

A.T.R.

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW  
BENCH, LUCKNOW**

**Original Application No.54/2006  
This the 24<sup>th</sup> Day of September 2012**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)  
Hon'ble Mr. S.P. Singh, Member (A)**

1. Jag Prasad aged about 63 years son of Sri Tilak Ram Resident of C/o Stall at Platform No.7, Northern Railway, Lucknow Station, Lucknow.
2. Sarju Prasad aged about 66 years son of Sri Ram Das, Resident of C/o Trolley No.20, Northern Railway, Lucknow Station, Lucknow.
3. Tejai aged about 60 years son of Sri Gaya Prasad, Resident of Trolley No.12, Northern Railway, Lucknow Station, Lucknow.
4. Kitabullah, aged about 66 years son of Sri Ramjan Ali, Resident of C/o B-5, Stall Platform No.3, Northern Railway, Lucknow Station, Lucknow.
5. Gaya Prasad, aged about 62 years son of Sri Ram Ujagir, Resident of C/o Trolley No.4, Northern Railway, Lucknow Station, Lucknow.
6. Tej Ali, aged about 66 years son of Sri Shamsher Ali, Resident of C/o Trolley No.8, Northern Railway, Lucknow Station, Lucknow.
7. Mohd. Yusuf, aged about 65 years son of ---- Resident of C/o Trolley No.6, Northern Railway, Lucknow Station, Lucknow.
8. Madho Raj, aged about 62 years son of Indradutt, Resident of C/o Trolley No.14, Northern Railway, Lucknow Station, Lucknow.
9. Sant Ram, aged about 65 years son of Sri Janki Prasad, Resident of C/o Trolley No.19, Northern Railway, Lucknow Station, Lucknow.
10. Murli, aged about 65 years son of Sri Pohkar, Resident of House No.32, Hussainabad Ghantaghar, Lucknow.

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11. Ram Narain aged about 66 years son of Sri Dulare, Resident of C/o Northern Railway, Lucknow Station, Lucknow. Station, Lucknow.

12. Kallan Khan, aged about 65 years son of Sri Lallu, Resident of C/o Stall at Platform No.4, Northern Railway, Lucknow Station, Lucknow.

**...Applicants.**

**By Advocate: Sri P.S. Mehra.**

**Versus.**

1. Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.

2. Chairman, Railway Board, Rail Bhawan, New Delhi.

3. General Manager (Commercial), Northern Railway, Baroda House, Lucknow.

4. Divisional Railway Manager, Northern Railway, Lucknow Division, Lucknow.

5. Divisional Railway Manager (Personnel), Northern Railway, Lucknow Station, Lucknow.

6. Divisional Railway Manager (Commercial), Northern Railway, Lucknow Station, Lucknow.

7. Chief Catering Manager, Northern Railway, Lucknow Station, Lucknow.

**.... Respondents.**

**By Advocate: Sri S. Verma.**

**(Reserved on 13.09.2012)**

**ORDER**

**By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)**

Twelve applicants have jointly filed this OA for the following relief's;-

"1. issue an order or direction to the respondents to give the applicants notional absorption with effect from

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some suitable date i.e. with effect from 1983 on suitable post in Indian Railways with all consequential benefits.

OR

issue an order or direction to the respondents to allow the applicants to carry out and function as Commission Vendors at Northern Railway Lucknow Station, Lucknow till they are able to do so and they be paid the commission as admissible to them.

2. issue any other order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstance of the instant case.

3. allow the Original Application with cost in favour of the applicants."

