

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 28th Day of August 2018)

Hon'ble Mr. Gokul Chandra Pati. Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.883 of 2009
(U/S 19, Administrative Tribunal Act, 1985)

Bikau son of late Ganesh Resident of Village Bharauli Bazar
Yamuna Sadan, Post and District Deoria.

..... Applicant

By Advocate: Shri Satyajeet Mukherjee/Shri Himanshu
Srivastava

Versus

1. The Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager (Commercial), Varanasi.
3. The Assistant Commercial Manager, Varanasi.
4. The Chief Ticket Inspector, North Eastern Railway, Deoria Sadar, Deoria.

..... Respondents

By Advocate: Shri Anil Kumar

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. The applicant prays for the following reliefs :-
 - “(i) Issue a suitable order or direction in the nature of certiorari quashing the letter dated 13.10.2008 in so far as it intends to cancel the badge No.4.
 - (ii) Issue a suitable order or direction in the nature of certiorari quashing the license of Harihar and Deoki with regard to the said badge No.4.
 - (iii) Issue a suitable order or direction in the nature of mandamus commanding the respondent No.2 to issue the license of the said badge No.4 in favour of the applicant and allot the said Badge to him.

- (iv) Issue any other and further orders that this Hon'ble Court deems fit and proper under the circumstances of the case.
- (v) Award the cost of the application to the applicant".

2. Applicant Bikau case, in short, is that his deceased father Ganesh was working as a Coolie in the Deoria Sadar Railway Station under North Eastern Railway and was allotted badge No. 4 regarding which he regularly paid the licence fees when he expired in 6.9.1993 and survived by his wife, four sons and four daughters. Due to sudden death of his father, Smt. Lakshmina Devi mother of applicant gave the badge No. 4 to Harihar on the understanding that said Harihar would give some money every month to Smt. Lakshmina for maintenance of her family and that said Harihar used to deposit the licence fees in his own name about which his mother had no knowledge. That Harihar sold badge No. 4 to his younger brother Dewki for Rs.12000/- in 1997 as Harihar got a permanent job as Class IV employee.

3. It is the further case of applicant that now the applicant and the family are finding it difficult to earn their livelihood and therefore, seek the relief that the badge should be given to the applicant and in this regard Smt. Lakshimana Devi filed an application dated 21.4.2008 praying that the badge No. 4 be given to her son (the applicant) in which an ex-parte enquiry was conducted by the respondents and, as per, the enquiry report, the Enquiry Officer came to the conclusion that the transfer of badge No. 4 was not done according to the Railway Rules and that the badge should be given to the applicant and his brother. That respondent No. 3 as per his report dated 9.9.2008 sanctioned the cancellation of the badge, since the same was illegally transferred and that respondent No.2 issued letter dated 13.10.2008 cancelling

badge No. 4 and requiring that Dewki deposit the badge. The efforts of the applicant to secure the badge have yielded no result.

4. It is the case of applicant that no explanation or reasons have been given by the respondent No.2 while cancelling the badge vide impugned order dated 13.10.2008. That it is settled position according to License Badge Policy dated 9.12.1988, badge is to be allotted to a porter son or closed relative. Hence, the present O.A. that order dated 13.10.2008 cancelling badge No. 4 be quashed and the respondent No. 2 be directed to issue badge No. 4 in favour of the applicant.
5. In counter affidavit, it has been averred that the badge has been cancelled since the mother of applicant instead of informing the Railway Authority sold the badge to Harihar which is now being taken back. That Smt. Lakshmina should have filed an application for transfer of badge immediately on her son becoming major but instead she sold the same illegally and unauthorizedly, so the badge has been seized.
6. We have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record.
7. Before proceeding with this OA, the question arises as to whether, in view of Section 14 of the Central Administrative Tribunal, has any jurisdiction to decide matters relating to Porter licenses.
8. Section 14 of the Central Administrative Tribunal Act reads as:

"Jurisdiction, powers and authority of the Central Administrative Tribunal.—

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and

from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment. ⁴⁰

[Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section

shall be construed as including references also to a Union territory.]

[\(2\)](#) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government: Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

[\(3\)](#) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to—

[\(a\)](#) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

[\(b\)](#) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs”.

9. In the present case, the question in dispute is as to the relationship between a licensor and licensee and no question regarding question of any service matter is involved which requires adjudication. The dispute is that the applicant is entitled to the porter license and does not come within the ambit of recruitment and matters concerning recruitment to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian as mandated by Section 14 of Central Administrative Tribunal Act.
10. Neither the dispute in the instant O.A. is a dispute concerning service matter of the applicant and nor is the applicant a holder of civil post which would entitle him to approach the tribunal for settlement of his dispute which is patently a dispute of commercial nature.
11. Reference may be made to State of Karnataka & Ors. vs. Ameerbi & ors., (2007)11 SCC 681 wherein the specific question was with regard to jurisdiction of the Tribunal in the matter of Anganwadies and the reasoning and observations of the Hon'ble Supreme Court would apply with full force to the facts of the present case and it was held therein that "Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case."
12. In sum, it was held by the Hon'ble Apex Court that Constitution of India, Articles -14 and 16 – Administrative Tribunals Act, 1985, Sector 3(k) and 15 – Administrative Tribunal – Jurisdiction – Civil post – Anganwadi workers – Appointment under scheme of Central Government – Scheme directly under the control of State governments,

financial burden is to be borne by Central government – They are not carrying on any function of the State and do not hold post under a statute – Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case – State not required to comply with the constitutional scheme of equality under Article 14 and 16 – No process of selection for the purpose of their appointment – Anganwari workers held not holding of any civil post – State Administrative Tribunal has no jurisdiction to entertain their application.

13. So, in terms of decision of the Hon'ble Apex Court, it is clear that the applicant in the present case does not hold any civil post and in view of the said fact, the Central Administrative Tribunal has no jurisdiction to entertain his claim regarding the grant of the Porter badge which in any case does not fall within the scope of the matters which come under the jurisdiction of the Tribunal by virtue of Section 14 of the Central Administrative Tribunal Act.
14. This OA has been filed by the applicant not regarding a service matter but regarding the grant of Porter badge to him which dispute does not fall within the jurisdiction of this Tribunal. The basic ingredient, i.e. the *raison d'être* that there is master and servant relationship between the Railway Administration and the applicant or that he holds a civil post under the State has not been established by the applicant and hence, the OA is not maintainable on the ground of jurisdiction. Accordingly, the OA is dismissed as not maintainable. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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