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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

D. A. No. 447/98

M. A. 453/98

New Delhi: Dated: this the 26th day of November, 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

1. Mukesh s/o Shri Babu Lal,
2. Dinesh Kumar S/o Shri Nanak Ram,
3. Raj Kumar S/o Sh. Suraj Bhan.
4. Jitender Kumar S/o Sh. B. R. Sharma,
5. Ramesh Kumar S/o Shri Das Raj,
6. Kishan Lal S/o Sh. Madu Ram,
7. Vishnu Dutt S/o Shri Jagan Nath Sharma,
8. Jagdish S/o Sh. Ram Swaroop,
9. Mahabir Singh S/o Sh. Mangtu Ram,
10. Raj Kumar S/o Sh. Jya Swami,
11. Mange Ram S/o Sh. