

(Reserved on 28.09.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **11th** day of **October, 2018.**

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/01013/2006

1. Pankaj Kumar Gupta, S/o Late Heera Lal, R/o H. No. 158, Rail Bazar, Kanpur
2. Kishan, son of Late Ram Gopal, Resident of 260, Faithful Ganj, Cantt., Kanpur.
3. Santosh Kumar Tiwari, s/o Late Ram Sunder, R/o Gram Purai Jodhai Pandey, Post Peper Gaon, Dostt. Sultanpur.
4. Hardeo, son of Late Abhilakh, Resident of Faithful Ganj, Cantt. Kanpur.
5. Nand Kumar, son of Late Luxmi Narain, Resident of 57/20, Chandari Lal Banglow, Kanpur.
6. Vinod Kumar Tiwari, S/o Maha Deo Prasad, Resident of House No. 430, Faithful Ganj, Cantt., Kanpur.
7. Desh Raj Gupta, son of Ram Bharose, Resident of House No. 71/52, Sutherkhana, Kanpur.
8. Makhan Lal, son of Late Raja Ram, Resident of 504, Kummer Mandi, Cantt., Kanpur.
9. Papu Pandey, s/o Late Ram Shanker, resident of 303, Nehru Junior School, Bhirpur, Cantt., Kanpur.
10. Daya Ram, son of Late Basawan, Resident of 355, Bhiprur, Cantt, Kanpur.
11. Shyam Lal, son of Late Rameshwar, Resident of 893, Jaggi Purwa, Anand Nagar, Kanpur.
12. Lallan Tiwari, son of Late Chandra Bhushan, Resident of House No. 464, Luniya Mohal, Kanpur.
13. Pawan Kumar Mishra, son of Late Kishan, Resident of Channi Lal Ka Hatha, N. 5, Kanpur.
14. Manna Lal, son of Late Mohan Lal, Resident of 355/20, Gopal Ka Hatha, Rail Bazar, Kanpur.
15. Ram Jeewan Gupta, s/o Late Baij Nath, Resident of Rail Bazar, N. 5, Kanpur.
16. Vijay Kumar Mishra, S/o Late Sant Ram, Resident of 295, Rail Bazar, Near Police Chowki, Kanpur.
17. Vijay Kumar, S/o Late Deena Nath, Resident of 27/29, Roti Godam, Berahna Road, Kanpur.
18. Bal Kishan, son of Late Abhiraj, Resident of P.S Maharajganj, Kanpur Nagar.
19. Hari Ram Tiwari, son of Late Muneshwar Tiwari, Resident of House No. 14, Jaggi Purwa, Kanpur.

20. Uma Kant, Son of Late Shiv Narain, Resident of 340, Faithful Ganj, Cantt., Kanpur.
21. Basant Lal, S/o Late Sita Ram, R/o Vill. Changurpur, Mishraulia, Barkhari, Distt. Ambedkar Nagar.
22. Room Narain, Son of Late Sheo Shankar, Resident of 15/280, Civil Lines, Jaithan College, Kanpur.
23. Shyam Kishore, S/o Late Ram Avtar, R/o 447, Om Purwa Chakeri Raod, Kanpur.
24. Kishan Lal, son of Late Chotey Lal, Resident of Meerpur Cantt., House No. N 37, Kanpur.
25. Dinseh Chand Gupta, S/o Late Raja Ram, R/o Plot No. 21, Supari Wali Gali, Changa Mandir, Gopal Nagar, Kanpur.
26. Jawahar Lal, son of Late Putti Lal, Resident of Railway Station, Kanpur.
27. Ram Jan, son of Late Sabpati, Resident of Dree Light Hata, Ram Leela Maidan, Kanpur.

...Applicants

V E R S U S

1. The Union of India through the Ministry of Railways, Government of India, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. The General Manager, North Central Railway, Allahabad.
4. Divisional Railway Manager (DRM), Allahabad Division, Allahabad.
5. Chief Commercial Manager, North Central Railway, Allahabad.
6. Senior Divisional Personal Officer, Allahabad Division, Allahabad.
7. Senior Divisional Commercial Manager, Allahabad Division, Allahabad.
8. Divisional Commercial Manager, Allahabad Division, Allahabad.
9. Group General Manager, IRCTC, North Zone, Rail Yatri Niwas Building, New Delhi.
10. Assistant Manager, IRCTC, North Zone, IRCTC Ltd., Regional Office, 206, Chintel House, 16, Station Road, Lucknow.
11. Chief Catering Manager, IRCTC, Kanpur Central.

