

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH

1. Original Application No.284 of 1986

Shri Shaikh Iqbal Shaikh Shafi,
New Satara File, Near 'A' Cabin,
Post: Bhusawal,
Dist: Jalgaon.

.. Applicant

V/s.

1. Divisional Commercial Supdt.,
Central Railway,
Bhusawal.
2. Divisional Railway Manager,
Central Railway,
Bhusawal.
3. Chief Catering Inspector,
Central Railway,
Bhusawal Railway Station,
Bhusawal.
4. Union of India through
Divisional Railway Manager,
Central Railway,
Bhusawal.

.. Respondents

2. Original Application No.285 of 1986

Shri Shaikh Shafi Shaikh Sandhu,
New Satara File, Near 'A' Cabin,
Post: Bhusawal,
Dist: Jalgaon.

.. Applicant.

V/s.

1. Divisional Commercial Superintendent
D.R.M. Office,
Bhusawal,
Dist: Jalgaon.
2. Divisional Railway Manager,
Bhusawal,
Dist: Jalgaon.
3. Union of India through
Divisional Commercial Supdt.,
D.R.M.'s Office,
Bhusawal,
Dist: Jalgaon.

.. Respondents.

3. Original Application No.309 of 1986

Shri Subhash Pralhad Patil,
Jam Mohalla, Rehman Sheth Building,
Near Implipura,
Post: Bhusawal,
Dist: Jalgaon.

.. Applicant

V/s.

1. Divisional Railway Manager,
Central Railway,
Bhusawal.

2. Union of India through
D.R.M.'s Office,
Bhusawal.

.. Respondents.

Coram: Hon'ble Vice-Chairman, Shri B.C. Gadgil

Hon'ble Member(A), Shri P. Srinivasan

Appearance:

1. Mr. M.S.Mohite
Advocate
for the Applicants
2. Mr. V.G. Rege,
Advocate
for the Respondents.

JUDGMENT:

DATE: 21-1-1988

{PER: Shri P.Srinivasan, Member(A) }

All these applications involve a common issue and are, therefore, disposed of by a common order.

2. The applicants in Original Application Nos. 284/86 and 309/86 ^{they were} ~~are~~ Commission Bearers('CB') in the Central Railway while the applicant in Original Application No.285/86 ^{was} ~~is~~ a Commission Vendor ('CV'), all at Bhusawal. Their services were terminated by orders bearing different dates. The Chief Catering Inspector, Bhusawal passed an order on 1.2.1984

terminating the services of the applicant in Original Application No. 284 of 1986. The Divisional Railway Manager, Bhusawal terminated the services of the applicant in O.A.No.309/86 by an order dated 5.7.1985 while the services of the applicant in O.A.No.285/86 were terminated by order dated 1.11.1985 by the Divisional Commercial Superintendent, Central Railway, Bhusawal. The contention of the applicants is that they have been working in the respective capacities for long periods and are employees of the Railway and that therefore their services could not be terminated without giving them an opportunity of being heard as contemplated in Article 311 of the Constitution. It is common ground that ^{by order of} the termination of ^{the} services ^{by} in respect of all the applicants were passed without giving them a hearing. The respondents have in their replies contended ^{that} that none of the applicants were employees of the Railways, they had been engaged on contracts to sell food articles on commission basis on the station platform and the said contracts were lawfully terminated in accordance with the terms of the contract and that Article 311 of the Constitution had no application to them.

3. Sri S.Mohite, Learned Counsel for the applicants, made the following submissions: There were 3 categories of functionaries working in the Railway viz., catering bearers, CBs and CVs. The Railways were treating catering bearers as their employees while CVs, CBs are not so treated. The applicants fall in the latter categories. The first point urged by Sri Mohite was that whether the applicants were employees or independent contractors, their services

