

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri S.R.Adige, Vice-Chairman (A)
Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.2537/99

New Delhi, this the 1st day of April, 2002

1. Shri R.K.Mishra
s/o Shri Ram Naresh Mishra
New Colony
Near Adarsh Public School
Fazal Pur
Meerut Cantt.250 001.
2. Shri Purshottam Lal
s/o Shri Daya Chand
House No.24, Mohalla Sidharth Nagar
Golabeech Dohata Road
P/O Anoop Nagar
Fazal Pur
Meerut City - 250 002.
3. Shri N.K.Sharma
s/o Shri Y.K.Sharma
1020, Baghpat Road
Meerut City - 250 002. Applicants

(By Advocate: Shri P.S.Mahendru)

Vs.

1. Union of India through
the Chairman
Railway Board
Rail Bhawan
New Delhi.
2. The General Manager
Northern Railway
Baroda House
New Delhi.
3. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi. Respondents

(By Advocate: Shri Anju Bhushan)

O R D E R

By Shanker Raju, Member (J):

MA 2571/99 for joining together is allowed.

2. Applicants, who had been working as
Booking Clerks as well as Parcel Clerks in Railway
City Booking Agency at Meerut, have sought their

absorption in Northern Railway and regularisation with all consequential benefits to them as is being extended to their counterparts working at Railway Stations.

3. Respondents have opened City Booking Agencies for issue of Railway Tickets and Booking of Parcels. The applicants have been appointed by the respondents after approval has been accorded by the competent authority. They have been working under the railway administration.

4. It is contended by the learned counsel for the applicants that despite the discharge of work of permanent and perennial nature by the applicants and they were working under direct control and supervision of the railway officials and are also being paid by the railways for rendering their services, they are being treated as direct labour. By referring to the decision of the Court in Secretary, HSEB Vs. Suresh and Others, 1999 SCC (L&S) 765, it is contended that they have employer and employee relationship and the contract is only a sham. In fact, they are working with the respondents and performing the duties and functions as performed by their counterparts at Railway Stations.

5. By quoting the example of Parcel Porters and Mobile Booking Clerks, who have been regularised in pursuance of the directions of the Apex Court, it is contended that as per the provisions of Section 182 of the Contract through working and performing duties of permanent nature and controlled by railway

26

officials, they are not contract labour but employees of the Railways and as such they cannot be deprived of the status and other benefits attached to them, which would be violative of Articles 14 and 16 of the Constitution of India.

6. On the other hand, the learned counsel for the respondents took a preliminary objection regarding jurisdiction of this Court by stating that there exists no relationship of master and servant between the applicants and the respondents. The applicants are working with private contractors as City Booking Agents on agreement with the respondents and as such this Court has no jurisdiction to deal with the grievance of persons working under the private contractors/contract labour.

7. It is further stated that City Booking Agents are neither supervised nor ^{by} managed by the respondents, rather they are allotted to private contractors for operation. However, watch has been kept on the working of the Contractors through institutions. In order to operate the agency the contractor has executed an agreement and deposited the requisite security. None of the staff of such agencies is appointed by the Railways but to avoid any undesirable element to be engaged by the Contractor, former approval of the staff is done by the officials of the respondents. In case of termination of services of the employees engaged by the Contractor, no prior approval is required. Contractor has to satisfy with the working of the employee and if he is not satisfied, he is competent to terminate their

services without any intimation to the respondents. Applicants are not countable to the respondents for their acts of omission or commission and in that event Contractor is liable, who is responsible for the working of the agency. The work of agencies is not of perennial nature. In a nutshell, there is no relationship of master and servant between the applicants and the respondents. No selection has been held by the respondents and no rules and regulations have been followed while the applicants were appointed by the Contractor. Lastly, it is contended that by way of this OA, the applicants seek to make backdoor entry. As regards the case of Parcel Porter, it is contended that the same has no application in the facts and circumstances of the present case.

8. We have carefully considered the rival contentions of the parties and perused the material on record. The Constitutional Bench of the Apex Court in Steel Authority of India Ltd. & Others Vs. National Union Waterfront Workers and Others, 2001(7) SCC 1 has held as follows:

"126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

9. It was further held that if the industrial adjudicator comes to the finding that the Contract is not genuine but mere camouflage only then the contract

labour would be treated as employees of the principal employer, who shall be directed to regularise their services.

10. However, if one has regard to the aforesaid ruling, we find that the respondents have allotted the agencies to private contractors for operating and for this an agreement was executed and requisite security was deposited. The respondents have no control in case contractor terminated the services of the applicants engaged by him. The approval given to the list as presented by the Contractor to engage workers ^hand ^hto ensure that no undesirable element is introduced ^hin the working of Contractor. No doubt ^hbut there is no control over the working of the Contractor, ^hand ^hfurther the work is also not perennial in nature. In the event, any shortcoming is found in the working of the applicants, it is only the Contractor who is responsible to take action against them since the respondents are not paying directly or indirectly salary to the employees of the Contractor and this is a matter to be settled between the agent and his employees.

11. After going through all the relevant factors and material produced before us, we are of the considered view that contract is not a sham or camouflage. The applicants are working under the Contractor and have no master and servant relationship with the respondents.

12. In this view of the matter, as this Court has no jurisdiction, in case of grievance of a contract labour or contract the remedy lies in the proper forum as ruled by the Apex Court (supra). Hence, the present OA is dismissed for want of jurisdiction. No order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

S.R. Adige

(S.R. ADIGE)
VICE-CHAIRMAN(A)

/RAO/