

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 19/8/87

Application No. 222 /87(F)

W.P. No

Applicant

Shri M. Kandaswamy

V/s

The Secy, M/o Railways & 3 Ors

To

1. Shri M. Kandaswamy
No. 11-37, Kulkarni Hakkal
Hubli - 580 020
Dharwad District

2. Shri M.S. Anandaramu
Advocate
128, Cubbonpet Main Road
Bangalore - 560 002

3. The Secretary
Ministry of Railways
Rail Bhavan
New Delhi - 110 001

4. The General Manager
South Central Railways
'Rail Nilayam', Secunderabad (A.P.)

5. The Divisional Railway Manager
South Central Railways
Hubli

6. The Divisional Commercial Manager
South Central Railway
Hubli

7. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Buildings, 10th Cross
Cubbonpet Main Road
Bangalore - 560 002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NO. 222/87(F)

Please find enclosed herewith the copy of the Order/~~Interim Order~~
passed by this Tribunal in the above said Application on 12-8-87.

Encl : as above.

Hale
SECTION OFFICER
(JUDICIAL)

RECEIVED 22/8/87

Diary No. 1520/87

Balu*

Date: 22-8-87

Amo to copy
Unrecd
21/8

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 12TH DAY OF AUGUST, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman(J)

And;

Hon'ble Mr. B.N. Jayasimha, .. Vice-Chairman(A)

APPLICATION NUMBER 222 OF 1987

M. Kandaswamy,
S/o Muthukaruppan,
Aged about 35 years,
working as Commercial Vendor/Bearer,
Railway Catering Department, S.c.
Railways (Now illegally terminated from service) and residing at
No. 11-37 Kulkarni Hakkal, Hubli 560 020, Dharwad Dist.

.. Applicant

(By Sri M.S. Anandaramu, Advocate)

v.

1. The Union of India
represented by its Secretary to Government
of India, Department of Transports,
Department of Railways, Rail Bhavan,
New Delhi.

2. The General Manager,
South Central Railways, 'Rail Nilayam', Secunderabad.

3. The Divisional Railway Manager,
South Central Railways, Hubli.

4. Divisional Commercial Manager,
South Central Railway, Hubli.

.. Respondents.

(By Sri M. Sreerangaiah, Advocate)

--

This application coming on for hearing this day, Vice-Chairman(J)
made the following;

ORDER


In this application made under Section 19 of the Administrative
Tribunals Act, 1985 ('the Act'), the applicant has challenged letter/



order No.H/C 101/22/MRJ dated 13/14-2-1985 of the Divisional Railway Manager ('DRM'), South Central Railway ('SCR').

2. On and from 5-1-1971, the applicant has been engaged as a vending contractor at Miraj platform of South Central Railway. On 13/14-2-1985, the DRM had terminated the contract and directed the applicant to hand over all materials to the authority, viz., Unit Catering Inspector and the same is challenged by the applicant.


3. The applicant claims to be a regular employee of South Central Railway. In their reply, the respondents have stated that he was not their employee, but had been engaged under an ordinary contract entered into between him and the railways.



4. Sri M.S.Anandaramu, learned counsel for the applicant, contends that his client was holding a civil post under the Union of India and therefore, the order made by the DRM was really one terminating his services and, therefore, this Tribunal has jurisdiction, and power to adjudicate the dispute. In support of his contention, Sri Anandaramu relies on the ruling of the Supreme Court in CATERING CLEANERS OF SOUTHERN RAILWAY v. UNION OF INDIA (AIR 1987 SC 777), and a ruling of Bopanna, J. in FOOD CORPORATION OF INDIA LOADING AND UNLOADING WORKERS' UNION, BANGALORE v. F.C.I AND OTHERS ('FCI's case') (1987) 71 FJR 79.

5. Sri M.Sreerangaiah, learned counsel for the respondents, contends that the applicant was not holding a civil post and was doing vending work under an ordinary contract and, therefore, this Tribunal had no power to adjudicate the dispute.

6. The letter/order issued by the DRM terminating the contract reads thus:



"SOUTH CENTRAL RAILWAY,
Divisional Office,
Commercial Branch,
Hubli, dated 13/14-2-1985.

No.H/C.101/22/MRJ

Sri M.Kandaswamy,
Commission Vendor,
Miraj Railway Station,

Thro : VIR/VRR/MRJ

Sub: Surprise check on Commission Vendors at Platform
Nos 4 and 5 at Miraj on 29-1-1985 by ADRM.

.. During the surprise check conducted by ADRM on 29-1-1985 at 20.00 hrs. it was noticed that you were absent from the stall and one Sri Radhakrishnan was manning your stall. On a check of the items on the counter, it was found that the coffee container was without seal of the VRR and there was one open vessel containing Coffee.

It was further noticed that the vendor was in possession of raw materials like tea powder, coffee powder, milk, raw egg 100 Nos. and also Biryani packets, masala rice packets etc. which was not supplied by the VRR.

In addition to the above, he was having a kerosene stove and Kerosene oil and was indulging in the sale of tea and coffee thus prepared.

Please note that your vending contract has been terminated with immediate effect.

You should hand over all the Railway materials taken by you to the Unit catering Inspector, VRR-NVRR/MRJ immediately and vacate the premises.

Sd/ Divl. Railway Manager,
S.C.Rly.Hubli."

