

LIBRARY**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A. 350/001350/ 2016

Order dated: 05.12.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Indian Railways Coal & Ash Handling Mazdoor Union, a recognized Union represented by its Secretary namely Shri Joydeb Roy, having its registered office at Santragachi Zonal Committee, Santragachi, District- Howrah, Pin-711111;
2. Joydeb Roy, son of late Keshab Roy, aged about years, residing at Sahebpara, Swadeshpally, Santragachi, District-Howrah, Pin-711111 and contract-labourer-cum-Secretary of Indian Railways Coal & Ash Handling Mazdoor Union.
3. Dilip Mukherjee, son of Late Ramendra Nath Mukherjee, residing at Sultanpur, Jagacha, Santragachi, District-Howrah, Pin-711111 and the member of the Indian Railways Coal & Ash Handling Mazdoor Union.

..... Applicants.

Versus

1. The Union of India Service through the General Manager, South Eastern Railway, 11, Garden Reach Road, Kolkata-700043.
2. The Chief Personnel Officer, South Eastern Railway, 11, Garden Reach Road, Kolkata-700043.



3. The Divisional Railway Manager, Kharagpur Division, South Eastern Railway, Kharagpur, Dist-Paschim Medinipur, Pin-721301.
4. The Loco-Foreman, South Eastern Railway, Santragachi, Post Office-Santragachi, District-Howrah, Pin-711111.

..... Respondents.

For the applicant : Mr. P.C.Das, Counsel

For the respondents : Ms. G.Roy, Mr. K.Sarkar, Counsel

O R D E R (ORAL)

Per: Ms. Bidisha Banerjee, Member (J):

The applicant in this case is a recognized Union, namely Indian Railways Coal and Ash Handling Mazdoor Union, being represented by its Secretary, Sri Joydeb Roy, (Applicant No.2 herein) and one of the members Sri Dilip Mukherjee (Applicant No.3).

2. The Union is espousing the cause of several labourers and has sought to quash the Speaking Order No. SER/P-HQ/CC/1505/Coal & Ash dated 08.02.2016 issued by the General Manager, S.E.Railway; communicated to them by Sr. Divisional Personnel Officer, S.E.Railway, vide O.M. dated 11.02.2016 (Annexure-A/18), and to consider the claim of its members for their absorption/regularization in the light of various Railway Board orders as well as decisions of the Hon'ble Supreme Court and Hon'ble High Court and further to implement the letters issued by the Deputy Chief Labour

Commissioner (Central) Kolkata dated 26.08.2014 and 18.11.2014 under Annexure-A/14 and A/15 respectively.



3. The facts in a nutshell goes thus:

The Union was established in the year 1982 to safeguard the interest of poor contract labourer, handling the job of coal and ash in the South Eastern Railways so that they would not be exploited either by the contractor or by the principal employer. Such labourers have been engaged in Santragachi, Shalimar and Kharagpur Loco Sheds in the Kharagpur Division under S.E.Railways under the control of Loco Foreman, Santragachi and have rendered services since 1984 onwards. Out of such labourers 14 persons have been regularized as in Annexure-A/2 to the O.A. The applicants have claimed that the Identity Cards that were issued to the labourers were by the Railway authorities, which clearly proved that they have performed duties for the Railways.

That, their repeated representations to the Railway authorities since 2004 onwards have failed to yield any response.

While the then Railway Minister as well as the Railway Board have time and again advised the General Managers of Eastern, South Eastern and East Central Railways to give chance to the Coal and Ash Handling Workshop contract labourers to be considered for absorption in relaxation of their age and educational qualification, and that the Board had advised

the General Managers to scrutinize the following documents for the purpose of such absorption vide a letter dated 25.07.2009.



- "a) Identity Cards/Pass issued by the contractor and countersigned by the Railway Supervisor for the period claimed to have worked as Contract Labour.
- b) Copy of Certificate/Affidavit attested by the Notary Public in regard to age proof.
- c) SC/ST certificate if the applicant wants the benefit.
- d) Any proof of working period."

