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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDERS OF THE BENCH

Date of Order: 25.04.2012

OA No. 97/2008 with MA No. 86/2008 &
MA No. 295/2010

Mr. N.K. Gautam, counsel for applicants.
Mr. Anupam Agarwal, counsel for respondents.

MA No. 295/2010

Heard on the Misc. Application bearing No. 295/2010 filed by the applicants for taking the document(s), annexed along with the MA, on record of the O.A. No. 97/2008. In the interest of justice, the Misc. Application No. 295/2010 stands allowed. The document(s) annexed along with the Misc. Application No. 295/2010 are taken on record of the O.A. No. 97/2008.

OA No. 97/2008 with MA No. 86/2008

Heard learned counsel for the parties. O.A. & M.A. are disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

Jaipur, this the 25th day of April, 2012

ORIGINAL APPLICATION No. 97/2008

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

1. Jethanand
s/o Atu Mal,
Gangman under Sr. Section Engineer
(Permanent Way), Dungarpur and
r/o Radha Swami Colony,
Ajay Nagar,
Ajmer.
2. Pappu
s/o Atu Mal,
under Sr. Section Engineer
(Permanent Way),
Khamlighat and
r/o 26/16, Khari Kui,
Ajmer.

... Applicants

(By Advocate: Shri N.K.Gautam)

Versus

1. Union of India
Through General Manager,
North Western Railway,
Jaipur

2. Divisional Railway Manager,
North Western Railway,
Ajmer.

... Respondents

(By Advocate : Shri Anupam Agarwal)

ORDER (ORAL)

This is second round of litigation. Earlier the applicants preferred OA No.38/2007 and the same was disposed of vide order dated 16th March, 2007. In that OA, the applicants prayed for the following reliefs:-

- "(i) direct the respondents to treat the applicants in service w.e.f. 8.3.92 for all purpose except seniority.
- (ii) direct the respondent to govern them by Railway services (Pension) Rules, 1993.
- (iii) direct the respondents to produce the sanction cadre and actual cadre of S.S.Ajmer and to post the applicants against such vacant post at Ajmer by transfer.
- (iv) direct the respondents to grant yearly increment to the applicants w.e.f. 8.3.1992 alongwith its arrear payments.
- (v) Cost of the application may be awarded to the applicants."

2. In the aforesaid OA, since during the course of argument the learned counsel for the applicants submitted that he has also served



a registered legal notice dated 12.12.2006 on the respondents regarding redressal of grievance of the applicants but of no avail and further submitted that he will now be satisfied if the OA is treated as representation on the part of the applicants and the same is disposed of by the respondents within the stipulated time by passing a reasoned and speaking order.

3. Having considered the submissions on behalf of the applicants, the aforesaid OA was disposed of with direction that the respondents shall treat the OA as representation on behalf of the applicants and shall dispose of the same within a period of three months by passing a reasoned and speaking order: However, liberty was granted to the applicants to approach this Tribunal by way of filing substantive OA.

4. The applicant also filed Contempt Petition No.21/2007 and the same was disposed of vide order dated 16th January, 2008. Since the respondents decided representation of the applicant vide order dated 25.7.2007, and the same was placed alongwith the reply to the Contempt Petition as Ann.R/1, therefore, in view of this fact the Contempt Petition was disposed of and notices issued were discharged. However, liberty was granted to approach this Tribunal further in terms of the order dated 16.3.2007, in case the applicants are still aggrieved, therefore, the present OA has been filed.



5. In the present OA, the applicant prayed for the following reliefs:-

- "(i) the applicants may be declared as temporary status holder w.e.f. 8.3.1992.
- (ii) the applicants may be declared as entitled for all benefits as available to temporary railway servants except seniority w.e.f. 8.3.1992.
- (iii) difference of arrear of salary after grant of increments for the period from 8.3.92 to April, 2006 may be paid to the applicants.
- (iv) The period of applicants as substitute as well as temporary status w.e.f. 8.3.1992 to their regularization dated 5.4.2006 may be treated as qualifying service for pensionary and retrial benefits.
- (v) The applicants may be governed under Railway Servants (Pension) Rules, 1993.
- (vi) Cost of the application may be awarded to the applicants.
- (vii) Any other just and reasonable relief, the Hon'ble Tribunal consider just and reasonable in the facts and circumstances of the case."