2. The case of the applicants in brief is that the applicants have been serving as Commission Vendors in the Northern Railway, Lucknow for the last about 40 to 45 years as per details given in para-4.3 of the O.A. Their age is also mentioned in the above para. On 13.12.1976, a letter/order was issued by the Railway Board to the General Managers of All India Railways communicating the desire of the Ministry of Railways to take action for regularization of Commission Vendors. This desire was reiterated in the letter-dated 06.04.1978 by the Railway Board to the General Managers. In view of these letters, the applicants were hopeful that they would be absorbed in the services of Indian Railways. But, they were denied the regularization/absorption. From 1983 to 1994, they were also paid salary by the respondents treating them to be the employees of the railways. But, the railway did not evolve a uniform and just policy. In the said process, the Railway Board again issued a letter dated 20.08.1996, directing the General Managers to strengthen the existing departmental units by absorbing the applicant as Commission Vendors in regular service (Annexure-4). In

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order to avoid contempt proceedings in C.C.P.No.402/2004 before the Hon'ble Apex Court, the respondents in a most illegal and hasty manner have passed order to absorb all the commission vendors subject to medical fitness with age cut off as 59 years as on 01.04.2005 with educational qualification as read and write only. A true copy of the said order dated 12.07.2005 has been placed at Annexure-5. Said decision of absorption will serve no purpose because, without backdating it, a large number of commission vendors like applicants will be thrown away. Secondly, the same will not be fruitful for those commission vendors who will be absorbed as regular employee since they will not get the post retrial benefit. Therefore, the respondents ought to have given effect to the absorption from some back date. The respondent are adopting step motherly attitude towards the applicants who are not covered by arbitrary cutoff date of 59 years and now on 18.01.2006 they have orally asked the applicants to stop their activities and to deposit the entire material provided by the Indian Railways. The applicants should be therefore absorbed notionally with effect from some suitable back date. They had also moved a representation-dated 17.01.2006, which has not been considered. Hence, this O.A.

3. The claim of the applicants have been contested by filing a detailed counter affidavit saying that there is no such provision of notional absorption under the rules. The O.A. has also been challenged on the ground that the applicants are not the employees of the railways and they have also attended the age of superannuation. Hence the relief claimed by the applicants are not within the jurisdiction of this Tribunal. Further, it is highly

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barred by limitation in view of Section 21 of the Act because, the applicants are claiming benefits from the year 1983, while the O.A. has been filed in the year 2006. The representation dated 17.1.2006 has been shown for creating artificial cause of action. As a matter of fact their job of vendors on commission has been dispensed with in writing by the unit Incharge i.e. the Chief Catering Inspector, IRCTC, Lucknow because after attaining the age of 60 years they cannot be allowed to do vending as per the extant policy framed by the Ministry of Railways (Railway Board). Earlier, the railway was managing Commissions Vendors service at few selected stations departmentally. At such departmental units there were some regular salaried employees i.e., Cook, Waiter/bearer, Khallasi etc. for refreshment rooms/cafeteria. In 1999, a new Public Sector Undertaking in the name of Indian Railways Catering and Tourism Corporation Ltd. (IRCTC) was set up under the ministry of Railways to manage catering-vending. As per policy submitted by the Ministry of Railways all the departmentally managed catering and vending units in Lucknow Division of Northern Railway has been handed over to the said corporation w.e.f. April, 2005 with an understanding that all the eligible commission vendors would be absorbed in the railway on available vacant Group-'D' posts. Accordingly, majority of them have since been absorbed. Since, the age of superannuation in the Central Government is 60 years, the railways is constrained to consider those commission vendors who have already attained or crossed the age limit. The applicants have already attained the age of 60 as such, they are not entitled to continue them as commission



vendors. The applicants were working as commission vendors and they are guided by the terms and conditions of their engagement. At any point of time they were never railway servants and the relevant act/rules are not applicable to them. Meanwhile, some commission vendors, who were petitioners in a writ before the Hon'ble Apex Court, were paid salary in compliance of the interim order passed by Hon'ble Supreme Court. But, that payment was subject to final adjustment of the case. Finally, Hon'ble Supreme Court decided that case on 22.09.92 in the light of its earlier judgment dated 8.9.87 in the case of T.I. Madhvan, General Secretary, All India Railway Catering Service Workers Union Vs. Union of India W.P.No.191/86 in which the procedure which was being followed by the railways for absorption of commission vendors progressively was upheld and it was directed that the petitioners would be entitled to salary and allowances from the date of their actual appointment/regularization in the railway service. A copy of the judgment has been placed at Annexure-C-2. It has been also specifically denied that on 18.1.2006 any oral order was given to them to stop working. Instead, vide a written letter dated 19.1.2006 they were asked to stop their function as vendors on account of their attaining age of 60 years (Annexure-C-3). Thus, according to respondents the applicants are not entitled for any relief.

