurda Division. Through this application, the applicant challenges the order of termination passed by the Respondents-Railways vide Annexure-A/7 dated 14.6.95. He has also prayed this Tribunal to direct the Respondents

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10
to regularise his service as Booking Clerk or against any other post at Birapurusottampur Railway Station or at any other place under the jurisdiction of Respondent No.2, viz., Divisional Railway Manager, S.E.Railways, Khurda Road Division.

2. The undisputed facts of the case are that the applicant was appointed as a Commission Agent at Birapurusottampur Passenger Halt with effect from 30.4.1988. The agency was given to him under certain terms and conditions for which an agreement was signed by both the parties (applicant and the Railways) vide Annexures-A/3 and A/4 dated 23.5.1988 and 5.8.1991, respectively. In a nut shell, the applicant was appointed as Commission Agent on commission basis payable at the rate of 4.5% on ticket sale value, subject to a minimum of Rs.200/- per month, for which the applicant was required to keep a deposit of Rs.1000/- with the Respondents-Railways, purchase tickets not less than Rs.200/- on each occasion from the identified Station Master(s). Besides, there were other conditions as contained in the agreement signed by the applicant at Annexures-A/3 and A/4. The agreement also contained the condition that the Railway Administration reserved the right of terminating this agreement and in dispensing with the service of Commission Agent for selling of the tickets at any time, by giving three months' notice. On receipt of the notice of termination of the agency, on 14.6.1995, the applicant represented to Respondent No.2 stating that he having worked as a Commissioned Agent to the satisfaction of the Respondents from 2.1.1992, he should be absorbed as a casual labour/substitute under Commercial Department,

under whom he was working so far. He further pointed out that such facilities are being provided to the workers of the Canteen/Cooperative Stores/Railway Clubs/ Institutes and Canteen Vendors, and therefore, his case also should be considered sympathetically. However, he did not receive any formal reply from the Respondents. Being aggrieved by this action of the Respondents, the applicant has approached this Tribunal for redressal of his grievance.

3. The Respondents have contested the application by filing a counter. They have stated that the agency of the applicant was terminated when a decision was taken to upgrade Passenger halt at Birapurussottampur to a regular crossing station with effect from 27.1.1995. However, the applicant had not cooperated and refused to handover the railway property in his possession. They have also stated that there is no merit in this application as the agency of the applicant has been terminated strictly according to terms of agreement, which clearly confers a right on either of the parties in the agreement to terminate the same without assigning any reason, by giving three months' notice in writing (Clause-14 of the agreement). It is also stated in that Clause that neither party shall have any claim, whatsoever from the other party in consequence of such termination of the agreement. In the circumstances, it is not open for the applicant to challenge the same now. They have further submitted that as the engagement of the applicant was not in the nature of casual employment, there was no scope for Res.2 to consider his case for

12 - 4 - 12
absorption. In any case, the applicant was working on contract basis, as per the agreement signed by both the parties and since there is no provision for regularisation of Commissioned Agent in the agreement, the claim raised by the applicant is untenable.

4. The applicant by submitting a rejoinder further contested the averments made by the Respondents that his appointment was never confined to a specific period, that there was nothing contractual about his appointment as a commissioned agent and that the last agreement which was signed between him and the Respondents having come to an end on 29.2.1993, in June, 1995, when the Respondents gave him notice of termination, there existed no agreement for enforcement. Thus, he has argued that on 14.6.1995, no agreement being in existence, the Respondents could not have invoked Clause-14 of the agreement in Annexure A/7 to throw him out. The learned counsel for the applicant drew our notice to the following decisions of the Apex Court, in support of his argument.

- i) AIR 1991 SC 295 (H.C.Puttaswamy v. Hon'ble Chief Justice of Karnataka)
- ii) AIR 1994 SC 1668 (Andhra University v.M. Shivaram)
- iii) JT 1996(8) SC 1 (Central Welfare Board & Ors. v. Ms.Anjali Bepari & Ors)
- iv) AIR 1999 SC 2202 (Govt. of Tamil Nadu and another v. G.Mohamed Ameenuddin & Ors.)
- v) Order dated 3.12.1997 passed in W.P.(C) No. 196/95 by the Hon'ble Supreme Court of India (S.E.Railway Congress & Ors. v. The Chairman Railway Board)

5. We have perused the records as also the decisions as referred to above by the learned counsel for the applicant.

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We have also heard the learned counsel on both sides. We, however, find that those case laws are of no great help to the applicant's case. In the present application, the applicant has made a claim that having remained Commissioned Agent for seven years under the Railways he had acquired a right to be considered for absorption against a regular post. The learned Standing Counsel for the Railways had drawn our notice to the fact that regular posts, either Group D or C under the Railways (it is Group C in this case for appointment as Booking Clerk or Commercial Clerk) are done according to Recruitment Rules prescribed in the Railways Establishment Manual. According to rules, initially appointments of Group C are made partly through Railway Recruitment Boards and partly by way of promotion from amongst Group D posts and/or by transfer from other service by a Committee of Officers, when permitted by the Railway Board. Rule, therefore, does not permit induction of outsiders into any Group C post directly without the intervention of the Railway Recruitment Board. He further submitted that in this case the Respondents-Department have no liability to look after the service requirement of the commissioned agent. We have also perused the agreement for Passenger Halt signed by the applicant with the Respondents at Annexure-A/3. In Clause-50 thereof, it is said, "the commission agent shall have no claim whatsoever against the Railway Administration in consequence of such termination of the applicant". Existence of this clause gives in the agreement / credence to the argument of the learned Standing Counsel for the Railways that in terminating the

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14

service of the commissioned agent for reasons whatsoever, the Respondents-Railways had no liability to takeover.

With regard to his plea that as on 14.6.1995, there was no agreement in existence, it was not open to the Respondents-Railways to invoke Clause-14 of the agreement to terminate the service of the applicant. The Respondents have rebutted this argument in their counter. We also find that the Respondents had issued a letter dated 14.6.1995 (Annexure-A/7) (which is the notice for termination of contract/agreement dated 20.1.1992) wherein they had informed the applicant as follows.

" You are informed that although the tenure of the agreement dtd. 2.1.1992 executed with you and the Railway Administration of Khurda Road Division, has expired on 29.4.1992, your service was continued as Commission Agent to sell the tickets at Birapurusottampur Passenger Halt".

The applicant, as it appears that from Annexure-A/8 acknowledged this notice and did not raise any objection on the point that by virtue of letter dated 14.6.1995, the Respondents-Railways had extended the tenure of agreement from 30.4.1993 to that date. In other words, he had accepted the position that he was a contract commissioned agent to sell tickets at Birapurusottampur Passenger Halt and that he had no objection to the said proposal made by the Respondents. Having not repudiated the notice for termination issued under the agreement dated 2.1.1992, the applicant is estopped to raise this issue so late in the day.

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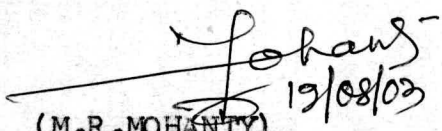
Having regard to the nature of appointment of the applicant and the explicit terms and conditions under which the agency he had operated since 1988 by selling tickets

15

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- 7 -

to the passengers at Birapurusottampur Passenger halt, we have no doubt that the applicant has failed to establish that he had any indefensible right to demand employment in the Railways by way of compensation for the reason of terminating his agency by virtue of the impugned order dated 14.6.1995 (Annexure-A/7). In the circumstances, this Original Application fails being devoid of merit. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

Bjy