6. The respondents raised the preliminary objection regarding maintainability of this OA. It is stated that the applicant No.1 is working as Gangman under Sr. Section Engineer (P.Way)



Dungarpur and applicant No.2 is working as Gangman under Sr. Section Engineer (P.Way) Kamlihat and the territorial jurisdiction of applicant falls under the CAT, Jodhpur Bench instead of Jaipur Bench.

7. The respondents have also raised preliminary objection that the OA has been filed claiming plural reliefs and not against single cause of action and submitted that bare perusal of the relief sought by the applicants reveals that the reliefs are not consequential to one another and, as such, plural remedies cannot be sought by way of filing the present OA by the applicants, therefore, the present OA deserves to be dismissed under Rule 10 of the CAT (Procedure) Rules, 1987.

8. Maintainability of the OA is also challenged on the ground that the applicants are seeking main relief in their favour that they may be treated in service w.e.f. 8.3.1992, thus, the cause of action has arisen in March, 1992 wherein the present OA has been filed in the year 2008. Therefore, the present OA is hopelessly time barred and the same deserves to be dismissed under the provisions of section 21 of the Administrative Tribunals Act.

9. It is also contended on behalf of the respondents that applicants S/Shri Pappu and Jethanand had earlier filed OA No.38/2007 praying same reliefs as claimed in the present OA. The



said OA No.38/2007 was disposed of on 16.3.2007 without issuing notices to the respondents with direction to the applicants to submit the copy of the OA to the respondents alongwith copy of the Tribunal's order which the respondents shall treat representation and shall pass a reasoned and speaking order and if the applicant have any grievance, liberty was given to the applicants to redress their grievance by way of filing a substantive OA.

10. It is also not disputed that both the applicants filed Contempt Petition No.21/2007 in OA No.38/2007 for non-compliance of the Tribunal order dated 16.3.2007. The respondents have submitted that the applicant Shri Pappu has submitted representation dated 25.3.2007 which has been decided by the respondent on 25.7.2007 but the applicant Shri Jethanand did not file any representation in pursuance to the order passed by this Tribunal on 16.3.2007. Thus, the opportunity granted by this Tribunal has not been availed by the applicant Shri Jethanand. Therefore, the applicant Shri Jethanand cannot file the substantive OA and it appears that applicant Jethanand is satisfied and has no grievance for agitating the same before the respondents, as such, he has no right to file present OA along with applicant Shri Pappu.

11. The learned counsel appearing for the applicants has strongly controverted the preliminary objections raised by the respondents and submitted that the present OA is maintainable. Regarding



factual aspects, it is stated on behalf of the applicants that previously the applicants were working as commission bearers/vendors in catering department at Ajmer Division of the then Western Railway and were being remunerated on commission basis. Subsequently in terms of Hon'ble Supreme Court judgment, they were to be regularized progressively in railway service and to be paid salary at same rate as of selected bearers w.e.f. 1.1.1983 and in response to it respondent No.1 notified mass scale rate payment and in order of progressive regularization 13+1 candidates were regularised as regular temporary waiter in scale Rs. 196-232 vide letter dated 19.1.1985 (Ann.A/2). The applicants were posted as helper under the control of Station Superintendent, Ajmer to perform duties of Coach Attendant, Waterman, Khallasi etc. vide order dated 1.11.1991. It is further stated that in terms of para 1512 of the Indian Railway Establishment Manual (IREM), the applicant are to be treated as substitutes and on completion of four months continuous service as substitute in March, 1992, the applicantd were entitled to grant of temporary status under para 1515 of the IREM but the respondents have arbitrarily disregarded the mandatory provisions of IREM having force of law inspite of recommendation made by immediate controlling officer vide Ann.A/4, as such, the applicants could not be granted temporary status throughout their 15 years period and were deprived of their legitimate right.