.... Respondents

Advocate for Applicants	:	Shri N.P. Singh
Advocate for the respondents	:	Shri A.K. Gupta

O R D E R

The applicants, who were working as commission vendors under the Railways, have filed this OA under section 19 of the Administrative Tribunals Act, 1985 (in short Act) with the prayer for following main reliefs:-

- “A). To issue a suitable order directing the respondents to absorb the applicants in group ‘D’ services in permanent cadre of railways giving all consequential benefits from the year 1983

since the process of absorption started and emoluments for this period, which a regular employee deserves to be given.

- B). In the alternative and without prejudice to the above to permit the applicants to continue as Commissioner Vendors.
- C). To issue a suitable order directing the respondents to give retiral benefit to the applicants as available to other regular employees of the railways.
- D). To issue a suitable order quashing the impugned order dated 24.08.2006 retiring the applicants.”.

2. The applicants were retired vide the impugned orders dated 24.8.2006 (Annexure-I) issued to each of the applicants retiring them from working as commission vendors (in short CV) under the Railways on completion of 60 years. Misc. Application filed under the rule 4(5) of the CAT (Procedure) Rules, 1987 has been allowed vide order dated 21.9.2006. The main grievance of the applicants is on account of their retirement before their regularization in Group D service under the Railways as per the circular dated 13.12.1976 of the Railway Board. It is stated in the OA that on one hand the applicants are being treated as employees who retire on attaining the age of 60 years and on the other hand they were not allowed any benefit of service as per the policy of the respondents.

3. Following main grounds have been mentioned in the OA:-

- No action was taken by the respondents for absorption of the applicants as per the order of Hon’ble Apex Court in the case of Saital Singh (supra) and the letter dated 13.12.1976 of the Railway Board.
- The applicants have been arbitrarily retired as per the impugned orders after attaining the age of 60.
- The applicants have right to claim for absorption in Railway service with effect from 1.12.1983 as many of their juniors were absorbed in regular service and the applicants are entitled for all consequential benefits, as stated in the para 4(xx) and 4(xxii) of the OA.

4. The respondent no. 10 and 11 have filed their Counter Affidavit (in short CA) with the following main averments:-

(i) The preliminary objection was that the OA is not maintainable as the Indian Railway Catering and Tourism Corporation (in short IRCTC) has not been notified under section 14 of the Act, since all catering activities have been handed over by the Railways to IRCTC.

(ii) All catering and vending activities of the Railways have been hived off to the IRCTC from August, 2001 in a phased manner as per the Catering Policy, which was revised from time to time. The Catering Policy was challenged in different Courts. Finally, the matter came up before

Hon'ble Apex Court in Civil Appeal No. 4897/2002 in which the judgment dated 29.3.2005 was passed (Annexure CA-3) in which the Policy including enhanced license fees was upheld. Under the new Catering policy, the tender system has been adopted and vendorship system has been abolished. As per the letter dated 1.12.2005 of the Railway Board, the commission vendors are required to retire at age of 60 years.

(iv) If the applicants were aggrieved for their non-absorption in the regular establishment of the Railways, they should have agitated the matter in proper forum within a reasonable time (vide para 38 of the CA).

5. The respondent no. 1 to 8, representing the Railways, have also filed their Counter Affidavit (in short CR) stating the following averments:-

(i) As per the Railway Board letter dated 13.12.1976 (Annexure -III of the OA), the maximum age for the CVs was fixed as 60 years and there was a provision for transfer of the vendorship in favour of son/relative in the event of death of the CV.

(ii) As per the Railway Board letter dated 1.12.2005, the management of catering has been transferred to IRCTC, for which, it was not possible for the applicants to work as CV. In this letter also it is mentioned that the CVs will retire after attaining 60 years of age. The responsibility for Allahabad division was handed over to IRCTC w.e.f. 27.12.2005 and since then, the work is being looked after by IRCTC.

