

Central Administrative Tribunal, Lucknow Bench, Lucknow

M.P. No. 1025/2008 in Dy. No. 991/2008

This the ^{27th} day of January, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

1. Keshav Ram Shukla aged about 36 years, son of Sri Ram Dhan Shukla, Resident of Village Baunapur, post Khairam, District Gonda, Present address Sudamapuri, A.P. Sen Road, Charbagh, Lucknow.
2. Radhy Shyam Tewari aged about 39 years son of Sri Dasrath Lal Tewari, Resident of Village BaunaPur post Khairam, District Gonda, Present address Sudamapuri, A.P. Sen Road, Charbagh, Lucknow.
3. Ghanshyam Gupta aged about 36 years son of Sri Bihari Lal, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
4. Ram Sabad Yadva aged about 34 years son of Sri Guru Prasad Yadav, Resident of Sudamapuri A.P. Sen Road Charbagh, Lucknow.
5. Ram Gopal Mishra aged about 39 years son of Sri Jagdamba Prasad Mishra, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.

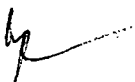
6. Mohan lal Yadav aged about 32 years son of Sri Guru Prasad Yadav, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
7. Shiv Charan Shukla aged about 29 years son of Sri Bansi Dhar Shukla, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
8. Gauri Shanker Dubey aged about 46 years son of Sri Janki Prasad Dubey, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
9. Ram Saroj Tewari aged about 34 years son of Sri Bhairav Prasad Tewari, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
10. Ram Bahorey Tewari aged about 33 years son of Sri Jagdish Prasad Tewari, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
11. Deshraj Tewari aged about 37 years son of Sri Ram Tej Tewari, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
12. Ayodhya Prasad Tewari aged about 41 years son of Sri Bhairav Prasad Tewari, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
13. Krishna Bahadur Mishra aged about 43 years son of Sri Jagannath Mishra, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.

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14. Anil Kumar Tewari aged about 33 years son of Sri L. N. Tewari Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
15. Dev Raj Tewari aged about 31 years son of Sri Ram Tej Tewari, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
16. Dilip Kumar Gupta aged about 33 years son of Sri Ram Teerath Gupta, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
17. Satya Narain Shukla aged about 39 years son of Sri Bandhi Dhar Shukla, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
18. Tapsi Ram Shukla aged about 33 years son of Sri Ran Dhar Shukla, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
19. Ram Suresh Tewari aged about 33 years son of Sri Bhairav Prasad Tewari, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.
20. Chandra Mohan Shukla aged about 36 years son of Sri Jai Mangal Shukla, Resident of Sudamapuri A.P. Sen Road, Charbagh, Lucknow.

---**Applicants/ petitioners.**---

BY ADVOCATE: SRI D.R. SHUKLA.



Versus

1. Union of India through Secretary, Ministry of Railways, New Delhi.
2. Chairman Indian Railway Catering and Tourism Corporation Ltd., Northern Zone Office, Rail Yatri Niwas Building, New Delhi, Railway Station Complex Ajmeri Gate, New Delhi.
3. General Manager (Commercial) Northern Railway, Baroda House, New Delhi.
4. Divisional Railway Manager, Northern Railway, Lucknow Division, Lucknow.
5. Divisional Railway Manager (Commercial) Northern Railway, Lucknow Station, Lucknow.
6. Chief Catering Manager, Northern Railway, Lucknow Railway Station Lucknow.

Respondents.

By Advocate :Sri N.K. Agrawal
Sri Ram Raj

ORDER

BY HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been filed not against any specific order of the respondent authorities but with a prayer that the applicants who were working as helpers of Commission Vendors of Northern Railway and are going without any job now, should be absorbed in appropriate service of the Northern Railway. The 'Relief' paragraph of the application is extracted below:-

- 1) Issue an order or direction to the respondents to absorb the applicants/ petitioners in Northern Railways/ Indian Railway Catering and Tourism Corporation (IRCTC) in the manner, the commission vendors have been absorbed; alternatively the applicants who have been erst-while helpers be up-graded as Commission vendors.
- 2) Issue an order of direction to the respondents to let the petitioners function as Commission vendors as usual without any



hindrance with all the right and liabilities which the commission vendors used to carryout.

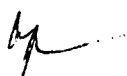
3) Issue any other order or direction which this Hon'ble Court may deem fit and proper looking into the facts and circumstances of the case (may also be passed) in favour of the applicants.

4) allow the Original Application with cost in favour of the applicants.

2. In addition to their prayer for absorption either in the Northern Railways or in the IRCTC, they have prayed for their engagement as commission vendors with all the right and liabilities which go with the position of commission vendors without any hindrance. In paragraph 1 of the application, they have mentioned that their alternative prayer to let them function as commission vendors was placed before the Hon'ble High Court in their Writ Petition No. 2962 (M/B) of 2007 and according to them, the petitioners were permitted to continue as helpers to the commission vendors. As such, according to their own admission, their grievances of being thrown out of job by the respondent railways has been redressed to some extent.

3. It is their prayer for absorption in the respondent Railways/ IRCTC which has been referred to this Tribunal in the order dated 17.3.2008 passed by the Hon'ble High Court passed in the aforesaid writ petition. The Hon'ble High Court examined Sections 3(q) and 14(1) of the Administrative Tribunal Act and came to the conclusion that in respect of any matter relating to recruitment of government employees, the Administrative Tribunal will have jurisdiction. Accordingly, the writ petition of the applicants was dismissed with a liberty to them to approach the Central Administrative Tribunal. Hence this application.