12. Further, after grant of temporary status, they were to be treated as temporary railway servants in terms of para 1501 of the IREM and the applicants are also entitled to regularization and to be governed in terms of Rule 32 of Railway Services (Pension) Rules, 1993.

13. The respondents in their reply to the factual aspects have stated that the applicants were working as commission vender/helper. The Hon'ble Supreme Court in Writ Petition No. 15357 to 15378/1984 with CMA 34782 to 34803/1983, Shri Shyam Sunder Jain and others vs. Union of India and Writ Petition No. 15379 to 15431/1984 with CMP No. 34719 to 34771/1994, Shri R.Mahalingam and others vs. Union of India, was of the view that those persons who worked on commission/percentage basis will get scale rate of pay and no other extra facilities as applicable to a railway employee is to be afforded to them, as they will not become railway employee. Thus, it is clear that as per Supreme Court judgment, the commission venders/helpers were not employee of railway and entitled to get scale rate of pay and in pursuance of the direction, the applicants were getting scale rate of pay. Further stated that there is no mention about grant of yearly increment in the mandate and the judgment of the Hon'ble Supreme Court has been fully complied with by the respondents vide Ann.A/2.



14. With regard to the application of provisions of IREM as referred by the applicants, it is submitted that the applicants were not engaged as substitute, hence para 1515 of IREM is not applicable in the case of the applicants. The right and privileges to temporary status holder employees are not specified under IREM para 1313. Fact is that the applicants were working as commission venders/helpers on commission basis and getting pay scale of pay rate in terms of order of the Hon'ble Supreme Court and question of temporary statue does not arise as the applicants never engaged as substitutes. The applicants were regularly appointed in Railway vide order dated 5.3.2006 and they are entitled for annual increment after 1 year from order dated 5.4.2006 and they are not entitled annual increment prior to 5.4.2006, hence new pension scheme is applicable on the applicants.

15. We have heard the rival submissions of respective parties and carefully perused the averments made in the OA as well as in the reply and rejoinder. We have also perused the reply to rejoinder and the material available on record and also the earlier order passed by this Tribunal in the OA No.38/2007 filed by the applicants and the order passed by this Tribunal in OA No.18/2007 on 1.2.2008 in the case of Teju Chalani and another vs. Union of India and others, which has been placed by the respondents as Ann.R/1. We have considered the preliminary objections raised by the respondents and also considered merits of the case.



16. It is not disputed that the applicants were initially engaged on commission basis. The applicants earlier filed OA No. 38/2007 claiming more or less same reliefs which have now claimed in the present OA. The said OA was disposed of vide order dated 16th March, 2007 with direction to the respondents to treat the OA as representation and consider the same and shall pass reasoned and speaking order. It is also not disputed that one of the applicant Shri Pappu filed representation along with OA and the order passed by this Tribunal on 16.3.2007 and the same has been considered by the respondents and passed impugned order dated 25.7.2007, which is under challenge in the present OA.

17. We have also carefully perused the order passed by this Tribunal in OA No.18/2007 and the relief claimed by the applicants Shri Teju Chalani and Deepak Sharma in the aforesaid OA. Bare perusal of the reliefs claimed in the present OA, it reveals that more or less same reliefs have been claimed in the OA filed by Shri Teju Chalani, which are reproduced as under:-

- “i) that the Hon’ble Tribunal may kindly issue by an appropriate orders or directions and writ and direct the respondents to consider the case of the applicants for taking action in accordance with the railways rules on the subject.
- ii) Directed the respondents to treat the applicant in service w.e.f. 8.3.1992 for all purpose except seniority.



