

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1286 of 1994.

Dated this 25th, the ____ day of July, 2001.

Shantiram Bhatt, Applicant.

Shri M. S. Ramamurthy, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri P. M. A. Nair through Advocate for the
Shri S. Ravi, Respondents.

CORAM : Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman.

Hon'ble Shri V. K. Majotra, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.

No.

V. K. Majotra

(V. K. MAJOTRA)
MEMBER (A). 25/7/2001

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CORAM : Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman.

Hon'ble Shri V. K. Majotra, Member (A).

Shantiram Bhatt,
Commission Vendor,
In-Charge of the Stall in
the Computer Reservation Hall,
Western Railway,
Bombay Central,
Bombay - 400 008.

Applicant

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union of India through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Shri P. Agarwal,
Chief Personnel Officer (Admn.),
Western Railway, Churchgate,
Bombay - 400 020.

3. Divisional Railway Manager,
Bombay Central,
Bombay - 400 008.

Respondents.

(By Advocate Shri P.M.A. Nair through
Learned Proxy Counsel Shri S. Ravi.)

O R D E R

PER : Shri V. K. Majotra, Member (A).

The applicant has assailed order dated 09.11.1994
(Annexure-'A') passed by Respondent No. 2, wherein it has been
found that the applicant has been working as Helper and not

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Commission Vendor. The applicant has claimed that he had been working as Commission Vendor from prior to 01.11.1983. According to him, a stall had been allotted in his name and he had been working as Commission Vendor till 25.11.1994. According to him, this contention of his has been upheld by this Bench in O.A. No. 7 of 1992. The applicant had filed the aforesaid O.A. on 10.11.1991 and challenged order dated 23.10.1989 passed by the Respondents holding that the applicant and three other persons were working as Helpers only and not as Commission Vendors. Earlier, in C.M.P. No. 2339/84 an interim order was passed that the petitioners shall be paid salary in the same rate w.e.f. 01.12.1983 as salaried bearers of the statutory canteens. C.M.P. No. 25661 of 1986 (in Writ Petition No. 892-975 of 1984) was decided by order dated 18.01.1988 by the Hon'ble Supreme Court with the following directions :

"There is dispute whether Shanti Ram Bhatt, Sunder Lal Dwivedi, Narendra Prasad Dwivedi and Saroj Kumar Pandey were serving as helpers or functioning as commission vendors. That is a matter which should be resolved by the Chief Personnel Officer, Western Railway, Bombay. In the event these four persons are found to be commission vendors, they will be entitled for absorption from the date the other commission vendor have been absorbed. The Civil Miscellaneous Petition is disposed of."

Vide Annexure 'B' dated 23.10.1989, the respondents concluded that the applicant was only a Helper, who is not entitled for absorption and scale rate of pay being allowed to him in pursuance of the interim order of the Supreme Court was discontinued with immediate effect. The applicant has sought

quashing and setting aside of order dated 09.11.1994 and regularisation of his service as a Waiter in the Western Railway w.e.f. 01.12.1983 with consequential benefits on the basis that he has been functioning as Commission Vendor prior to 01.12.1983.

2. In their counter, the respondents have stated that the Chief Personnel Officer had conducted a detailed enquiry on the basis of documents available with the respondents, calling upon the applicant to furnish supporting documents for his claim and passed orders in pursuance of Supreme Court's order dated 18.01.1988 followed by Tribunal's order dated 16.03.1993 rejecting the claim of the applicant. According to the respondents, the applicant had not worked as Commission Vendor. He was only a Helper with the actual Commission Vendor, namely - Shri Kedarchand Agarwal and thus, he is not eligible for absorption as a Waiter in the Railways as per rules.

3. We have heard the Learned Counsel of both sides and considered the material available on record.

4. The Learned Counsel of the applicant stated that the short question for adjudication in the present matter by the Tribunal is, whether the applicant has worked as a Commission Vendor or not prior to 01.12.1983 ? The Learned Counsel stated that one Shri Kedarchand Agarwal had been allotted two stalls, one of which was wholly managed by the applicant. The applicant was drawing stores, making and receiving payments for the same.



Thus, the Learned Counsel drew a distinction that even though the applicant had not been independently allotted a stall, he was not serving as a Helper to Shri Agarwal. On the contrary, he was functioning as a Commission Vendor, as he had been managing the stall by himself. The Learned Counsel maintained that the onus of proving that the applicant had been working as a Helper and not as a Commission Vendor lays on the respondents and not on the applicant. Further, that the identity card produced by him had not been relied upon by the respondents. The Learned Counsel also drew our attention to Annexure 'E' dated 19.01.1985 whereby a large number of Commission Vendors/Helpers had been absorbed by the respondents as Waiters. He particularly mentioned the names at Sl. No. 32, 40, 50 and 54 - Ragveer Sardar Yadav, Balwant Babubhai, Kishore Basant Rane and Sampath Kumar Ram Nihor Mishra, respectively. The Learned Counsel contended that in case the applicant is held not to be Commission Vendor in the present case, then he should be treated as a Helper and absorbed as a Waiter in the Railways like several other Helpers, w.e.f. 01.12.1983.