4. The learned counsel for the IRCTS (Respondent No.2) raised the point of jurisdiction stating that this Tribunal did not have any jurisdiction over IRCTC as this Public Sector Undertaking (PSU) does



not find place in the list of public agencies included in the schedule notified under Section 14(2) of the AT Act, 1985. Since this application has been filed under the specific direction of the Hon'ble High Court and is primarily for absorption in Northern Railway, this objection on jurisdiction ground is not maintainable.

5. We would, therefore, confine ourselves only to the issues raised before us in respect of absorption of the applicants in the Northern Railway. It would not be in our jurisdiction to consider anything beyond this, particularly, in respect of absorption in IRCTC, which is admittedly is not notified under Section 14 (2) of the AT Act, 1985.

6. It is the case of the applicants that they were working as helpers to Commission Vendors appointed by the Northern Railway for a very long time. Their job consisted in assisting the vendors in their duties relating to catering of food items to the passengers. The Railways have specifically permitted engagement of helpers by the vendors subject to their medical fitness. In this regard, reference was made to the letter dated 20.11.1988 of the Railway Board in which the fact of acceptance of the recommendation of the Study Group of Railway Licensed Porters and Commission vendors to the effect that "Commission Vendors may be permitted to have Helpers wherever considered necessary and they should undergo medical examination on the same lines as vendors by the Board" was communicated". Accordingly, the Commission Vendors were permitted to engage helpers to assist them in their work. The applicants came to be engaged by the vendors to work in Railway platforms belonging to Northern Railway.

7. Learned counsel for the applicants contended that since the engagement of the helpers by commission vendors has been made on the express permission of the Railway authorities after due certification about their medical fitness from Railway Medical officers, they should be treated on the same footing as commission vendors. In this



connection, the application has made reference to the identity cards issued in favour of applicants by the Railway authorities and annual renewals of the cards made from time to time. He placed reliance on the judgment of the Hon'ble Bombay High Court passed in the case of National Mazdoor Union Vs. UOI and others in respect of Writ Petition No. 471 of 1997, in which the Hon'ble High Court had given direction for absorption of commission vendors and bearers of the Central Railways in phases. This judgment also refers to the order and judgment of the Hon'ble Supreme Court passed in T.I. Madhavan, Gen. Secretary, All India Railway Catering Services Workers' Union Vs. Union of India and others reported in 1998 (Supp.) Supreme Court Cases 437, in which directions were issued for absorption in phases of commission bearers working in Central and South Central Railway.

8. The learned counsel for the respondents pointed out that these two judgments are in respect of the claims of commission vendors/bearers belonging to Central and South Central Railways. They are not helpful to the case of the applicants who are helpers engaged by the Commission vendors of Northern Railways. Whereas commission vendors and bearers are engaged by the Railways themselves on the basis of contracts entered into with them, the helpers have no direct relationship with the railway; the helpers are engaged by Commission vendors keeping in view their own requirement. As such, these two cases cannot be relied on as precedent to pass any order directing for regular absorption of the applicants. According to counsel for the respondents, the present application is in the nature of a Public Interest Litigation (PIL). It does not reveal any right which is sought to be enforced. They have not brought on record the dates on which they were engaged, nor the dates when their services were allegedly dispensed with. They cannot make out a case for absorption in the railway or in the



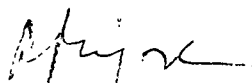
IRCTC merely on the ground that the Railways had permitted the engagement of the helpers by commission vendors. This was a general permission which allowed the vendors to engage helpers for themselves. The applicants have not brought on record any document to suggest that they were engaged or appointed by the Railways directly. After constitution of the IRCTC, the task of catering to the passenger both at platform and in running trains has been taken over by the new entity for better efficiency and commercial discipline. Moreover, the Hon'ble Supreme Court in the case of State of Karnataka and others Vs. Umadevi and others reported at (2006) 4 SCC page 1, have deprecated the practice of regularizing employees appointed without proper selection according to recruitment rules. They expressed their displeasure on such a practice on the ground that such appointments are de hors the constitutional scheme for public employment whose hallmark is equality of opportunity and made a categorical observation that the courts should not give any direction unless the recruitment was to be made regularly and in terms of constitutional scheme. It is erroneous for the courts to merely consider equity for the handful of people who have approached the court with a claim while ignoring equity for the teeming millions seeking employment and a fair opportunity for competing for employment. The Hon'ble Supreme Court made these observations in the context of regularization of Casual Labour directly appointed by the Department, whereas the applicants in the present case were appointed by private persons. Therefore, there is no occasion to formulate any scheme for regularizing the applicants whose engagements and subsequent removal were never in the control of the respondents.


9. We find that there is considerable force in the argument advanced by the respondents. The admitted position is that the applicants were never engaged directly by the respondent railways which never had



any control over the number and period of engagement of helpers made by the commission vendors. Their only stipulation was that these helpers should be medically fit and such fitness should be ascertained periodically. This was a precautionary measure to ensure public hygiene and safety from communicable diseases. Medical certificates issued periodically in this regard to the applicants would not establish their claim for regular appointment in the railways. It is not in our domain to issue any instruction to the respondents to formulate a scheme for regularization of the applicants in view of the position of law propounded in Umadevi case.

10. For the foregoing reasons, we find that this application has no merit, hence dismissed without any order as to costs.


(DR. A. K. Mishra)
Member (J)


(M. Kanthaiah)
Member (A) 2-01-09

HLS/-