- iii) Direct the respondent to govern the applicants by Railway service (pension) Rules, 1993
- iv) Direct the respondents to produce the sanctioned cadre and actual cadre of SS Ajmer and to post the applicants against such vacant post at Ajmer transferring them from Abu Road.
- v) Direct the respondents to grant yearly increment to the applicants w.e.f. 08.03.92 along with its arrear payment.
- vi) Cost of the application to be awarded to the applicants.
- vii) Any other just and reasonable relief in the facts and circumstances of the case may be awarded"

18. We have also carefully gone through the facts involved in the aforesaid OA and find that the facts are also similar as in the aforesaid OA both the applicants were initially engaged as Commission Bearer/vender in the catering department at Ajmer Division of the then Western Railway (now North Western Railway). This Tribunal considered the fact that similarly placed persons had approached the Apex Court and the Apex Court directed the Railways to pay salary to the writ petitioners w.e.f. 1.12.1983 with a further direction to absorb them as permanent railway catering service. The Apex Court further held that they would not become railway employees even though they were paid scale rate of pay till such time they were regularly absorbed in railway service. Accordingly, the applicants were paid scale rate of pay and they were continued to work as Commission Vendors and instead of commission they were getting scale rate of pay. This Tribunal after hearing the matter at length observed as under:-



"6. We have heard the learned counsel for both sides and carefully perused the pleading and record of this case. Admittedly, the applicants are seeking the relief of scale of pay applicable to a regular railway servant with effect from 1992. We are of the firm opinion that as the applicants have claimed the scale of pay from the year 1992 this application ought to have been filed in the year 1993 itself and the OA has to be dismissed for laches on this ground alone. Looking into merits of this case, the applicants were given the benefit of regular scale of pay vide order dated 05.0.2006 (Annex.A/5). If at all the applicants have any grievance they ought to have challenged this in the present O.A. In stead of challenging the same, they have prayed for the reliefs mentioned in para 1 above. The Hon'ble High Court of Rajasthan at Jaipur have uphold the decision of this Bench of the Tribunal dated 10.04.2007 (some other O.A. filed by the first applicant after three months of the filing of the instant O.A.) vide its judgment dated 16.08.2007. The Hon'ble High Court while disposing of D.B. Civil W.P. No.6113/2007, has observed as under in para 2:

"that if any fresh representation is made by the petitioner to the concerned authority for reconsideration of his transfer on the medical grounds such representation shall be considered and decided within four weeks from the date of receipt of such representation."

This bench of the Tribunal had also vide its order dated 08-08-2007 passed in O.A. No.243/2007 filed by the second applicant herein, had held that the said O.A. is premature and directed the respondents to decide the representation



dated 17.04.2007, within a period of two months from the date of order. This would clearly shows that the applicants are pursuing their remedies claimed in the instant O.A. before different forums in different ways. Therefore, this Bench is of the view that the applicant have not come before this Tribunal with clear hands. Further the respondents are following the directions given by the Apex court on the subject. Therefore no fault can be fastened with their action. We are also of the view that at present the applicants are working in Abu Road, this Bench of the Tribunal has no territorial jurisdiction to entertain this application.

7. Further more, even though the applicants alleged that they are 'Substitutes' no proof or evidence appointing them as 'Substitutes' has been produced before us. That apart, as submitted by the respondents, the relief prayed for by the applicants are appearing to be plural in nature which therefore cannot be prayed for in a single O.A.

8. Thus viewed form any angle, whether on the preliminary point of limitation jurisdiction or plurality of remedies or even on merit. As discussed above, we are unable to come to the rescue of the aggrieved in any aspect or respect supra."

19. In our considered view, the ratio decided by this Tribunal in OA No.18/2007 vide order dated 1.2.2008 in the case of Teju Chalani (supra) is squarely applicable in the facts and circumstances of the present case. In the instant case also, the applicants utterly failed to prove that they are substitute as no proof or evidence appointing them as substitute has been produced before us and we find no fault in the action of the respondents as in pursuance of the direction



issued by the Hon'ble Supreme Court, the applicants were paid scale rate of pay. The applicants had already been appointed on regular basis vide order dated 5.4.2006 and are entitled to increments only w.e.f. 5.4.2006.

20. Thus, we are of the view that the present OA is not maintainable on the ground of limitation and plurality of remedies and even on merit the OA does not survive. Accordingly, the OA is hereby dismissed with no order as to costs.

21. In view of the order passed in the OA, no order is required to be passed in MA No.86/2008, which stands disposed of accordingly.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/