4. A Rejoinder Affidavit has also been filed on behalf of the applicants reiterating the pleadings contained in the O.A. and denying the averments of the C.A.

5. We have heard the learned counsel for the parties at length and perused the entire material on record.

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6. This O.A. has been filed by twelve persons, who had been working as commission vendors with the respondents. All of them are of the age of 60 years or above as mentioned in para-4.3 of the O.A. itself. According to them they have been orally asked on 18.8.2006 to stop their activities of vending and to deposit the entire material provided by the Indian Railways. But, in the counter affidavit sworn by the then Additional Commercial Manager Sri Chandrika Prasad, it has been specifically averred that since all the applicants have attained the age of 60 years, as such they are not entitled to continue as commission vendors. Accordingly, by means of a written letter dated 19.1.2006 (Anexure-C-3) they were asked to stop their function as commission vendors. The contention of the applicants that they have been orally asked to stop working on 18.1.2006 has been specifically denied. In the rejoinder affidavit, the above written order dated 19.1.2006 has not been controverted. The perusal of this written order shows the names of 16 persons including all the 12 applicants of this O.A. This written letter has been received by all of them and they have also appended their signatures /thumb impression in the last column. Hence it was wrongly pleaded in this O.A. that they were asked to stop the work of commission vendors by an oral order of 18.1.2006. Thus, it was a misleading and wrong averment which was against the record. Therefore, this O.A. has to be dismissed on this ground itself.

7. Secondly, the commission vendors were performing the work on the basis of an agreement between them and the concerned railways. Though, no such form of agreement has been brought on record by the applicants

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but, the respondents have filed the relevant form of agreement for commission vendors placed at Annexure-C-1. Its perusal shows that as per para-8, it was open to the parties to determine this agreement without assigning any reasons and without any compensation whatsoever by giving **one months notice in writing. Para-16, it is clearly mentioned that commission vendors, under the terms of this agreement, shall not be treated as a Railway Servant for any purpose and shall not be entitled to claim any privileges that are admissible to the railway servants.** In case of any dispute the matter was to be referred to arbitration of a sole arbitrator appointed by the Chief Commercial Superintendent or the D.C.S. or A.C.S. as per terms contained in para-18. From the side of the applicants this agreement form of commission vendors has not been challenged. In view of the above therefore all the 12 applicants had lost even the status of commission vendors vide above letter dated 19.1.2006 after attaining the age of 60 years. The attainment of age of 60 years and above has been admitted in para-4.3 of the O.A. itself. This O.A. was filed on 20.1.2006. Obviously, on the day of filing this O.A. they were neither the employees of the railways nor even commission vendors and they had also attained the age of superannuation of the Central Govt. employees i.e. 60 years. Any provision of recruitment etc. is also not involved here. Therefore, this O.A. is barred by provision of Section-14 of the Administrative Tribunal Act, 1985, which provides jurisdiction, powers and authorities to this Tribunal only in relation to recruitment to any All India Service etc. and all their service matters.

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8. Thirdly, the applicants have claimed benefit from the year 1983 on the basis of their working as commission vendors and have sought **NOTIONAL ABSORPTION** from 1983 on suitable post in the Indian Railway with all consequential benefits. But, the O.A. has been filed in the year 2006 i.e. after about 23 years. The representation dated 17.1.2006 has been shown only for creating artificial cause of action. Therefore, this O.A. is also barred by limitation in view of Section-21 of the Administrative Tribunal Act, 1985.