6. Shri NP Singh, learned counsel for the applicants was heard. He emphasized on the order of Hon'ble Supreme Court in the case of Saital Singh and anr. Vs. Union of India & Ors. in Civil Appeal No. 6804-05 of 1982 (Annexure A-IV to the OA), in which it was mentioned that the Government had assured that in pursuance to the Railway Board letter dated 13.12.1976 all registered commission vendors would be absorbed in Railway service. Learned counsel submitted that the applicants in this case were not considered for such absorption before they were retired vide the impugned orders. He also submitted the judgment in the following cases in support of his case:-

- National Federation of railway Porters, Vendors and Bearers v Union of India & Others, JT 1995 (4) S.C. 568
- T.I. Madhavan Gen. Secy., All.... vs Union of India and Ors. JT 1987(3) SC 650
- Union of India through....& Ors. vs. Smt. Manorama in W.P.(C) 2904/2007 and W.P.(C) 2905/2007

7. Shri A.K. Gupta, learned counsel for the respondents submitted that the OA is time barred and the catering activities have been entrusted to the IRCTC. He also submitted that many of the applicants have died and that no representation was submitted by the applicants till issue of the retirement order.

8. In reply, the applicants' counsel submitted that the impugned retirement orders were issued by the Railway authorities without regularization of their services. He pointed out to the order dated 7.8.2015 of this Tribunal by which the OA was admitted after considering the respondents' plea of non-maintainability of the OA since IRCTC has not been notified under the Act.

9. The pleadings on record have been perused by me and the submissions by learned counsels have been considered. Before proceeding further, it is noted that the preliminary objection of the respondents about maintainability of the OA on account of the fact that the IRCTC has not been notified under section 14 of the Act, was examined by this Tribunal earlier and vide order dated 07.08.2015, it was held as under:-

“In view of facts and position stated above and in the light of the opinion provided by the Joint Registrar regarding the admissibility of this O.A, I find that the O.A is covered under Section 14 of the CAT Act 1985 and in larger interest of justice the OA is admitted.”

The order dated 07.08.2015 has also referred to the decision of the Railway Board to hand over the catering services to IRCTC vide letter dated 04.02.2003 with the following provision, which has been quoted in the order dated 07.08.2015 as under:-

“the commissioned vendors, bearers will function under the control of IRCTC as per the existing terms and conditions applicable at present on railways until their absorption in railways. This process of absorption must be expedited on the zonal railways of this will be suitably incorporated in the MoU.”

Hence, the preliminary objection raised by the respondents have been settled in favour of the applicants as per the order dated 07.08.2015.

10. It is seen that a copy of the Railway Board circular dated 13.12.1976, in which the decision to absorb the commission vendors was communicated, has not been enclosed with the pleadings. The letter dated 13.12.1976 enclosed at Annexure-III is on a different subject. The order of Hon'ble Apex Court in the case of Saital Singh (supra) has been enclosed by the applicants at Annexure-IV to the OA and this order states as under:-

“ After the case was heard for some time, Shri M.S. Gujral, learned counsel for the Union of India (Railways) drew our attention to Para 3 of the Memo bearing No. 76-TG/III/639/11 dated 13.12.1976 issued by the Jt. Director, Traffic Commercial (C) II, Railway Board and submitted that persons working as commission members / bearers and vendors would be absorbed progressively as members in the permanent railway service as stated in the above Memorandum. It is obvious from the above memo that the Railway should first absorb all the bearers who are registered in accordance with the memorandum thereafter the vendors who are registered accordingly and that until all the bearers and vendors are accordingly absorb the Railways cannot appoint any person either as bearer or vendor on permanent basis on railway service

from any other source. In view of the clarification no orders are called for. The petitions are disposed off accordingly. We hope that the government would take steps to absorb all bearers and vendors as mentioned above, as early as possible.”

11. It is a fact that the applicants have not been regularized or absorbed in Railway service as per the letter dated 13.12.1976 of the Railway Board and the order of Hon’ble Apex Court in the case of Saital Singh (supra). The reason for the non-compliance has not been indicated in the pleadings by both the parties. In support of the applicants’ case, the learned counsel for the applicants, at the time of hearing the OA, has cited the order of Hon’ble Apex Court in the case of T.I. Madhavan (supra), by which direction was given to the respondents for absorption of the commission vendors and bearers in terms of the order in the case of Saital Singh (supra). In spite of the directions of Hon’ble Supreme Court, no action seems to have been taken by the respondents in respect of the applicants. The pleadings of the respondents do not deny the averments of the applicant in para 4(iv) of the OA referring to these orders of Hon’ble Supreme Court and not mentioned if any action was taken for absorption of the applicants in pursuance to the order of Hon’ble Supreme Court.