5. The Learned Counsel for the respondents stated that in pursuance of the Hon'ble Supreme Court's and this Tribunal's orders, the respondents had considered the available documents with the Railways and also the material produced by the applicant and after giving him full opportunity of pleading his case, decided that he had not worked as Commission Vendor since 1983 and therefore, the impugned orders of the respondents are quite in order and unassailable.

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6. From the Identity Card No. 06427 produced by the applicant, we find that the same is different from the prescribed proforma. The Learned Counsel of the respondents explained that the kind of Identity Card that the applicant has produced is the one which were issued to persons including the petitioner, when scale rate of pay was given to them as per directions of the Hon'ble Supreme Court and the purpose of issue of such Identity Card was only that there was no hindrance in the moving around of such persons doing odd jobs on the railway platforms and that the designation of Commission Vender in the irregular Identity Card was indicated in a routine manner. Whereas the Applicant had not produced documents like allotment of stall, receipt of security, etc. which should have been in applicant's possession to establish his claims, the applicant produced certain documents regarding monthly sales from November, 1989 to June, 1993. We find that, whereas the applicant has claimed benefits for having functioned as Commission Vendor w.e.f. December, 1983, he has produced statements of monthly sales from November, 1989 to June, 1993 only. This period is certainly post-judgement of the Supreme Court and not from December, 1983. We are satisfied with the explanation rendered by the Learned Counsel for respondents that the applicant had been temporarily engaged as Commission Vendor from November 1989 onwards and was paid commission for the same period after November, 1989. In our view, this admission of the respondents that the applicant had functioned as Commission agent from November 1989 onwards, certainly does not confer status of Commission Vendor on the applicant from 1983. We have read and re-read the excerpts of the orders of the Supreme Court,

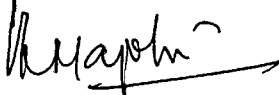
It is nowhere mentioned that the respondents only have to establish that the applicant was not working as a Commission Vendor. The direction of the Court is that the dispute whether the applicant was serving as a Helper or Commission Vendor should be resolved by the respondents and if it is found that the applicant and his three other colleagues were Commission Vendors, they would be entitled for absorption from the date the other Commission Vendors had been absorbed. From the impugned orders of the respondents we find that they had held five hearings in the case and provided full opportunity to the applicant to establish his case. No principles of natural justice had been violated in the conduct of the enquiry held by the respondents in pursuance of the directions of the Court.

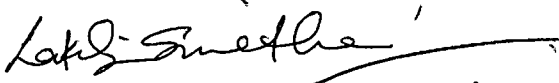
7. The Learned Counsel of the applicant had stated that if the Court finds that the applicant was not a Commission Vendor from 1983, it should be considered that he had functioned as a Helper and should be regularised on that basis against the post of Waiter. We find from the reliefs sought by the applicant in his O.A. that the applicant had not sought such a relief, as put forward now during the course of arguments. It is certainly an after-thought.

8. In the result, we find ourselves unable to go along with the Learned Counsel of the applicant to hold that the impugned order is illegal, arbitrary or unjustified in any manner. As a matter of fact, in the facts and circumstances of the case, we do not find any infirmity in the impugned orders, which are reasoned

and speaking orders. In matters of judicial review, Courts are not in a position to substitute themselves for competent authority, which in the present case has taken proper decision on the basis of the evidence available on the issues in the present case.

9. Having regard to the reasons recorded above and in the facts and circumstances of the case, finding the present O.A. bereft of merits, the same is dismissed. No order as to costs.

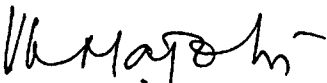

(V. K. MAJOTRA) 25.7.2001
MEMBER (A).

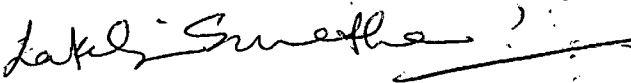

(Smt. LAKSHMI SWAMINATHAN)(J).
VICE-CHAIRMAN.

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After the above order was pronounced today, Shri M.S.Ramamurthy, learned counsel for the applicant prayed that the ad interim order dated 25.11.1994 regarding status quo of the applicant as Commission Vendor which has been continued, be continued further four weeks.

2. Now that we have already passed our final order as regards his status and reliefs in O.A.No.1286/1994 after considering the relevant records and submissions of the learned counsel for the parties, the above prayer is rejected.


(V.K.MAJOTRA)
MEMBER (A) 25.7.2001


(Smt. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)

at 25/7/01
order/Judgement despatched
to Applicant/Respondent (s)
on 10/9/01

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