

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

26.08.2013

OA No. 486/2011 with MA 305/2012 & 306/2012

Mr. Gopal Gupta, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard learned counsel for the parties. The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 486/2011
With
MISC APPLICATION NOS. 305/2012 & 306/2012

Jaipur, the 26th day of August, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Om Prakash Sharma son of Shri Bhagwat Dutt Sharma, aged about 37 years, by caste Brahmin, resident of inside of Nagauri Gate, in front of Police Chowki, Jodhpur (Rajasthan). At present resident of Plot No. 27, Pratap Vihar, Govindpura, Jaipur.
2. Sikha Ram son of Bachna Ram, aged about 33 years, resident of House No. 74, Lolawas, Marwar Junction, District Pali (Rajasthan). At present resident of 389, Tata Nagar, Shastri Nagar, Jaipur.

... Applicants

(By Advocate: Mr. Gopal Gupta)

Versus

1. Union of India through its Chairman, Ministry of Railway, Railway Board, Rail Bhawan, New Delhi.
2. Divisional Railway Manager, North West Railway, Jodhpur Division, Jodhpur (Rajasthan).
3. Gulab Rai & Company though its Proprietor Railway Catering Contractor, Jodhpur (Rajasthan).

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

Brief facts of the case, as stated by the learned counsel for the applicants, are that an agreement took place on 17.09.1999 between the President of India acting through the Divisional Commercial Manager and M/s Gulab Rai & Company. In pursuance to the agreement, the respondent Railway authorities

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issued a licence to M/s Gulab Rai & Company for serving refreshment at the railway station.

2. That M/s Gulab Rai & Company, respondent no. 3, appointed 22 candidates/employees for selling the breakfast and other food materials in which the name of the applicant find place at sr. no. 1 & 7 of this list of Salesmen (Annexure A/2).

3. The applicants submitted their family details to the respondents. Thereafter the respondents issued medical fitness certificate. The applicants also supplied their character certificate to the respondents.

4. The applicants were appointed by the respondents initially on the commission basis and at that time, the rates were cheap. When the rates increased then the commission of the applicants was reduced by the respondents.

5. That the applicants have been working with the respondents without any break for about 13 years and during this entire period, there is no complaint whatsoever against the applicant but the respondents in an illegal and arbitrary manner disallowed the applicants from rendering their service on the basis of an oral termination order.

6. Therefore, the learned counsel for the applicant argued that the oral termination order of the applicants may be quashed

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and set aside and the respondents be directed to reinstate the applicant in service with all consequential benefits.

7. With regard to the maintainability of this OA before the Tribunal, the learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of **A.I. Railway Parcel & Goods Porters Union vs. Union of India & Others** [Writ Petition No. 433/1998 decided on 22.08.2003] and **Howrah Parcel (EAS. Rly) LCM Panch & Others vs. Union of India & Others** [Writ Petition (C) 640/2007].

8. On the other hand, the respondents vide MA No. 306/2013 have raised preliminary objections that this application is not maintainable. The learned counsel for the respondents argued that as per Para 4(3) of the OA, the applicants were appointed by M/s Gulab Ray & Company as Salesmen. The applicants have failed to demonstrate the terms & conditions of appointment. Even without entering into aspect, he argued that no OA is maintainable before this Tribunal by impleading private contractor as respondents. Therefore, this OA deserves to be dismissed on the ground of mis-joinder of parties.

9. He further submitted that it is admitted by the applicants that they were appointed by respondent no. 3 as Salesmen but the applicants have not produced the copy of the appointment letter to substantiate this aspect. As per rules, the

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appointment is governed by the terms & condition of the letter of appointment.

10. The learned counsel for the respondents further submitted that respondent no. 3 was a license holder of the answering respondents, therefore, he cannot give better rights to the applicants than that of himself. Accordingly the applicants at the best can be a licensee. As per rules, licensee cannot have substantive service rights against the answering respondents. Therefore, this OA should be dismissed.

11. The learned counsel for the respondents argued that since the applicants are not the employees of the Railways, therefore, this Tribunal has no jurisdiction to adjudicate on this issue.

12. Heard learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the applicants.

13. In the present OA, it is not disputed by the applicants that they are the employees of M/s Gulab Rai & Company to which a license was given by the official respondents to provide refreshment at the railway station. Thus respondent no. 3 i.e. M/s Gulab Rai & Company is a private party. It has been stated by the applicants in Para No. 4(5) of the applicant that they were appointed on commission basis. The applicants have nowhere

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stated that they were paid salary or wages in a particular scale of pay. Therefore, in my considered view, the applicants are not the employees of the official respondents.