12. Learned counsel for the applicants has also cited the judgment of Hon’ble Apex Court in the case of National Federation of Railway Porters, Vendors & Bearers (supra) in which the Railways were directed to absorb the Railway parcel porters in cases where there is possibility of engaging regular porters as per the assessment of the Railways. It was held that the absorption and regularization of the petitioners will be as per the rules and circulars of the Railway Board. In the case of Smt. Manorama (supra), whose husband was also a railway porter who died before regularization of his service, although he was absorbed as a Substituted porter. The Tribunal had ordered posthumous regularization of his services and grant of family pension, considering the fact that the Railways did not bother to take any action to regularize the Parcel Porters in pursuance of the direction of Hon’ble Apex Court.

13. In para 4(xx) and 4(xxii) of the OA, it is stated that the juniors of the applicants were absorbed/regularized, but the applicants were not absorbed. But the details like when their juniors were considered by the respondents and at that time whether the applicants were also considered have not been mentioned in the pleadings. There is nothing on record to show if any action was taken by the applicants after their cases were ignored by the respondents while considering the case of their juniors. By remaining silent over the matter till the respondents have issued the impugned orders retiring them from working as Commission Vendor for the Railways, the applicants have virtually accepted the fact that they were not absorbed in service by the respondents.

The reasons for not protesting at that point of time have not been disclosed by the applicants. It is also not clear from the pleadings on record as to why the applicants were not regularized while their juniors were regularized after 1983.

14. The applicants have raised the issue of issue of the impugned orders retiring them without absorbing them. The respondents in their Counter affidavit have stated that as per the Railway Board letter dated 1.12.2005 (Annexure-II to the OA), it is stipulated as under:-

“(ii) All Commission Vendors/Bearers should retire at an age of 60 years.”

Although the said letter dated 1.12.2005 of the Railway Board has not been challenged in this OA, but the justifications for retiring them without first considering their case for absorption have not been mentioned in the letter dated 1.12.2005. It is not clear if such a clause of retiring at the age of 60 years is as per the catering policy or as per the terms and condition of the license of the commission vendors.

15. It is noticed that another case of the commission vendors of the Railway was decided by Hon'ble Rajasthan High Court, vide the order dated 16.11.2017 in the case of Union of India and Ors vs. Nehrumal Jain And Ors. (indiankanoon.org/doc/67382937) in Special Appeal Writ No.963/2011 and it was held by Hon'ble High Court as under:-

“1. By way of this appeal, the appellant has challenged the judgment and order of the learned Single Judge whereby the learned Single Judge has allowed the petition preferred by the original petitioner-respondent herein.

2. The original petitioner herein preferred a writ petition before this Court challenging the action of respondent whereby by order dated 21.5.2001 (Annex.5), they issued guidelines for screening of the existing commission vendors who were running the stalls at Railway Stations more particularly to set aside condition No.4 where they have restricted activities for licence.

3. The learned Single Judge while considering the same considering the original contract entered between the parties set aside condition No.4 holding as under:-

11. Similarly situated persons as the petitioners took up the matter and the Hon'ble Supreme Court recognizing the right of the commission bearers and vendors disposed of the petition taking note of the earlier circular dated 13.12.1976 observing that "we hope that the Government would take steps to absorb all the bearers and vendors as mentioned above as early as possible". One is constrained to observe that the hopes expressed by the Hon'ble Supreme Court in the aforesaid order which is available as Annexure-R/2 with the reply at page 91 were belied and it was not till the order Annexure-4 came to be issued by the respondents on 6.11.2000 issuing the guidelines and the directions for absorption of the persons working as commission bearers/vendors and it took further 6 months for issuance of guidelines for the absorption on 21.05.2001 which are now challenged. The above facts only go to show that the matter had remained under consideration with the Railway Establishment over since 1976 and it was not till May 2001 that finally the guidelines were issued by the Railway department determining the criteria for the absorption of the persons working as commission vendors/bearers despite directions of the Hon'ble Supreme Court in 1983. It has thus taken nearly 25 years despite the circular of 1976 and nearly 18 years from the order of the Hon'ble Supreme Court dated 13.12.1983 for issuing the guidelines in this behalf for absorption of the petitioners.

