

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 656 of 2009

Cuttack, this the 6th of January, 2012

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)

.....

Trilochan Das, aged about 41 years, Son of Late Sahadev Das of
Village Nima Basanta, Po.Harirajpur, Po.Delanga, Dist. Puri.

...Applicant

Legal practitioner :M/s. T.K.Mishra, S.Mohapatra,Counsel,

- Versus -

1. Union of India service through General Manager, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager (Personnel), East Coast Railway, Khurda Road Division, PO. Jatni, Dist. Khurda, PIN 752 050.
3. Manager, Hotel East Coast Railway, Khurda Road Division, Khurda Road, Jatni, Dist. Khurda.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Khurda.
5. Asst. Personnel Officer-III, Office of the DRM (P), East Coast Railway, Khurda Road, Jatni Khurda.

....Respondents

Legal Practitioner: Mr. M.K.Das, Counsel (Rly.)

O R D E R

MR.C.R.MOHAPATRA, MEMBER (ADMN.):

In this Original Application the prayer of the Applicant is to quash the order at Annexure-A/8 dated 26.10.2009 and to direct the Respondents to engage him as Commissioner Vendor in the Railway as he has been in such engagement in the Railway since, 1990. In Annexure-A/8 dated 26.10.2009 the Respondents have notified the names of such of the Vendors/Bearers who could not be empanelled, after screening, due to the reasons mentioned against their names and the reason showing against the name of the Applicant is that **"Original money receipt issuing authority's stamp is illegible. No documents are available neither in Commercial Deptt; nor in the Catering units i.e.MRR/BBS & MRR/CTC for**

verification, hence not accepted". Respondents filed their counter in which it has been stated that as the applicant did not fulfill the requirements he was declared unsuitable.

2. Learned Counsel for the Applicant at the out set submitted that the continuance of the applicant as Commissioner Vendor/Bearer is not in dispute and as such asking the applicant to produce the documents at this stage is not sustainable. In this connection he has placed reliance on the decision of this Tribunal in OA No. 523 of 2009 filed by Babula Das & Others V Union of India and others. Besides the above, it was contended by Learned Counsel for the Applicant that the applicant is in possession of the original money receipt but could not produce as it was not sought by the Respondents at any point of time. Having heard we have gone through the records so also earlier order of this Tribunal in OA No. 523 of 2009. Relevant portion of the order is quoted herein below:

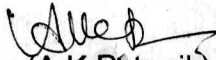
"8. As it appears from the record, in compliance with the aforesaid order of the Hon'ble Apex Court, the Chief Commercial Manager/Catering issued an order under Annexure-A/3 dated 12.5.1999 enclosing thereto a list of Commission Vendors and bearers who are/were to be benefited pursuant to the order of 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 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 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."

3. Apart from the above it is the specific case of the applicant that the original money receipt is with him. In view of the above, this OA is disposed of

with direction to the Respondents to reconsider the case of the applicant on production of the original money receipt keeping in mind the orders cited above within a period of 120 days from the date of receipt of copy of this order. No costs.


(A.K. Patnaik)
Member(Judl.)


(C.R. Mohapatra)
Member (Admn.)