14. The learned counsel for the applicants has argued that the applicants were medically examined and police verification was also done. In my opinion, these actions do not confer any status to the applicants to be an employee of the official respondents. A contractor/licensee can always ask his employees to go for a medical examination and also to submit police verification. Therefore, on this ground also, the applicants cannot be said to be employees of the official respondents.

15. Further the official respondents have not issued any order against the applicant. Therefore, as per the provisions of Section 19 of the Administrative Tribunal's Act, 1985, the present OA is not maintainable before this Tribunal.

16. I have carefully gone through the judgment of the Hon'ble Supreme Court in the case of **A.I. Railway Parcel & Goods Porters Union vs. Union of India & Others** [Writ Petition No. 433/1998 decided on 22.08.2003] and **Howrah Parcel (EAS. Rly) LCM Panch & Others vs. Union of India & Others** [Writ Petition (C) 640/2007]. The judgment of **Howrah Parcel (EAS. Rly) LCM Panch & Others vs. Union of India & Others** is based on the directions issued by the Hon'ble Supreme Court in the case of **A.I. Railway Parcel & Goods Porters Union vs.**

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Union of India & Others. The Hon'ble Supreme Court in the case of A.I. (Railway Parcel & Good Porters Union vs. Union of India & Others has issued the following directions:-

- "(1) The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and the railway administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six months from the date of receipt of this judgment.
- (2) Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, the Railway Administration should absorb them permanently and regularize their services. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.
- (3) The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective stations concerned on contract labour who have not completed the age of superannuation.
- (4) The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are not found medically fit/unsuitable for such employment. .

....."

17. The basic issue before the Hon'ble Supreme Court in these two cases was with regard to the regularization of Parcel Porters which were working for long years through contractors. The Hon'ble Supreme Court have issued directions to the Assistant Labour Commissioner, Lucknow to scrutinize all records already placed by the petitioner and also the record to be placed by the

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respective contractor and the Railway Administration. Therefore, I am of the opinion that the case law, referred to by the learned counsel for the applicant, does not help the applicants about the maintainability of their claim before this Tribunal.

18. On the other hand, the ratio decided by the Hon'ble Supreme Court in the case of **R.R. Pillai, deceased by L.Rs. Vs. Commanding Officer H.Q. S.A.C (U) & Others**, AIR 2010 SCC 188, is squarely applicable under the facts & circumstances of the present case. The issue before the Hon'ble Supreme Court in this case was about the status of an employee of the Unit Run Canteen in Armed Forces. The Hon'ble Supreme Court in Para Nos. 6 & 7 of the judgment has held that:-

"6.The issue is not whether it is an instrumentality of the State. Issue is whether the concerned employees are Government employees. It is submitted that Union of India and Ahr. v. Chote Lal (1999(1) SCC 554) : (1999 AIR SCW 29) clearly applies to the facts of the case."

"7. It is submitted that unit run canteen is amenable to Shops and Commercial Establishments Statutes because the appointment cannot be made dehors the Rules. There is no prescribed qualification or age limit. Similarly there is no grade or cadre. Therefore, it cannot be said that the concerned employees are holders of civil posts."

The Hon'ble Supreme Court in Para No. 11 of the judgment has held that the employees of Unit Run Canteens (URC) are not Government Servants.

19. In the present case also, the applicants have not been able to show that there was any prescribed qualification or age limit for the job that they were performing as Salesmen. Similarly, it is

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admitted by them that they were on commission basis and there was no grade or cadre. They could not show me any rules under which their appointments were made and hence as held by the Hon'ble Supreme Court that the appointments cannot be made dehors the rules, therefore, in my opinion, the applicants cannot be said to be the holder of the civil post and I am of the considered opinion that the applicants are not Government Servants. Therefore, the Tribunal cannot entertain this OA in terms of Section 19 of the Administrative Tribunal's Act. However, the applicants are at liberty to redress their grievances before the proper forum.

20. Consequently the OA is dismissed as it is not maintainable before this Tribunal.

21. In view of the order passed in the OA, there is no need to pass any order in MA Nos. 305/2012 and 306/2012 and they are disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

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