should not have been terminated without giving them a hearing. It was pointed out to him at this stage that if the applicants were not employees of the Railways and the relationship between the Railways and the applicants was a purely contractual relationship governed by the terms of the contract entered into between the parties, this Tribunal would have no jurisdiction over disputes arising from such relationship. There upon Sri Mohite endeavoured to show that the nature of the relationship between the Railways and the applicants was that of employer and employee or master and servant. To begin with, letters of appointments were issued to both the CVs CBs by the Railways. As an illustration Sri Mohite drew our attention to a letter dated 23.2.1975, the subject of which was "Appointment of Commission Bearers at DC Unit, Bhusawal" signed by the Divisional Superintendent (C) Bhusawal by which Sheikh Iqbal Shaik Shafi, the ^{M applicant} application in O.A.No. 284/86 was appointed as CB. In pursuance of this appointment, the said applicant furnished a security deposit. He had to report for duty to the Catering Unit Manager, Bhusawal under whose control he had to work. CBs and CVs were to carry on their work in the premises of the Railways. Food stuffs were prepared by Railway establishments and handed over to them for sale and they could not sell any other food items. The equipment needed for their work like trolleys, utensils and stalls were all Railway property. They were required to deposit the proceeds of sale of the articles given to them with the Railways every 24 hours with statements of account. Though their remuneration consisted of commission at 10 per cent of the sale proceeds it was

to be paid monthly like salary. It was contended by Shri Mohite that payments made to them were ^{by} in the nature of wages paid on piece rates, and that calling it commission does not alter this character of the payment. They had to sign the muster roll maintained by the Catering Inspector every morning. They could not remain absent from work for even one day without prior permission. If they were allowed to remain absent, the Catering Inspector posted somebody in their place and they could ^{if not} nominate persons whom they liked for the purpose. If they remained absent without prior permission they had to produce medical certificates. No doubt they were not subject to fixed hours of work. If they worked longer and effected more sales they would get more remuneration. However, the Railways fixed minimum targets for daily sales to be effected by each one of them. They were issued identity cards and had to wear uniforms even though they were required to provide themselves with uniforms at their own cost. The Railway gives them washing allowance, for the uniforms. They were also issued badges. The Railway administration took vital decisions as to what they should sell and the choice was not left to them. They were subject to surprise inspection at any time by the Vigilance Branch and the Catering Inspector. Complaint books were kept in Railway ^{at stations where M} ~~booths~~ where customers could record their complaints which the Railway authorities would examine. It was submitted that all this would show that the applicants were, so far as their work was concerned, under complete and detailed supervision and control of the Railway administration. The agreements which the applicants were required to enter with the Railways represented contracts of service and not contracts for service. If one were to adopt the organisation test CBs and CVs were an organic

part of the Railway set up because no Railway administration can afford not to have catering arrangements at stations for passengers travelling long distances. Providing food and refreshments to passengers at stations was an essential function of the Railways and CVs and CBs like Catering Bearers, who are treated as Railways employees, constituted an integral part of the Railway administration. After their initial engagement all the applicants were part of the Railway organisation for many years. In fact, it is because CBs and CVs are an integral part of the Railway set up ^{Y H} they are eventually absorbed as Catering Bearers. The Supreme Court had in Civil Miscellaneous ~~P~~^Wetition No. 1670/87 (W.P.No.191/86) T.I. ^M~~MAHADEVAN~~^{Madhavan} V/s. Union of India directed that all persons working as CBs and CVs at various Railway platforms belonging to the Central Railway and the South Central Railway should be absorbed progressively as members of the permanent Railway catering service. This order should not be read as implying that before such absorption these persons were not Railway employees. Their work involved the same skills as catering bearers who were accepted as Railway employees. Not treating them as Railway employees therefore amounted to discrimination. If one were to apply the economic test, CVs and CBs cannot function independently of the Railways. Their livelihood dependend entirely on the Railways. Shri Mohite cited by way of analogy the decision of the Calcutta Bench of this Tribunal in Samar Kumar Mukherjee, reported at 1986(2) CAT 7 which dealt with the case of volunteer ^{H ticket} ~~railway~~ checking staff engaged by the Railways and held that they were Railway employees. The position of the applicants was the same as those of daily rated workers of the Railways

