

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No. 2636/1999

Date of decision: 21.12.2001

Bhagwan Das & 24 Others ... Applicant

(By Advocate: Shri B.S. Mainee)

Applicant

versus

Union of India & Others .. . Respondents

(By Advocates: Shri P.M.Ahlawat) Advocate)

CORAM:

The Hon'ble Shri M.P. Singh, Member(A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?

(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2636/1999

New Delhi, this 21st day of December, 2001

Hon'ble Shri M.P. Singh, Member(A)

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Bhagwan Das &
24 Others as per details given in
Memo of Parties to the OA, all
working as Parcel Porters in Delhi
Railway Station .. Applicants

(By Shri B.S. Maine, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Railways
Railway Bhavan, New Delhi
2. General Manager
Northern Railway
Baroda House, New Delhi
Northern Railway, Delhi
3. Divisional Railway Manager
Northern Railway, New Delhi
4. Chandra Mohan
PP-81, Pitampura, New Delhi
5. Phool Kumar Singh
C-6/369, Yamuna Vihar, Delhi
6. Ashok Baugh
A-28/8A, Paschim Vihar, New Delhi
7. Bharat Bhushan
A-3/32D, Paschim Vihar, New Delhi
8. Radhey Shyam
336, Turab Nagar, Ghaziabad .. Respondents

(By Shri P.M. Ahlawat, Advocate)

ORDER

Applicants, 25 in number, who are working as contract
Parcel Porters in the Delhi Railway Station for the last
4-7 years, are seeking a direction to the respondents to
regularise their services as Railway Servants in
pursuance of the judgement dated 10.9.1998 in OA
331/1998 and the Supreme Court judgements in the case of
Raghavendra Gumastha (WP No.277/1988) dated on 15.4.1991
and also in WP Nos.507/92, 415/92, 82/93 and 838/92 in
the case of National Federation of Railway Porters,
vendors & Bearers Vs. UOI & Ors. 1995(2) SLJ 709.

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2. Respondents have opposed the OA on the ground that the applicants are labourers of forwarding and clearing agencies of private parties (Respondents No.5 to 8) and the OA is not maintble u/s 14 of AT Act, 1985. 24

3. Heard the learned counsel for the rival contesting parties and perused the records. During the course of the arguments, the learned counsel for the respondents has also brought to my attention the judgement of the Constitutional Bench of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd. & Ors. Vs. National Union Water Front Workers & Ors. etc. JT 2001(7) SC 268. In this case, the Supreme Court has held as under:

"Neither Section 10 of the CLRA Act nor any other provision in the Act whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Sub-Section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

We over-rule the judgement of this Court in Air India's case (JT 1996(11) SC 109) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following judgement in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgement in cases where such a direction has been given effect to and it has become final.

4. While delivering the aforesaid judgement, the Constitutional Bench of the Supreme Court has also observed as under:

"If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned

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establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications..." 35

The apex court has further held that:

"If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

5. In the present OA, the applicants are only seeking regularisation of their services. It is not the case of the applicants that respondents intend to employ regular workmen and therefore the applicants (contract labours) should be considered by giving them preference, if necessary, by relaxing the condition of age etc., nor that the contract has been found to be a mere camouflage.

6. Having regard to the aforesaid judgement of the apex court which is binding on us, I have no hesitation to hold that the present OA is not maintainable and deserves to be dismissed. I do so accordingly. No costs.


(M.P. Singh)
Member(A)

/gtv/