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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.523 of 2009

Cuttack, this the 18th of November, 2011

Babula Das.....Applicants

- Versus -

Union of India & Ors.Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to C.A.T., PB, New Delhi or not ?


(C.R.MOHAPATRA)

ADMINISTRATIVE MEMBER


(A.K.PATNAIK)

JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.523 of 2009

Cuttack, this the 18th of November, 2011

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

A N D

THE HON'BLE MR. A.K.PATNAIK, MEMBER (JUDL)

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1. Babula Das, aged about 49 years, son of Late Rama Das at present working as Commission Vendor in Khurda Road Division of the East Coast Railway residing at Brahmakunda, PO. Retang, Dist. Khurda, PIN 752 054.
2. Kalia Swain, aged about 57 years, Son of Late S.Swain at present working as Commission Vendor in Khurda Road Division of the East Coast Railway residing at Bistu Jena Colony, PO Budheswari, Bhubaneswar-6.
3. Y.Jagannath, aged about 59 years, Son of Late Y.Potraju at present working as Commission Vendor in Khurda Road Division of the East Coast Railway residing at Flat No.A/8, Budhanagar, Bhubaneswar-14.
4. Bharat Ch. Sahoo aged about 52 years, Son of Late Munindra Sahoo at present working as Commission Vendor in Khurda Road Division of the East Coast Railway residing at Gokuli Jena Colony, Bhubaneswar.
5. L.R.Nath, aged about 56 years, Son of Late Laghunath Nath at present working as Commission Vendor in Khurdas Road Division of the East Coast Railway residing at Vidyadharpur, PO Chatia, Dist. Jajpur.
6. Gajendra Rout, aged about 48 years, Son of Late Shyam Sundar Rout working as Commission Vendor of East Coast Railway, residing at Holding No. 1740, Plot No. 123 side, Koolie Sahi, Budheswari Colony, Bhubaneswar, PIN 751 006.
7. Mohan Pradhan alias Man Mohan Pradhan aged about 52 years, Son of Late Saiman Pradhan working as Commission Bearer residing at C/o.Mrs.Lilima Pradhan, City Road, Shanti Kunj Lane, Dist. Puri-2.

.....Applicants

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Legal practitioner : M/s. Achintya Das, D.K. Mohanty, Counsel.

- Versus -

1. Union of India service through General Manager, E.Co.Railway, ECoR Sadan, PO. Mancheswar, Dist. Khurda, PIN 751 017.
2. Chief Personnel Officer, E.Co.Railway, ECoR Sadan, PO. Mancheswar, Dist. Khurda, PIN 751 017.
3. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, PO. Jatni, Dist. Khurda, PIN 752 050.
4. Divisional Railway Manager (Personnel), East Coast Railway, Khurda Road Division, PO. Jatni, Dist. Khurda, PIN 752 050.
5. Chief Commercial Manager, E.Co.Railway, ECoR Sadan, PO. Mancheswar, Dist. Khurda, PIN 751 017.
6. Chief Traffic Manager, E.Co.Railway, ECoR Sadan, PO. Mancheswar, Dist. Khurda, PIN 751 017.
7. Regional Manager, Indian Railway Catering and Tourism Corporation, Fortune Tower, Chandrasekhapur, Bhubaneswar.
8. Chief Commercial Manager (Catering/PS), S.E. Railway, 14 Strand Road, Kolkata-1, PIN 700 001.

.... Respondents

Legal Practitioner: Mr. M.K. Das & Mr. S.K. Ojha, SC (Rly.)

O R D E R

A.K. PATNAIK, MEMBER (JUDL):-

In a nutshell the background of the case in hand is that the Applicants were initially appointed as Commission Vendors and Bearers at Khargpur Railway Station and were subsequently transferred to Puri/Cuttack/Bhubaneswar Railway Stations. They are in such engagement with effect from 13.05.1976, 10.03.1976, 23.02.1967, 10.12.1974, 01.01.1980, 14.01.1977 and 02.03.1969 respectively. In the year 2003, the Catering Department of Khurda Division was placed under the control of Indian Railway Catering and Tourism Corporation. A provisional seniority list of Commission Vendors/Bearers working in the Catering Units was

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published on 18.01.1988 and 30.01.1997 respectively showing the names of the Applicants and other similarly situated employees. Regularization and payment of wages to Commission Vendors and Bearers working in the Catering Units of various Railway received due consideration of the Hon'ble Apex Court in WP (C) No. 196 of 1995 and the same was disposed of on 03.12.1997 with direction that

" We, therefore, direct that till such Commission Vendors and Commission Bearers of South Eastern Railway who are now getting Rs.1500/- per month, are not absorbed against the available vacancies, they will be paid the minimum of the revised scale of pay on the basis of Fifth Pay Commission's recommendations together with Dearness Allowances and other allowances and also the House Rent Allowance which would have been payable on permanent absorption but no increment should be given to them until they are regularly absorbed against available vacancies."

