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CENTRAL ADMINISTRATIVE TRIBUNAL

ALIAHABAD BENCH  
(CIRCUIT BENCH LUCKNOW)

Registration O.A. No. 82 of 1990 (L)

Onkar Nath and others ... Applicants  
versus

Union of India and others.... Respondents

Hon'ble Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, A.M.

(Hon'ble Mr. A.B. Gorthi, A.M.)

Onkar Nath and four others, all Vendors at Charbagh Railway Station, Lucknow, Northern Railway, have filed this application under section 19 of the Administrative Tribunals Act, 1985, challenging the validity of the order (Annexure-1) dated 8-3-1990 issued by the Divisional Railway Manager (Respondent No.2) cancelling the vendorship of the applicants with immediate effect. The applicants further prayed for the cancellation of the direction (Annexure-2) given by the Chief Commercial Superintendent (Respondent No.3) to the D.R.M. asking the latter *inter-alia*, to terminate the vendorship of the applicants, vide his letter dated 13-2-1990.

2. It all began when the vendors were caught selling beverages like Tree Top and Frooti long after the 'date of expiry' printed on them. The applicants asserted that they sold whatever they got from the suppliers. Taking a different view of the matter, the authorities concerned decided to cancel the vendorship of the applicants resulting in the issue

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of impugned order/direction.

3. Besides pleading innocence in the matter of sale of beverages with expired dates, the applicants contended that they acquired the status of regular Railway Employees and that their services could not have been summarily terminated without proper inquiry. In support of their contention, the applicants produced a copy of the interim order they obtained from the Hon'ble Supreme Court; extract ~~xx~~ reproduced below:-

"..... Issue notice. Pending notice all the employees covered by Annexure 'A' to the writ petitions shall be paid salary in the same rate with effect from this month as salaried bearers of the Railway caterers are paid."

4. In the writ petitions, the applicants' (except for Om Prakash, applicant no.5) prayer was that they be deemed to be Railway employees and granted all consequential benefits. In compliance with the Hon'ble Supreme Court's <sup>interim</sup> order, instructions were issued by the Divisional Office for payment of salary to the applicants at the same rate as applicable to salaried bearers of the Railway catering.

5. The respondents have failed to file<sup>a</sup> reply despite several opportunities and directions given to them. On 7-3-91 the case file was shown to us in which a copy of the counter affidavit also was placed. The stand taken by the respondents is that the applicants being vendors working on commission basis had no legal right to approach this Tribunal as they were neither railway employees nor was their grievance related to any of the service matters as defined in section 3(q) of the Administrative Tribunals Act, 1985. The

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respondents thus urged that the termination of vendorship by the Divisional Railway Manager was absolutely in order and called for no interference.

6. Admittedly the applicants were working for the past 13 years and performing duties under the direct supervision of the Railway officials, such as, U.C.M. (Catering), U.C.M. (Vending) and the Chief Catering Inspector. Nevertheless, they were all along serving on a commission basis and not as regular railway employees. Had they been Railway servants, suitable disciplinary action would have been initiated against them also, as was done in respect of Sri M.P.Singh, U.C.M. (Vending) and Sri Kamal Singh, UCM (Catering) who were also involved in the improper sale of old stocks of soft drinks by the vendors. Notwithstanding the aforementioned, the fact remains that the applicants are to be paid 'salary' by virtue of the Hon'ble Supreme Court's interim order referred to in para 3 above. Since the very question of the status of the applicants is now before the Supreme Court, it would be proper for us to await the final order of the Supreme Court before we arrive at a conclusion. We, therefore, direct that this application, which should no longer be tied up, be reheard.

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as and when the decision of the Hon'ble Supreme Court is announced or the interim order by Supreme Court is vacated.

*Anand Singh*

Member (A)

*Umeshwar Singh*

Vice Chairman

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*23 April 1991*

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