in respect of whom the Supreme Court observed in

1982 SC (L&S) 124, L.Robeet D'Souza V/s.

that it was highly unethical to treat a person who had worked for 10, 20 and 30 years at a stretch without break as a daily rated casual labourer whose services can be terminated at the whim and fancy of officials. In support of his argument Shri Mohite also relied on the decisions of the Supreme Court in Dhrangadara Chemicals case, 1957(1) LLJ 447, in Silver Jubilee Training House and Others V/s. Chief Inspector of Shops and Establishments, 1973(2) LLJ 495, Gammon India Ltd. V/s. Union of India and Others, 1974(1) LLJ 489, Bandhuwa Mukti Morcha V/s. Union of India, AIR 1982 SC 802, Hussain Bhai Calicut V/s. Alatt Factory Thozhilali Union Calicut, 1978(1) LLJ 397, Bhagaghandh Colliery V/s. Workers 1962(2) LLJ 356, BHEL Wrokers' Association V/s. Union of India 1985(1) LLN 596 and Workmen of FCI V/s. FCI, 1985(2) LLN 20. He also relied on a number of judgments of different High Courts in the Country. Summing up the case, Shri Mohite submitted that in view of his submissions^H set out above, the applicants were employees of the Railway and therefore, their services could not be terminated without giving them a hearing.

4. Replying on behalf of the respondents, Shri V.G.Rege sought to refute the contentions of Shri Mohite. The order passed by the Supreme Court in Mahadevan's case (Supra) cited by Shri Mohite was itself a clear indication that CVs and CBs are not regular employees of the Railway because^H Supreme Court in that order had directed that those persons be absorbed in the permanent establishment

of the Railways. If they were employees of the Railways there was no need for passing such an order. The various functions and liabilities to which the applicants were subject as elaborated by Shri Mohite did not arise out of a master and servant relationship. Unlike the case of Samar Kumar Kukherjee 1986 (2) C.A.T. 7 providing food and refreshments to passengers at Railway Stations was not a statutory function of the Railways. The case of S.K.Mukherjee dealt with appointments of Volunteer Checking staff on the Railways, ticket checking being a statutory function. For the purpose of supplying food and refreshments to passengers the Railways entered into contracts with persons like the applicants as independent contractors. However, to ensure that the service was clean, the food served was hygienic and prices charged were not unreasonable, the Railways had to exercise control over the various matters cited by Shri Mohite. A manufacturer engaging sales agents on commission, who are independent entities, is bound to exercise close control over the quantity of sales, the manner in which the agent should conduct himself vis-a-vis customers, the price to be charged and the particular kind of product to be sold, etc. Such control is, therefore, not inconsistent with contractual relationship. If CBs and CVs did not fulfill the terms of their contract efficiently and their functioning was found to be unsatisfactory, the Railways had to terminate their contracts and provision to this effect was entered in the agreements entered into with them. If the CVs and CBs

included *by*

did not conform to the various requirement stipulated from time to time by the Railway authorities under the contract, it was only natural that the authorities should terminate the contracts and engage others. This did not imply a relationship of master and servant. The decisions of various Courts cited by Shri Mohite turned on their own facts and cannot be applied to the facts of this case.

5. We have given the most anxious thought to the rival contentions. As will be seen from the narration, learned counsel for the applicants has relied on a large number of judgments rendered by the Supreme Court. It is not necessary to refer to each one of them. Broadly speaking, three tests have been laid down from time to time to determine whether the relationship between two parties is that of master and servant. They are the Control test, the organisational test and the economic test. It has also been stated in all the decision relied upon by the applicants that ultimately a decision in this regard will depend on the facts and circumstances of each case. For example, when a manufacturer engages the services of a sales agent for promoting sales of his product, he is bound to exercise stringent control on the price to be charged by the agent, the manner in which the product is to be packed and displayed in show rooms, engagement of competent salesmen, the manner in which the product is to be advertised and so on to ensure maximisation of sales. He will also set targets for each agent. This involves a considerable element of control. But in the background of the nature of the agreement, the control exercised cannot be taken as indicative of a master and servant relationship.

Again a manufacturer may have a sales organisation of his own or choose to engage independent agents for such sales and in either case the sales organisation is an integral part of the whole process of manufacture and sale and for this reason it may not be said that the agent is an employee. Persons undertaking sales of products of large manufacturers and specialising in such sales can be said to be economically dependent on the manufacturers for their business but such dependence in the context cannot be regarded as constituting a master and servant relationship. In the present case the Railways were in the position of a manufacturer in that all the food articles for sale were prepared in Railway establishments. It was felt that instead of organising sales of these products on a departmental basis it would be better to engage independent persons to vend the articles in Railway stations on commission basis. Since the Railways are interested only in catering to their passengers, the sales operations were confined to Railway stations which were their property. The bearers and vendors engaged for this purpose are given badges for identification so that persons from outside do not bring their own preparations whose hygienic content might be doubtful and try to sell them as preparations of Railway canteens. In the interest of the travelling public which, in the ultimate analysis, is linked with the continued patronage of the Railways by a large number of people in preference to other modes of travel, prices of articles to be sold are fixed by the Railways. In order to maximise sales the commission bearers and CVs ^{are} were given commission on the value of sales at fixed rates. Again to ensure that the sales proceeds ^{are} were promptly