And that, Eastern Railways have conducted similar screening and already absorbed its contractual labourers and, therefore, the members of the present Union, who belong to South Eastern Railways, should not be discriminated against.

4. Per contra, the respondents have submitted that all the applicants were contractual workers under a contractor and Railway administration had no concern with them. They were engaged and terminated by the contractor on closure of Steam Loco Sheds in 1993. They were neither engaged by the Railways nor paid by the Railways on any count. The recommendations of the Railway Board cited by the applicants were not the recommendations for particular applicants and that the applicants have crossed the upper age limit and Loco Shed has been closed in 1993, i.e. almost 24 years back. The speaking orders issued by the respondent, thus, holds good.



Railways have also disputed the genuineness of the identity of the Coal and Ash Handling Workers, who claim that until closing time in 1993 they worked for the Railways. The Respondents, thus, defended the speaking order under challenge in the present O.A.

5. The Ld. Counsels were heard and materials on record were perused.

6. From the records of the present O.A. we decipher the following:

(i) The applicants have annexed certificates issued by the South Eastern Railways, Cooperative Labour Contract Society Ltd. certifying their service as Coal Coolie for loading and unloading work in L.F. under D.M.E./P/Kharagpur, S.E.Railways.

(ii) By an order dated 30.12.2004, the Ministry of Railways directed the General Managers of Eastern, South Eastern and East Central Railways to consider the contract labourers of various Labour Cooperatives engaged in Coal and Ash Handling activities for regular absorption, in special dispensation of educational qualification and after verifying the genuineness and authenticity of each and every claimant.

(iii) On 01.03.2005, the then Railway Minister had given similar advise for their absorption.

(iv) Railway Board further directed the General Manager, S.E.Railways on 28.04.2006 as follows:

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)



No.E (LL) 2004 AT/CNR/ 15

New Delhi, Dt. 28-4-2006

The General Manager (P),
South Eastern Railway,
Garden Reach,
Kolkata.

*Sub: Absorption /regularization of Coal & Ash
Handling Contract Labourers on Indian
Railways.*

Please refer to Board's letter of even number dated 31.8.2004 on the above cited subject wherein Railway had been asked to give one more opportunity to the Coal & Ash Handling Contract Labourers to be considered for absorption/regularization in Railways.

South Eastern Railway is requested to commence the screening process for absorption /regularization of Coal & Ash Handling Contract Labourers in Railways expeditiously as per extant instructions on the subject under intimation to Board.

(B. Majumdar)

Director Establishment(LL)

(v) Further, on 25.07.2007, the General Managers were advised to scrutinize the following documents as indicated therein:

- "a) Identity Cards/Pass issued by the contractor and countersigned by the Railway Supervisor for the period claimed to have worked as Contract Labour.
- b) Copy of Certificate/Affidavit attested by the Notary Public in regard to age proof.
- c) SC/ST certificate if the applicant wants the benefit.
- d) Any proof of working period."

(vi) On 30.04.2010, applicant No.2 represented to the Chief Personnel Officer, S.E.Railways, on behalf of all the contract labourers for absorption or regularization in terms of the aforesaid communications. He

promised to place all relevant papers for perusal and necessary action. Such representations were made time to time.



(vii) Ultimately, in the wake of the decision of Apex Court in W.P. 179/2010, on 26.08.2014 (Annexure-A/14), the General Managers, Eastern Railways as well as S.E.Railways were requested by Labour Commissioner as under:

No. CL/Railway/C4/2014

Dated the 26th August 2014

To

The General Manager, Eastern Railway, 17, Netaji Subhas Road, Fairlie Place, Kolkata - 700 001	The General Manager, South-Eastern Railway 11, Garden Reach Road Kolkata - 700 004
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Subject : Representation of India Railway Coal, Ash and Workshop Handling Mazur Union -
Absorption/ Regularization of the said contract Labourers - Reg.

Dear Sir,

A representation on the above subject has been submitted by the General Secretary, Indian Railways Coal, Ash & workshop Handling Mazdur Union, Kolkata.

The above representation is self explanatory with all relevant enclosures. The matter has been found long pending since 1997. Meanwhile an initiative has also been taken by the Ministry of Railways vide letter dated 08.11.2005 after the order of the Hon'ble Supreme Court in C.W. Appeal No. 1358 dated 27.08.2004. In this context it has been ascertained that only a part of affected number of workers have been regularized and engaged as parcel porters but the implementation of the above order is still not accomplished in case of several other labourers. But the order of the Hon'ble Supreme Court passed in W.P. No. 179 of 2010 has given specific mandate to the Railways to "pass appropriate orders, in accordance with law, within a period of four months" on 13.11.2013 (Copy enclosed):

On the backdrop as above said, you are, therefore, requested to take necessary action as per the orders of the Apex Court and also Ministry of Railways, under intimation to the undersigned.

Yours faithfully

(Rajan Verma)
Deputy Chief Labour Commissioner (Central)
Kolkata



(viii) Thereafter, the contractual labourers demanded justice through a lawyer's notice dated 10.03.2014 and prayed for consideration on the basis of the following documents:

"(i) I/Card issued by Contractor in his name and Trade in terms of Board's direction vide No. E(LL)/2005/AT/CNR/16 dated 29.8.2006.
 (ii) Age proof-School Certificate or affidavit.
 (iii) Working Certificate issued by Contractor.
 (iv) Medical Fitness as per Railway Rules.
 (v) Educational Qualification-Read & Write as already relaxed.
 (vi) Relaxation of the upper age limit will be up to the age of superannuation as per order of the Apex Court."

Yet, their case was rejected vide Speaking Order.

7. At hearing, Ld. Counsel for the respondents vehemently opposed the claim of the applicants on the ground that in this second journey of these applicants to this Tribunal, they have assailed the speaking order issued pursuant to the direction in O.A. No. 1505/2015 whereby and whereunder their claim has already been turned down by the CPO, S.E.Railway, having said as follows:

"All the loco sheds were closed by 1993 and proper records of contract labour available in the division do not exist at this point of time, as the preservation period for records is already over. The usual method of establishing a claim is by matching LTI/Signature with that available paid vouchers which is not possible now in respect of contract labourers. Even the identity of the claimants cannot be established. On the other hand Railway Board again and again have emphasized on the need to verify the genuineness and authenticity of each and every claim of the claimant. Moreover, after closure of steam loco shed there is no quantum of work available for the contract labours which was also an essential criteria for absorption in terms of Bd.'s guidelines dated 31.08.2004."

8. Having delved into the materials on record, we are of the considered opinion that since the Railway Board has permitted

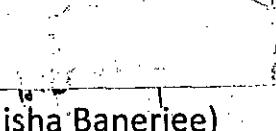


consideration on the basis of "Identity Card/Pass issued by the Contractors countersigned by the Railway Supervisor, Age Proof, SC/ST Certificate and any proof of working period", as enumerated supra, and such documents have been submitted by the members of the Union but the respondents have refused to verify the genuineness and authenticity of such documents due to absence of records, for the ends of justice the applicants and the members of the Union ought to be directed to once again furnish all the documents in terms of Board's order dated 25.07.2007 within two months from the date of receipt of a copy of this order along with a comprehensive representation. Upon receipt of such documents and representation, the Railways would ascertain the genuineness of such documents from the Contractors or from any other source as the Eastern Railway authorities have done, and thereafter issue appropriate orders in amelioration of their grievance in regard to violation of Board's order, policy of the Railways and the discrimination meted out to them vis-à-vis labourers of Eastern Railways and, most importantly, the violation of the decision of the Hon'ble Apex Court.

9. Appropriate orders shall be issued within two months thereafter.

10. The O.A., accordingly, stands disposed of. No costs.


(Nandita Chatterjee)
Member (A)


(Bidisha Banerjee)
Member (J)

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