2. There being no steps taken to implement the aforesaid order, CP No. 75/1999 was filed before the Hon'ble Apex Court. Immediately thereafter, the Chief Commercial Manager/Catering issued an order dated 12.5.1999 stating therein to take urgent and immediate steps to regularize the services of the Commission Vendors/Bearers working under the erstwhile S.E.Railway and pay them minimum basic pay plus DA plus HRA and transport allowance. In the list enclosed with the said letter the names of the Applicants figured at Sl. Nos. 326, 319, 125, 288,402,353& 162 respectively. This was again reiterated in letter dated 24.5.1999 wherein the names of the Applicants also did appear. After the letters dated 12.5.1999 and 24.5.1999 could be issued, the

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Applicants along with all other similarly circumstanced employees who were in receipt of Rs.1500/- per month were allowed the minimum of revised scale of pay on the basis of 5th. Central Pay Commission's recommendation of regular Class IV employees of the Railway together with dearness and other allowances including House Rent but no increment, vide order dated 30.05.1999 (Annexure-A/5). Another letter dated 09-07-1999 (Annexure-A/6) was also issued by the Chief Commercial Manager/Catering to all the Divisional Railway Managers including Khurda Road Division reiterating a direction to implement the order of the Hon'ble Apex Court in letter and spirit and also bringing the Commission Vendors/Bearers within the purview of Railway (D&A) Rules. In letter dated 14.12.2000, the Chief Personnel Officer, S.E.Railway, Calcutta, while formulating guidelines in regard to regularization of the Commission Vendors/Bearers, specifically directed that there should be no fresh recruitment until the regularization of the existing Commission Vendors/Bearers is exhausted. In the meantime, the Sr. Divisional Personnel Officer, KUR (Resp. No.3) issued a letter dated 13.09.2001 directing the Departmental Authorities to produce the security deposit money receipt of the Applicants with caution that unless the same is produced, adverse inference would be drawn in the matter. The Applicants preferred appeal and in response thereto, the Chief Commercial Manager (PS), S.E.Railway, Kolkata-1 (who was the Controlling Officer of the Applicants prior to 01-04-2003), vide letter No. E/TAC/Policy/Com.Bearer/2236, dated 04.09.2003 (Annexure-A/7) intimated that the applicants were not called for medical examination while calling their juniors on the plea that their records were not quiet sufficient for medical examination. However, he

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certified that the Applicants were appointed before 1978 and their names were also available in the screened list of 1984 as well as in the list of CCM (Catg)'s circular dated 12.05.1999 relating to Hon'ble Supreme Court's order.

3. Further case of the Applicants is that thereafter screening test and verification of documents of the applicants and similarly situated persons were conducted at various times. Applicants appeared along with all the required documents by the authorities. But for the reasons best known to them only a part panel of Vendor and Bearers were published for regularization in Group D categories vide order under Annexure-A/8 dated 01.12.2003, whereas in compliance with the order of the Hon'ble Apex Court after conducting the screening test persons working as Commission Vendors/Bearers in other Railways had already been regularized in Gr.D Posts either in catering or mechanical / engineering departments of the Railway.

3. The next contention of the Applicants is that an office order dated 01-10-2004 (Annexure-A/9) was issued by the DRM (P)/KUR stating therein that the applicants along with others could not be empanelled in the screening test as they were 'unable to produce authority of engagement letter and security deposit receipt' although this was no more required after the seniority list published and acted upon by way of payment of minimum wages as per the orders of the Hon'ble Apex Court. In this connection it has been stated that similarly situated Commission Vendors/Bearers approached this Tribunal challenging the delay in publication of the result of the Screening Test in OA No. 274 of

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2003. This Tribunal in order dated 09.02.2004 directed for publication of result. Again some of the Commission Vendors/Bearers approached this Tribunal in OA No. 312 of 2003 and OA No. 506 of 2003 and because of the interim order passed by this Tribunal, the result of the Screening Test was published and they have been empanelled for absorption in Gr. D post. The Applicants were intimated in letters dated 02.04.2008, 24/25.04.2008 and 06.02.2009 for appearing at the screening test. They did appear on the date and time fixed with all documents. As far as their knowledge is concerned all of them were found fit in the screening test and the documents were also found to be genuine, but they are yet to know the result of the said test. By submitting representation dated 15.6.2009 they requested the Chief Commercial Manager, E.Co. Rly, Bhubaneswar to publish the result so as to be regularized in Gr. D posts pursuant to the order of the Hon'ble Apex Court. There being no action, Applicant Nos.3&4 had approached this Tribunal in OA No.462 of 2009. The said OA was disposed of on 7.10.2009 with direction to the Respondent No.5, therein to publish the result within a stipulated period.