received by the Railways the CVs and CBs were required to deposit sales proceeds with the Railways daily. The insistence on uniforms being worn by the ^{H and CVs} CBs ~~CBs~~ was also to ensure that no unauthorised persons made sales in the railway premises. Naturally since food articles were to be sold in the Railway premises and on platforms the Railways provide stalls, trolleys etc. Periodical checks by Railway officials were provided for to ensure that the CVs and CBs were selling only food articles provided by the Railway and that they were accounting for the sales effected by them to the Railway fully. As we have stated earlier, the control, organisational and economic tests have to be applied not in a vacuum but in the perspective of the particular case. Basically the relationship here was between a manufacturer and a commission agent acting as independent contracting parties embodied in an agreement. Employees are not asked to sign agreements, but are governed by Rules framed by the Railways. CVs and CBs are required to sign agreements with the Railways while in the case of employees unilateral appointment orders are issued by the Railway authorities as employers. The employees of the Railways are subject to various conduct rules, service rules, leave rules, etc. No doubt a CV or CB had to inform the Railway authorities before hand if he was not able to come to work on a particular day. That was because some alternative arrangement had to be made in his position and not because he was an employee required to apply for leave. Normal working hours applicable to the employees are not applicable to the Commission vendors and bearers. CVs and CBs are required to pay a licence fee - though a nominal sum of Rs. 1/- per year - for being allowed to carry on their

trade in the Railway premises. In these circumstances it is difficult to hold that the relationship of CVs and CBs like the applicants in the present cases with the Railways was that of servant and master and not a contractual relationship between two independent persons. It is significant to note that while dismissing Writ Petition No. 191/86 along with the connected Civil Miscellaneous Petitions by its order dated 8.9.1987 (T.I.Madhavan V/s. Union of India and Others) the Supreme Court directed that

" all persons working as commission bearers and vendors on various railway platforms belonging to the Central Railway and the South Central Railway would be absorbed progressively as members of the permanent Railway Catering Service as per the terms of paragraph 3 of the Memorandum No.76 TG III/639/11 dated December 13, 1976 issued by the Joint Director Traffic Commercial (C) II, Railway Board New Delhi, as and when vacancies to the posts of bearers in the Railway Catering Service occur. As directed by this Court in Saital Singh's case, the concerned Railway Administrations would first absorb all the bearers who are registered in accordance with the aforesaid memorandum, thereafter the vendors who are so registered and until all the bearers and vendors are accordingly absorbed, the Railway Administrations shall not recruit or appoint any person either as a bearer or vendor on permanent basis in Railway Catering Service from any other Source.

In view of this, we must necessarily modify the direction contained in this Court's order dated March, 10, 1986 as to payment of salary. In modification of the earlier direction, we direct that the vendors and bearers so absorbed in the Railway Catering Service shall be entitled to salary as from the date of their absorption and not from December 1, 1983"

The implications of the above order are very clear. The CVs and CBs were to be absorbed as members of the Railway catering service as and when vacancies occurred. If they were already employees of the Railways, the question of

their absorption as and vacancies arose did not arise. It is evident, therefore, that the Supreme Court was of the view that CVs and CBs were not employees of the Railways, but considering that they were small time traders who could not look for any other livelihood the Supreme Court directed that they be absorbed in the railway catering service as soon as possible. We are thus fortified in our view that the claim of the applicants that they were employees of the Railways and as such termination of their engagement without giving them an opportunity of being heard was bad is not tenable. The services were terminated in accordance with the contract entered into between them and the Railways. Once we hold that the applicants were not employees of the Railways but independent contractors then this Tribunal has no jurisdiction over their grievance. We, therefore, do not have to examine the merits of their contentions against the orders of terminations^{by} issued by the Railway authorities. The applicants would be free to agitate their grievances, if any, before the appropriate forum.

ORDER

In the result all the applications are dismissed. Parties to bear their own costs.

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