An examination of this communication itself clearly establishes that the applicant had been engaged under an ordinary contract entered between him and the railways. Without any doubt, from the nature of the order as also the earlier contract, it is abundantly clear that the applicant was not holding a civil post under the Union of India (UOI). If the applicant was not holding a civil post under the UOI, then the grievance of the applicant, even if the letter/order made by the DRM on 13/14-2-1985 was illegal, on which we express no



no opinion, will not be a service matter that can be entertained and adjudicated by this Tribunal under the Act.

7. In the Catering Cleaners' and FCI's cases the precise question that arises in this case did not arise for consideration before the Supreme Court and the High Court of Karnataka. Hence, the ratio in those cases does not really bear on the point at all.

8. On the view we have expressed, it follows that this application is not maintainable and is liable to be dismissed as not maintainable. We, therefore, dismiss this application as not maintainable. But, this does not prevent the applicant from pursuing such legal remedies as are available to him in appropriate forum.



82
VICE-CHAIRMAN(I)

12/8/87

sd/-
VICE-CHAIRMAN(A)

12/8/87

np/

- True Copy -

f. a. i.
SECTION OFFICER 19/8
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

From:

SRI. M. KANDASWAMY,
S/o Sri. Muthu Kurappan,
Door No. 11-37,
Kulakarni Hakkal,
HUBLI - 590 020.

HUBLI,

Dated: 1.3.88 *Per*
7.3.88 *1st*

REGD. POST WITH ACKGT. DUE

To

The Regional Labour Commissioner and
Conciliation Officer (Central),
BANGALORE.

Respected Sir,

Sub:- Special original particulars given below as
information.

-XOX-

Sir that I am sending you some particulars originally for your
satisfaction. The particulars showed below:

I. South Central Administrative Tribunal Court Bangalore issued
me wrong judgement out of without knowing the originality to me on
19-8-1987. And I can say it is highly unjust.

II. Why because, myself since from my appointment I have appointed
as a one of the Commission Bearer by Railway Administration and there
was an agreement on Rs. 5/- paper; but I have not appointed on the
contract base, whereas there was no any name by contract and since
my appointment I have agreed on commission base only in the Railway
department on daily wages through by the departmental manager, not
on contract base.

III. But as per the surprise check by ADRM, Hubli during the night
at 20.00 hours of date 29-1-1985, but first of all myself was on
leave from 3-1-1985 to 5-2-1985, so ADRM, Hubli wantedly spoiled
my life and hit on my stomach illegally, made highly unjust to
me. So that myself no way any caution to his surprise check.

IV. Whereas the letter No. RTU 16/77-78 of dated 27-5-1960 as
per para in the letter of dated 30-5-1979 improve the permanent com-
mission bearer on commission base and on daily wages I have worked
in the Railway department and which there was no any contract busi-
ness. And I have not worked on contract base except commission
daily wages, and there was no any contract name which they are
claiming as per column 4 and 5.

V. As per South Central Railway letter No. H/C. 101/22/Hubli of
dated 21-2-1984, according to the Railway Administration letter No.
and as per the agreement myself appointed on daily wages on com-
mission by Railway Administration. But not on contract base. So as
per the above letter there was no any connection for column 4 and
5 which they revised.

VI. As per the South Central Railway, Guntakal division letter
No. G/P 564/II/CAG/EMP. of dated 29-12-1987 in clearly prove there
was no any contract business except on commission base and on daily
wages in the letter, so as per Hubli division column 4 and 5 not
suitable which all administration officers made highly unjust to me.

VII. Sir, but the same period, those who have appointed along
with me, how they may be posted permanently and they may not be
removed and terminated like me. As per the Guntakal letter No.
G/P. 564/II/CAG/EMP. please refer for your satisfaction, please
do the need.

VIII. Even Supreme Court also not shown there was a contract base.
Sir as per Supreme Court No. 777, writ, PETNS Nos. 19/498 of 1986

Contd.....2.

and 37 of 1987, dated 4-2-1987, the 4 and 5 columns illegal. And through out as above particulars and there was no scope to say contract. And whereas I have worked on daily wages on commission base; through from Railway department supervisors. But no doubt I can say column 4 and 5 illegally revised.

IX. Sir letter No. G/P. 420/P. of Southern Railway as the letter you have to fight for my said about illegal terminated me, where- as highly unjust and stopped from duty, now I can say purely fault by Railway Administration, but myself leave letter handed over to my Manager on 3-1-1985 and leave granted by the Manager VHR/UBL by name K.K. Pillai.

Now my final pray please your goodself after receiving these particulars that as treat it as telegram and issue a notice to reply within 72 hours, one notice to DRM/UBL and one notice to DCS/UBL; if you have not done any favour within 72 hours I will put this case in the Public Court for further justice. Hope that you will do the need. Before I go to court, and also I will send the complete record to Sri: Rajiv Gandhi, Prime Minister of India, New Delhi as per his letter verdict 311(2).

For which act of kindness I shall ever be thankful to you.

Thanking You Sir,

Yours faithfully,

Copy to:

The Honourable President of India,
The Honourable Prime Minister,
The Railway Board Minister,
The Chairman of Railway Board,
The Secretary, Ministry of Railways,
The General Manager, S.C. Railway,
Secunderabad.
The Divisional Railway Manager, Hubli.
The Divisional Commercial Manager,
S.C. Railway, Hubli.
Sri. M. Sreerangaiah, Railway Advocate,
Bangalore.

K. S. Puttaswamy
Central Administrative Tribunal.

M. K. Suresh
10.3.88