

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 96/92

Transfer Application No: ---

DATE OF DECISION 16-3-93

Narendra Prasad Dwivedi Petitioner

Mr. M. S. Ramamurthy Advocate for the Petitioners

Versus

Union of India and Ors. Respondent

Mr. N. K. Srinivasan

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Ms.~~ Usha Savara, Member(A)

The Hon'ble Shri V.D. Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Ans.



(V.D. DESHMUKH)
M(J)

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.96/92

Narendra Prasad Dwivedi
 C/o. Mama Malgi Foundation Trust,
 19, Vatsraj Lane, Room No.13,
 1st Floor, Matunga (C.Rly)
 Bombay - 400 019. .. Applicant

-versus-

1. Union of India
 through :
 The General Manager,
 Western Railway,
 Churchgate,
 Bombay - 400 020.
2. The Chief Personnel
 Officer,
 Western Railway,
 Churchgate,
 Bombay - 400 020.
3. Chief Commercial Superin-
 tendent(Catering),
 Western Railway,
 Churchgate,
 Bombay - 400 020. .. Respondents

Coram: Hon'ble Ms.Usha Savara, Member(A)

Hon'ble Mr.V.D.Deshmukh, Member(J)

Appearances:

1. Mr.M.S.Ramamurthy
 for the applicant.
2. Mr.N.K.Srinivasan
 for the respondents.

ORAL JUDGMENT: Date: 16-3-93
 (Per V.D.Deshmukh, Member(J))

The applicant contends that he joined the Western Railway service in 1980 and worked as Commission Vendor till 1983. However, whether the applicant was a Helper or a Commission Vendor appears to ^{have been -} ~~be~~ a matter of dispute in between the applicant and the respondents. The Supreme Court in Misc.

Petition No.25661 of 1986 in Writ Petition No.892-975 of 1984 passed an order on 18-1-88 that the Chief Personnel Officer, Western Railway, Bombay shall decide the dispute

whether the applicant and ~~some~~ ^{these} others were serving as Helpers or functioning as Commission Vendors.

2. The said authority i.e. the *Chief Personnel Officer, Western Railway, Bombay passed an order in compliance with the directions of the Supreme Court on 23-10-89 which is Ex. 'B' to the application. It is this order which is challenged in the present application.

3. The respondents have filed their reply and we heard the learned counsels for the applicant and respondents. The applicant has expressly contended in para 4(a) that the authority who examined the controversy had not issued any showcause notice to the applicant and the three others concerned against whom the enquiry was to be held. It is further submitted that the applicant and the others did not have the opportunity of adducing any evidence in justification of their stand that they were functioning as Commission Vendors. They were also not given any personal hearing. These contentions are not categorically denied in the reply filed by the respondents. The controversy had reached the level of the Supreme Court and was of valid importance to the applicants. In such circumstances the principle of natural justice required that the applicant and others were given an opportunity to lead the evidence and also of personal hearing. A similar ~~was~~ view was taken ^{by us} in O.A. 7/92 decided on 21-9-92. The applicant in that O.A. is one of the persons concerning whom the enquiry ~~was~~ to be held by the Chief Personnel Officer. That application is also before us today and it would be just and proper to take the same view in this

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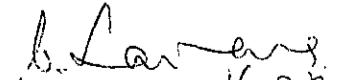
application as well.

4. In view of the above we quash the decision of the Chief Personnel Officer that the applicant was employed as a Helper ^{the} communicated to the applicant by letter of General Manager(E) dt. 23-10-89. The Chief Personnel Officer shall hold the enquiry afresh. He shall disclose to the applicant the evidence on which the respondents relied upon in their contention that the applicant is a Helper and not a Commission Vendor. The applicant shall be given an opportunity to rebut such evidence. The applicant shall also be at liberty to lead such ~~ether~~ evidence to establish his contention that he had been working as a Commission Vendor. The applicant shall also be entitled to be assisted by a fellow employee as it is submitted that the applicant is not competent to ~~lead~~ his own case. The applicant shall be given personal hearing and thereafter the Chief Personnel Officer shall determine the nature of work performed by the applicant and whether the applicant is a Helper or a Commission Vendor. This decision shall be given by the competent authority by a speaking order.

5. The above order shall be implemented and carried out within a period of four months from the date of receipt of a copy of this order.

6. The original application stands disposed of with no order as to costs.


(V.D. DESHMUKH)
Member(J)


(B. LANENG)
16.3.93
(USHA SAVARA)
Member(A)