3. Similarly Applicant Nos.1,2 & 5 had approached this Tribunal in OA No. 508 and 509 of 2009 which were dismissed as withdrawn. The Chief Traffic Manager, ECoRly, Bhubaneswar in letter dated 3.8.2009 (Annexure-A/12) directed the DRM/ECoRly, KUR to make special drive to regularize the services of the Applicants and other similarly situated employees to avoid complicity. Instead of regularizing their services, the Asst Manager (Catg.) for Chief Regional Manager vide order dated 4th

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September, 2009 (Annexure-A/13) spared the Applicants and managed the catering work through outsourcing. In order under Annexure-A/14 dated 26.10.2009 it was intimated that genuineness of the documents could not be verified due to non availability of records in commercial department and original money receipt is without signature and official stamp. Immediately the Applicants brought this fact to the notice of GM, ECoRly, BBSR through representation dated 28.10.2009. Their case is that delay in regularization pursuant to the order of the Hon'ble Apex Court has deprived them to get their retirement dues after superannuation.

4. They have stated that they are entitled to be regularized pursuant to the order of the Hon'ble Apex Court followed by the order of the Kolkata Bench of this Tribunal passed in OA No. 514 of 2007 disposed of on 02.04.2008. It is the specific case of the Applicants that raising the same objection as raised in order under Annexure-A/14 dated 26.10.2009 one Shri Gada Sahoo was deprived of the benefit of regularization. He approached the Kolkata Bench of the Tribunal in OA No. 514 of 2007. The C.A.T Kolkata Bench by placing reliance on the decision of the Hon'ble Apex Court and various orders directed for regularisation of the service of Shri Gada Sahoo pursuant to which Shri Gada Sahoo was taken to the regular establishment in Gr. D post vide order dated 19.6.2009.

5. Hence, based on the aforesaid facts and circumstances by filing the present Original Application the applicants have prayed for the following reliefs:

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- i) To quash the order dated 26.10.2009 under Annexure-A/14;
- ii) To direct the Respondents to empanel the Applicants for absorption as has been done in the case of others;
- iii) To direct the Respondents to extend the benefit of the orders of the Calcutta Bench of the Hon'ble Tribunal in OA No. 514/2007 allowed on 02.04.2004 under Annexure-A/10;
- iv) To direct the Respondents to grant all service and financial benefits retrospectively, as advised by the CCM/Catering/S.E.Railway, Kolkata-1 at Annexure-A/6.
- v) To pass any other order/orders as deemed fit and proper."

6. The main contention of the Respondents in the counter is that despite adequate opportunity provided to them as the Applicants could not produce the authority of their engagement letters and security deposit money receipts, they could not be recommended for empanelment for absorption in Gr. D posts in Railway. Therefore, persons who have produced the required documents as per the guidelines issued vide letter dated 13.09.2000 were empanelled for absorption in Gr. D posts. Accordingly, the Respondents have opposed the prayers of the Applicants and have prayed for dismissal of this OA. Rejoinder was filed by the Applicants in which they have more or less reiterated the stand taken in the OA.

7. After giving in-depth consideration to the facts set out by the Learned Counsel appearing for both sides, perused the

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materials placed on record. From the counter so also arguments advanced by Respondents' Counsel it is evident that as the Applicants could not produce the authority of their engagement letters and security deposit money receipts, their cases could not be recommended while recommending the cases of others. In the circumstances, it is worthwhile to place reliance on various orders and the decisions relied on by the parties. Annexure-A/1 dated 18-01-1988 is the provisional seniority list published by the Deputy Chief Commercial Superintendent, Catering in which the names of the Applicants were shown along with other similarly situated Commission Vendors and bearers. Annexure-A/2 is the order of the Hon'ble Apex Court dated 03-12-1997 in WP (C) No. 196 of 1995 [South Eastern Railway Congress & Ors V The Chairman, Railway Board]. It reads as under:

"Despite directions given as far back as on 22nd April, 1997 as to when and by what time the Commission Vendors and Commission Bearers working in the South Eastern Railway are likely to be absorbed pursuant to the direction given earlier by this Court, no such intimation could be given to this Court. An interim direction was given by this Court that such workers would be paid Rs. 1,500/- (Rs. Fifteen Hundred) per month by way of interim relief because it was reasonably expected at that time that the concerned workers would be absorbed without much delay. Our attention has been drawn by Ms. Shyamla Pappu, the learned Senior Counsel for the Petitioner that in the case of similar workers in Southern Railway the Railway Board Memo No. 88/T.G III/648/19/PNH Meeting dated 10.2.1989 directed that such Commission vendors unit they would not be absorbed permanently would be paid at the minimum of revised scale than in force and such interim relief would also include allowances like House rent allowances, Compensatory City allowances and also the Dearness allowances. The learned counsel has submitted that similar direction may be passed in favour of the Commission

Vendors and Commission agents represented by the Petitioners.

