



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, CALCUTTA

O.A. 350/01087/2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Sri Arjun Modi,  
Son of Late Guru Charan Modi,  
Aged about 62 years,  
Working as Ex. Group 'D' Staff,  
Eastern Railway, Asansol Division,  
Burdwan, by occupation Retired Person,  
Residing at Railpar, Sandhadka,  
Shivlal Dangal, Asansol-2,  
P.S. Asansol, District Burdwan,  
West Bengal, PIN - 713 302.

..... Applicant.

VS.

1. Union of India,  
Service through the Secretary,  
Ministry of Railways,  
Government of India,  
Rail Bhawan,  
New Delhi - 110 011.
2. The General Manager,  
Eastern Railway,  
Fairlie Place,  
Kolkata - 700 001.
3. The Divisional Railway Manager,  
Eastern Railway, Asansol,  
P.O. & P.S. Asansol,  
District - Burdwan,  
PIN - 713 302.

..... Respondents.

For the Applicant : Mr. A. Sinha, Counsel  
Mr. D. Gupta, Counsel

For the Respondents : Mr. S.K. Das, Counsel

Date of order: 8.8.16

ORDER

Heard Ld. Counsels for the respondent. Since none appeared for the applicant

Rule 15(1) of CAT Procedure Rules is invoked.

2. The admitted fact that emerged from the reply filed by the respondents would be as under:

In terms of order dated 13.12.1983 passed by Hon'ble Supreme Court in WP No. 6804-05 of 1982 and as per instruction contained in Railway Board's letter No. 76 TG 111/639/11 dated 13.12.1976 an action was taken to absorb Registered Commission bearer/vendor progressively as per their seniority against available vacancies.

Shri Arjun Modi, the applicant was junior most commission vendor so his screening and posting was done later than the senior registered commission vendors and subsequently he was absorbed as valveman (Group 'D') under Sr. Section Engineer/Asansol on 20.11.2003.

He superannuated from service on 31.03.2012 rendering net qualifying service of 08 years of 04 months 03 days. As his total service was less than 10 years of qualifying service for entitlement of pensions the applicant was not granted pension but he was given service gratuity as per Rule 69 (1) & (3) contained in Railway Services (Pension) Rules, 1993.

3. The applicant would reply upon the decision of the Hon'ble High Court at Calcutta in WPCT 471 of 2006 in regard to the "the applicants in O.A. 545 of 1999" who "admittedly had been, for long time, working as Commission Bearers/Vendors in the Railway Catering Department" were directed to be granted pension despite non completion of 10 years regular service. The Hon'ble High Court in the matter observed & held as follows:

"Railway authorities cannot take advantage of their own wrong. We are of the view that even by the latest, the Eastern Railway authorities would have fixed the date for computation of pension from 1<sup>st</sup> December 1984. As such we think that the judgment and order of the learned tribunal is quite justified on legal as well as factual aspect but then it needs certain modification in view of our observation. Therefore, service period should be reckoned for the purpose of computation of pension from 1<sup>st</sup> of December 1984 instead of 1<sup>st</sup> December 1983. In so far as reckoning of the service rendered prior to 1<sup>st</sup> December 1984 in the capacity of Commission Bearers/Vendors/Agents, as directed by the learned Tribunal, is concerned the same cannot be taken into consideration because the aforesaid principle has been drawn from the analogy derived from the Rules providing reckoning of service period during casual employment. An agent cannot become a servant so the Rule provided for the public servant cannot be made applicable to agents. The jural relationship in two cases are different, as in case of employment master and servant relationship exists, whereas in case of principal and agent the relationship of master and servant does not exist as there is no disciplinary or administrative control qua master over the agent since it is a contractual one and they are not liable to be disciplinary proceeded with unlike employment, either on temporary or casual basis. In case of agency, it would be open for the principal and agent to put an end to their bilateral contractual relationship. We, therefore, recall and set aside this portion of the order of the learned Tribunal. The remaining portion of the relief granted by the learned

Tribunal, so far O.A. 545 of 1999 is concerned, will remain as it is. Therefore, we direct the Eastern Railway authorities to give effect to the order passed by the learned Tribunal as modified by us within four months from the date of communication of this order."

The perusal of the decision would show that High Court never <sup>made</sup> any differentiation between commission vendors and commission bearers. The order passed by this Tribunal is also noted.

4. Nevertheless the respondents have attempted to refute the claim on the ground that the decision would not apply as all the petitioners of the above OA were "commission bearers" whereas the present applicants were "Commission vendors" who could not be equated with commission bearers. However they failed to demonstrate how the difference in nomenclature mattered.

5. I have perused the references made in the O.A. order at paras 13-16, of the Judgments of Hon'ble Apex Court but could not decipher any difference directed to be made in the case of vendors vis a vis bearers. Inasmuch as admittedly no differentiation has been made between a Commission "Vendor" and a Commission "bearer" neither by this Tribunal nor by the Hon'ble High Court or Hon'ble Apex Court, as would be evident from the Judgments cited supra, a commission vendor would be on par with a commission bearer and the non-extension of benefit of the Judgment in regard to a commission bearer to a commission vendor would result in invidious discrimination to a commission vendor. The present applicant who is admittedly a commission vendor would be entitled to same relief granted to applicant in the O.A. supra who was a commission bearer.

6. Therefore in the interest of justice the respondents are directed to consider grant of appropriate benefits to the present applicant on par with the applicant in O.A. 545/99, if nothing else stood in the way.

7. Let appropriate reasoned and speaking order be issued within 3 months.
8. O.A. is accordingly disposed. No costs.

(Bidisha Banerjee)  
Member, (J)

drh