

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No.504/96

Present : Hon'ble Mr.B.V. Rao, Member(J)
Hon'ble Mr.A.R. Basu, Member(A)

- 1) Shri Chote Lal Shaw, S/o Ram Krishna Shaw, residing at 17/11, Hat Lane, Howrah - 1
- 2) Shri Ram Sah, S/o Late Bindi Prasad Sah, residing at North Buxarah Deshbandhu Colony, Dist. Hoswrah

-Vs-

- 1) Union of India, service through the General Manager, Eastern Railway, Fairlie Place, Calcutta - 1
- 2) General Manager, Eastern Rly, Fairlie Place, Calcutta - 700 001
- 3) DRM, Eastern Rly, Howrah
- 4) Chief Personnel Officer, Eastern Rly, Fairlie Place, Calcutta - 1
- 5) Chief Catering Service Manager, Eastern Rly, Koilaghat Street, Calcutta-1
- 6) Chief Catering Inspector, North Wing, Eastern Rly, Howrah

For the applicants : Mr.S.K. Dutta, Counsel

For the respondents : Mr. P.K. Arora, Counsel

Date of Order :

ORDER

11/7/06

Mr.B.V. Rao, JM

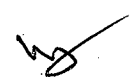
The applicants are serving as Commissioned Vendors under the Eastern Railway and attached to the Catering Unit North Wing, Howrah have filed this OA praying the following reliefs :

- 1) Leave under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987, be given to the applicants to move this application jointly since the cause of action and the relief, prayed for, are identical in nature.




- 2) To cancel, withdraw and/or rescind the impugned order dated 29-11-95 in so far as the applicants are concerned.
- 3) To declare that the applicants being Commission Vendors are entitled to be permanently absorbed as Group 'D' employees under the Chief Catering Inspector, Howrah Wing, Howrah Station and to be regularized at their present place of posting viz. Howrah Station forthwith.
- 4) To deal with and/or dispose of the representations being Annexure 'G' hereof.
- 5) To produce the entire case documents before this Tribunal for adjudication of the points of issue.

2. The brief matrix of the case according to the applicants is that they are serving as Commissioned Vendors under the Eastern Railway attached to the Catering Unit, North Wing, Howrah on the basis of licence and/or permits granted in their favour with effect from 10-10-81 and 19-10-81 respectively and they are given commission at different rates fixed for different articles and commodities. The Railway Board vide its letter dated 13-12-76 addressed to the General Managers of All Indian Railways circulated a procedure which has been outlined for absorption of Commissioned Vendors/Bearers in the permanent cadre as Class IV employee and further directed to take action in this respect (Annexure A). But the respondent authorities has not taken any suitable action in this regard though there is a specific direction from the Railway Board. The applicants further state that Hon'ble Apex Court in **Shital Singh and Others v. Union of India and Others** in Writ Petition No.6804 – 05 of 1982 has held that "The petitions are disposed of accordingly. We hope that the Government would take steps to absorb all the bearers and vendors as mentioned above as early as possible." The applicants further state that the CPO, Eastern Rly issued a circular dated 11-4-90 on the subject of filling up of Group 'D' vacancies in the Catering Department wherein it was decided to hold a screening test on 25-4-90, 26-4-90 and 30-4-90 for the said purposes and the applicants and other eligible persons were asked to keep themselves in preparedness for the same. The circular dated 11-4-90 is annexed as Annexure-B. The applicants further state that



the respondent authorities published a seniority list of Commission Vendors in the year 1990 wherein the names of the applicants find place at Sl. Nos 430 and 441 respectively. The respondent authorities vide order dated 17-3-93 asked for option in writing from the Commission Vendor/Bearers as to whether they are willing to have a vending contract or willing to be absorbed in Group 'D' category of Railway Service (Annexure 'C') and thereafter a medical test was conducted on 18-6-93 wherein the applicants were declared fit. The applicants further state vide order dated 30-3-94 (Annexure E) that the authorities posted the bearers against regular vacancies and have worked for a continuous period of 120 days and where they have been working but so far as the applicants and other similarly circumstanced employees are concerned, no such order was passed. A copy of order dated 30-3-94 is annexed as Annexure-E. The applicants further state that though they are discharging their duties and functioning as Commission Vendors since 1981, but their cases have not been considered at par with bearers though the Railway Board and the Hon'ble Apex Court directed the authorities concerned to take steps in this matter. The Railway Administration has accepted a consistent policy of regularization or permanent absorption of such commissioned vendors under the Catering Department and pursuant to such decision, the Railway Authorities held the said screening test amongst the commissioned vendors and in such screening test the applicants were found fit for being absorbed as Group 'D' employees under the Eastern Rly. The applicants further state that vide letter dated 29-11-95 issued by the Chief Personnel Officer, respondent No.4 wherefrom it transpires that the applicants have been absorbed in Group 'D' category in Liluah Workshop subject to their fitness in requisite medical categories. A copy of the said order is annexed as Annexure-F to the application. The applicants further state that the respondent authorities ought to have regularized and/or permanently absorbed the applicants in such posts where they are working and that too in the year 1990, but the concerned authorities deliberately delayed in taking action as per the

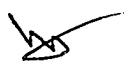


Railway Board's circular and as per the Apex Court's direction, but the authorities at the fag end of the year 1995 issued orders directing to join at Liluah Workshop as Group 'D' staff which was neither the purport nor intent of the absorption policy. Hence, the applicants filed this OA praying the above said claims and to ventilate their grievance.

3. The respondents opposed the application by filing reply. The respondents admitted almost all the facts of the case but they denied the claim of the applicants since the applicants cases were considered in view of the Railway Board's Circulars and Apex Court's direction for absorbing the applicants in Group 'D' posts. The respondents further contend that though the applicants were given order for absorption but they themselves willfully disobeyed the orders and refused to join the Group 'D' posts where they have been posted. The respondents further contend that the applicants desire for their posting in the same place where they are working as Commission Vendor is baseless, vague and unfounded and against the norms for posting. The applicants are working at tea point with trolley and selling cakes, biscuits etc. and earning commission through sale proceeds. Thus the respondents contend that the question of their absorption in the same place of working where they are earning commission through sale proceeds does not arise at all. On absorption they are to be posted in Group 'D' against existing vacancies in Railway Services. In view of the facts and circumstances stated above, there is no substance or merit in the OA and the purported grounds are of no avail to the applicants.

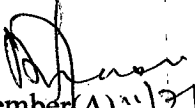
4. Heard both the parties.


5. The learned counsel for the applicants has reiterated the facts of the case which the applicants have already stated in their application. He mainly pointed out that the respondent authorities have to absorb the applicants in the Group 'D' category in the year 1990 itself in view of the Rly Board's Circular and as per the direction of the Hon'ble Apex Court. But the authorities willfully delayed the matter in processing and taking action in regularizing the services of the applicants in Group 'D' category. He also



applicants or similarly circumstanced persons should be posted at the same place of posting where they are working. The true meaning of the Judgement of the Apex Court is that the Commission Vendors/Bearers should be absorbed in a permanent vacancy in Group 'D' category of Railway Administration. We have observed that the applicants without joining the service have approached this Tribunal for the reliefs as stated in the application. The respondents have given the reason for delay in absorbing the applicants services in Group 'D' category. After a careful consideration of the submissions of both the parties, we have no hesitation to disallow the claim of the applicants since the applicants without joining the services have approached this Tribunal for the same remedy which the respondents have already given to them.

8. In view of the discussions made above and in view of the facts and circumstances of the case we find no merit in this OA and accordingly the same is dismissed. No costs.


Member (A) 11/3/2006


Member (J)