In our view, in the facts of this case, there is justification in the said submission. We, therefore, direct that till such commission vendors and commission bearers of South Eastern Railway who are now getting Rs. ;1,5000/- per month are not absorbed against the available vacancies, they will be paid the minimum of the revised scale of pay on the basis of Fifth Pay Commission's recommendations together with Dearness Allowances and other allowances and also the House rent allowance which would have been payable on permanent absorption but no increment should be given to them until they are regularly absorbed against available vacancies. The writ petition stands disposed of." (emphasis supplied)

8. As it appears from the record, in compliance with the aforesaid order of the Hon'ble Apex Court, the Chief Commercial Manager/Catering issued an order under Annexure-A/3 dated 12.5.1999 enclosing thereto a list of Commission Vendors and bearers who are/were to be benefited pursuant to the order of the Hon'ble Apex Court in which the names of the Applicants found place at Sl. Nos. 326, 319, 125, 288, 402, 353 & 162 respectively. Thereafter, a list of Commission Vendors / Commission Bearers were sent by the Senior Divisional Commercial Manager, KUR through letter under Annexure-A/4 dated 24-05-1999 in which the names of the Applicant were also found place. It is not in dispute that in compliance of the order of the Hon'ble Apex Court, the Applicants were allowed the minimum of revised scale of pay together with dearness and other allowances including House Rent on the basis of 5th. CPC recommendation of regular Class IV employees of the Railway without any increment vide order under Annexure-A/5 dated 30.05.99. In Annexure-A/7 dated 04-09-02003 the Senior Commercial Manager, Catering informed the Senior

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Divisional Personnel Officer, E.Co Railway, KUR that Applicants are eligible for absorption in railways since they were appointed before 1978 and their names are also available in the screened list of 1984 as well as in the list of CCM (Catg)'s circular dated 12.5.99 related to the order of the Hon'ble Supreme Court.

9. Despite the above, the Applicants were denied absorption in Gr. D post in Railway for the reason that they could not produce the authority of their engagement and security deposit receipts. No where in the order, the Hon'ble Apex Court have held that regularization of the Commission Vendors/Bearers shall be made after holding the screening test and upon production of the documents insisted by the Respondents. The Law is well settled that a judicial decision of Courts/Tribunal is not available to be tinkered by the Executive Branch as the Executive Branch of Government bears a great responsibility for upholding and obeying the judicial orders. Respect for law and its institution is essential in our democratic set up as the constitution enjoins the rule of law. Besides, the seniority list and all other documents showing the names of the applicants have never been disputed by the Respondents/Department either in their counter or in course of hearing rather as it is seen, pursuant to the orders of the Hon'ble Apex Court the applicants have been paid regular scale of pay and other allowances except increments. In the above conspectus of facts after such long lapse of time, insistence on production of the authority of engagement and security deposit receipts by the Respondents for their empanelment for absorption in Gr. D posts in Railways seems to be quite unreasonable nor is in accordance with the order of the Hon'ble Apex Court, referred to above. This is the only reason for denying the benefit of empanelment to them for


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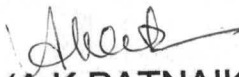
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absorption along with others. In view of the discussions made above, we hold that the applicants are entitled to be absorbed in Gr. D posts when others who were screened along with them were absorbed and are entitled to all consequential service benefits retrospectively. While coming to the above conclusion we have also taken note of the decision of the Calcutta Bench of the Tribunal dated 02-04-2008 in OA No. 514 of 2007. This was a case where for non production of the authority of engagement and security deposit one Shri Gada Sahoo (whose name also appeared in the list where the names of the Applicants were appeared) was denied empanelment. He had approached the Calcutta Bench of the Tribunal in OA No. 514 of 2007. The Calcutta Bench of the Tribunal by placing reliance on various documents, which has been relied on in the instant case, and on the order of the Hon'ble Apex Court in order dated 02-04-2008 has granted the relief of absorption in Gr. D post in Railway to the said applicant (Gada Sahoo).

6. For the discussions made above, we quash the order under Annexure-A/14 dated 26.10.2009 denying the applicants to be empanelled for absorption in Gr. D post pursuant to the order of the Hon'ble Apex Court and hold that the Applicants are entitled to be empanelled for absorption in Gr. D post from the date other similarly situated candidates empanelled/absorbed out of the screening test held on 26.05.2008 & 05.06.2008 retrospectively with all consequential service benefits which the Respondents shall do and pass necessary orders within a period of 120 days from the date of receipt of copy of this order.

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7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)
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(A.K. PATNAIK)
MEMBER (JUDL.)