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**THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR  
ORDER SHEET**

APPLICATION NO.: \_\_\_\_\_

ant (S)

Respondent (S)

ate for Applicant (S)

Advocate for Respondent (S)

OF THE REGISTRY

ORDERS OF THE TRIBUNAL


06.07.2009

OA No. 273/2009

<sup>proxy</sup>  
Mr. C.B. Sharma, Counsel for ~~applicant~~.

Mr. Mahendra Shah, Counsel for ~~respondents~~ <sup>applicant</sup>.

On the request of the proxy counsel appearing on behalf of the ~~respondents~~ <sup>applicant</sup>, let the matter be listed on 09.07.2009.

  
(B.L. KHATRI)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)

AHQ


09.7.2009

Mr. Mahendra Shah, Counsel for applicant

Heard learned Counsel for applicant,

For the reasons dictated separately,  
the OA is disposed of.

  
(B.L. KHATRI)  
M(A)

  
(M.L. CHAUHAN)  
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

**OA No.273/2009**

This the 9<sup>th</sup> day of July, 2009

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Gordhan Lal Mehta  
s/o Shri Kishan Lal Mehta,  
aged about 46 years  
r/o Village Pooprail Post Bhulon,  
Tehsil Chhabra,  
District Baran (presently posted as  
Ticket distributor at Motipura Chowki,  
Railway Station, Bhulon.

.. Applicant


(By Advocate: Mr. Mahendra Shah)

Versus

1. Union of India  
Through its Secretary,  
Ministry of Railways,  
Western Central Railway,  
Rail Bhawan, New Delhi.
2. Divisional Railway Manager (Commercial),  
Western Central Railway,  
Kota.
3. Station Superintendent,  
Motipura Chowki,  
Bhulon Railway Station,  
Kota.

.. Respondents

(By Advocate: -----)



O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "i) the impugned orders dated 26.05.09, 30.05.09 and 4.6.2009 may kindly be declared illegal and invalid, therefore, the same may kindly be quashed and set-aside with all consequential benefits;
- ii) respondents may kindly be directed to issuing writ of mandamus to absorb and regularize the applicant in the services of the respondents on the post of ticket distributor or any other post for which applicant is eligible after giving due relaxation in age and qualification looking vast experience of 27 years of applicant in distributing tickets.
- iii) Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts in the circumstances of this case may kindly also be passed in favour of the applicant."

2. Briefly stated, facts of the case are that the applicant was engaged as an agent for the purpose of distribution of tickets at Halt Station, Motipura Chowki in the year 1982. As per the averments made by the applicant in the OA period of his engagement was extended from time to time. The grievance of the applicant in this OA is regarding the order dated 26.5.2009 (Ann.A/1) whereby Motipura Chowki Station has been converted to 'B' grade station and the on duty Station Superintendent, Motipura Chowki was directed to arrange the work of distribution of tickets through on duty Station Mater, letter dated 30.5.2009 whereby the applicant was informed to hand over the unsold tickets to Station Superintendent,

Bhulon and further, vide order dated 4.6.2009 the respondents gave notice to the applicant that his service of distribution of ticket has been terminated and he should send an NOC from SS BLO for receiving the security amount of Rs.2000/-. It is these orders which are under challenge in this OA and the applicant has prayed for the reliefs as aforementioned.

3. It may be stated here that earlier the applicant has filed a petition before the Hon'ble High Court but the Hon'ble High Court vide order dated 29.6.2009 disposed of the petition on the ground that the applicant is aggrieved by the order dated 26.5.2009 and 30.5.2009 passed by the railway department, as such, in view of the decision rendered by the Hon'ble Apex Court in the case of L.Chandra Kumar vs. Union of India & ors., AIR 1997 SC 1125, the OA is not maintainable and the applicant can invoke jurisdiction of the High Court by filing Writ Petition only after rejection of the Original Application by the Central Administrative Tribunal and not otherwise. Consequently, the applicant has filed this OA for the aforesaid relief.