9. Fourthly, the entire pleadings of this O.A are hazy and unclear. In a hap hazard manner at one place the applicants have also claimed to have received regular salary for some period when they were working as commission vendors. Firstly, merely on that basis they cannot be deemed regular employees of the railways. Moreover, it has been duly explained in the counter affidavit that salary was being paid for few years in the light of interim direction of the Hon'ble Apex Court which ultimately, decided the writ petition on 22.09.1992 in the light of earlier judgment given by Hon'ble Apex Court in 1987 in the case of **T.I. Madhvan, General Secretary, all India Railway Catering Service Workers of Union Vs. Union of India in W.P.No.191/1986** and upheld the procedure being followed by the railways for absorption of commission vendors progressively and directing that the petitioner would be entitled for salary and allowances only from the date of their actual appointment/regularization in the railway service. A copy of this judgment has been placed at Annexure-C-2. The applicants themselves have filed a letter dated 12.7.2005 issued from the office of Chief Commercial Manager,

Northern Railway, Baroda House, New Delhi, which shows that the Railway Board had approved the absorption of commission vendors subject to medical fitness with age cut off as 59 years as on 01.04.2005 with educational qualification as read and write only. This order was passed in order to ensure compliance in the C.C.P.No.402/2004 in S.L.P. No.18786 of 2003. Admittedly, on the above cut off date all the applicants had already attained 60 years of age in view of the particulars of age given in para-4.3 of the O.A. Therefore, none of the applicants were entitled to be absorbed in view of the above guidelines and they did not have any vested right. For this reason also this O.A. deserves to be dismissed.

10. Fifthly, these applicants cannot be permitted to work even as commission vendors with the respondents as has been claimed under the alternative relief. Because in para-5 of the counter affidavit, it has been specifically averred that they have been stopped to work as commission vendors on their attaining the age of 60 years and as per extant policy of railways framed by Ministry of Railways (Railway Board) Govt. of India such vendors cannot be allowed to their business after attaining the age of 60 years. This paragraph has been replied in para-7 of the rejoinder affidavit. But, the averments regarding the above extant policy and rules framed under the Ministry of Railways not allowing business after attaining the age of 60 years has not been controverted. It has been merely said in the rejoinder affidavit that the applicants has been made escape goat and they have neither been absorbed nor they have been allowed to perform the duties of commission vendors

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until they are to be able to do so. Thus, the applicants have failed to prove any claim or vested right in this regard also. Therefore, this relief also cannot be granted.

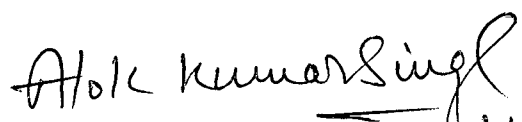
11. Lastly, it is also worthwhile to mention that under the relevant rules there is no provision of notional absorption as claimed by the applicants. The respondents have however clarified the back drop facts that earlier the railways were managing Commissions Vendors service at few selected stations departmentally. At such departmental units there were some regular salaried employees like Cook, Waiter/bearer, Khallasi etc. for refreshment rooms/cafeteria. In 1999, a new Public Sector Undertaking in the name of Indian Railways Catering and Tourism Corporation Ltd. (IRCTC) was set up under the Ministry of Railways to manage catering-vending. As per policy submitted by the Ministry of Railways all the departmentally managed catering and vending units on Lucknow Division of Northern Railway were handed over to the said corporation w.e.f. April, 2005 with an understanding that all the eligible commission vendors would be absorbed in the railway on available vacant Group-'D' posts. Accordingly, majority of them have since been absorbed. Since, the age of superannuation in the Central Government is 60 years, the railways is constrained to consider those commission vendors who have already attained the above age. Some of the commission vendors, who were petitioners in a writ before the Hon'ble Apex Court, were paid salary for some period in compliance of the interim order passed by Hon'ble Supreme Court. But, that payment was subject to final adjustment of the case. Finally, Hon'ble Supreme

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Court decided that case as already mentioned saying that the petitioners would be entitled for salary and allowances only from the date of their actual appointment/regularization in the railway service. Therefore, as discussed above, from any angle no relief can be given to any of the applicants in this O.A.

12. In view of the above, this O.A. is dismissed. No order as to costs.

  
**(S.P. Singh)**  
**Member (A)**

  
**(Justice Alok Kumar Singh)** 24.9.12  
**Member (J)**

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