Therefore, there appears to be some substance in what learned counsel for the petitioners submitted that during this long period many such persons as the petitioners became ineligible on account of the inaction on the part of the respondents to frame the policies as was expressed by the Hon'ble Supreme Court under their order dated 13.12.1983. It is no doubt true that a person who enters service, enters the same with the hope of some amount for regularity and with a reasonable expectation for pensionary benefits. It is true that the time which was consumed by the respondents in issuing guidelines only as late as 21.05.2001 has been lost so far as the petitioners are concerned from 1976 to 2001 which if they had been absorbed by framing the scheme in time would have not only made them eligible for absorption but also retiral benefits on completion of qualifying service.

13. The Railway therefore cannot turn round and take advantage of their own wrong and inaction and say that now the petitioners are ineligible for being absorbed as they have attained 60 years of age and also that they would not be permitted to continue as commission vendors or perform the work which they are otherwise performing on failure to submit for screening. The exercise of the aforesaid option would in fact tantamount to their being rendered unemployed in their old age with nothing to fall back upon. In their case the Railways should, in the facts and circumstances which should have been narrated above, be directed to allow them to continue and perform their duties as license vendors and commission bearers and vendors as they had been performing prior to the issuance of the order dated 06.11.2000 and also the guidelines Annexure-5 dated 21.5.2001 prescribing the age of 60 years as the maximum age for being eligible for screening cannot be faulted. The writ (4 of 4) [SAW-963/2011] petition is liable to be dismissed so far as the aforesaid challenge is concerned.

15. However, in view of what has been held hereinabove, it is directed that such of the petitioners who wish to continue to perform their duties in accordance with the policy and the terms of their license as commission vendors/bearers should be permitted to continue despite their having attained the age of 60 years. The para 4 of the order dated 21.05.2001, Annexure-5 is accordingly quashed as being violative of [Article 21](#) of the Constitution of India. It was submitted by the learned counsel for the petitioners that there is no upper limit for the commission vendors/bearers under the aforesaid policy. It is not in dispute that the petitioners No.1 and 3 have been continuing as commission vendors during the pendency of this petition also under the interim orders of this Court and they shall be permitted to continue if they shall be permitted to continue if they so desire on the same term and condition of their license.

4. However the learned Single Judge has upheld condition No.5 with respect to persons who are going to take after 2001.

5. We have heard counsel for the parties.

5.1 On condition NO.5 we are in complete agreement with the view taken by the Ld. Single Judge. It goes without saying that either side would be at liberty to take the appropriate action if there is any breach of contract.

6. The appeal stands dismissed.”

16. As stated above, in the case of Nehrumal Jain (supra), Hon'ble Rajasthan High Court had allowed the commission vendors to continue to perform their duty even after 60 years, if they want to continue in accordance with the existing policy of the Railway Board, since the Railways had not taken follow up action for their absorption or regularization as per the order of Hon'ble Supreme Court dated 13.12.1983 till 6.11.2000 and 21.5.2001 when detailed guidelines were issued for absorption of the commission vendors.

17. In the circumstances as discussed above and taking into the fact that the applicants did not raise the issue of their absorption in appropriate legal forum till the impugned orders retiring them were issued by the respondents after the

applicants have crossed the age of 60 years, it is not possible to allow the relief relating to regularization or absorption of the applicants. But since one of the relief prayed for at para 8(B) of the OA is to permit them to continue as commission vendors, it is seen that in the case of Nehrumal Jain (supra), Hon'ble Rajasthan High Court had allowed the commission vendors to continue to perform their duty even after 60 years. Further, there is nothing in the pleadings of the respondents to show that such condition of retirement of Commission Vendors at the age of 60 years was included in the terms and conditions of their license or their engagement as Commission Vendors.

18. In view of the facts and circumstances, as discussed above and following the judgment of Hon'ble Rajasthan High Court, as quoted above, I am of the considered opinion that in this case the applicants are also entitled to similar relief. Accordingly, the OA is allowed partly to the extent that the applicants or their legal heirs, who would be interested to perform the duty of the commission vendor as per the existing policy of the Railway Board and as per the terms and conditions of their license, shall be allowed by the respondents to continue to work as commission vendors irrespective of the impugned order of retirement of the applicant (Annexure I of the OA). There will be no order as to costs.

(Gokul Chandra Pati)
Member – A

Anand...