4. We have heard the learned counsel for the applicant at admission stage. The attention of the learned counsel for the applicant was invited to the various Annexures which form part of the OA and to

address us on the issue as to what is the status of the applicant and whether the present OA is maintainable in view of the provisions contained in the Administrative Tribunals Act, 1985. For that purpose, the learned counsel for the applicant invited our attention to the order dated 27.3.2000 (Ann.A/10), order dated 13.5.2004 (Ann.A/11) and order 6.10.2005 (Ann.A/12). Perusal of these documents reveals that the applicant was engaged as local agent by the railway authorities for distribution of tickets and for that purpose the applicant has executed an agreement with the department. Admittedly, the terms and conditions of his engagement were governed by the contract/agreement which he has executed with the railway. When the learned counsel for the applicant was confronted with the issue as to how this Tribunal has got jurisdiction to entertain this matter, the learned counsel for the applicant has also drawn our attention to the order dated 27.3.2000 (Ann.A/10) and argued that the applicant was paid minimum commission of Rs. 500/- and for sale of tickets upto Rs. 15000/- he was to be paid 15% additional commission and for sale of tickets over and above Rs. 15000/- he was to be paid 12% commission. Thus, according to the learned counsel for the applicant, since he was paid from the state exchequer, as such, this Tribunal has got jurisdiction to entertain the matter.

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5. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that in view of the provisions contained in the Administrative Tribunals Act, 1985 and in view of the special status on which the applicant was engaged, the application is not maintainable. The jurisdiction, power and authority has been conferred on the Central Administrative Tribunal by Section 14 of the Administrative Tribunals Act in relation to (a) recruitment, and matters concerning recruitment (b) all service matters concerning a person appointed to All India Service or to any civil service of the Union or a civil post under the Union and also all service matters pertaining to service in connection with the affairs of the Union concerning to a person appointed to any service or post as stated above or in respect of local or other authority or corporation or society whereby such notification has been issued by the Central Government. Thus, sine-qua-non for exercising jurisdiction and power of this Tribunal is that the matter should relate either to the recruitment or matter concerning to recruitment and also service matter in connection with the affairs of the Union or local or other authority or corporation regarding which notification has been issued by the Central Government.

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6. From the material placed on record, it is evident that the applicant was engaged as local agent for distribution of tickets and for that purpose he was entitled to a minimum commission of Rs. 500/- and 15% commission for sale of ticket upto the limit of Rs. 15000/- and 12% commission for sale of tickets over and above Rs. 15000/-. This is clear from the order dated 27.3.2000 (Ann.A/10). Thus, the contention of the learned counsel for the applicant that he was paid amount from the State exchequer as he is a railway servant working in connection with the affairs of the Union of India, as such, the matter falls within the definition of the service matter, cannot be accepted. Facts remain that the applicant was being paid commission and terms and condition of his engagement were governed by the agreement executed between the applicant with the railway authorities and not by the statutory rules and instructions issued by the railway department. It cannot be said that termination of service pursuant to agreement executed between two parties falls within the ambit of service matter pertaining to the service in connection with the affairs of the Union or local or other authorities or corporation or society.

7. At this stage, it may be stated that the service matter has been defined under Section 3(q) of the Administrative Tribunals Act which include service

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matters in relation to a person and all matters relating to the condition of service as defined therein. As already stated above, the terms and conditions of engagement of the applicant was not governed by any condition of service as formulated by the railway authorities. Rather, the terms and conditions of the applicant were governed by the agreement which was executed by the applicant from time to time. As such, we are of the view that it is not a service matter which can be entertained and which falls within the jurisdiction of this Tribunal. From the material placed on record it is also evident that the applicant has also furnished security of Rs. 2000/- in terms of agreement. Admittedly, the applicant is also not governed by the provisions contained in the Indian Railway Establishment Manual (IREM) whereby specific provisions have been made in respect of privileges admissible to casual labours and grant of temporary status, etc. and in that eventuality, it could have been said that since conditions of service of the applicant is regulated by the provisions contained in the IREM, as such, it falls within the definition of service matter as defined under Section 3(q) of the Administrative Tribunals Act. This being not a case of such nature, as such, we are of the view that the OA filed by the applicant cannot be entertained. In case there is breach of condition of the contract/agreement executed



between the parties remedy lies elsewhere and certainly it cannot be said to be a service matter empowering this Tribunal to exercise jurisdiction, power and authority under Section 14 of the Administrative Tribunals Act, 1985.

8. It may be stated that every right or privilege that accrues is not a condition of service. According to us, test to be satisfied in such matter is whether it regulates holding of the post. Further, according to us, holding of post means that there is proximity of nexus between right of matter holding the post. If it does not have bearing on post, it cannot be said to be holding of post. Thus viewing the matter from this angle, we are of the view that matter falls within the realm of contract which is governed by the terms and conditions stipulated in that contract/agreement executed between the applicant and railway authorities and, thus, cannot be said to be a condition of service governed by the instructions/rules as formulated by the department.

9. For the foregoing reasons, the OA is disposed of as not maintainable at admission stage.

  
(B.L. KHATRI)

Admv. Member

R/

  
(M.L. CHAUHAN)

Judl. Member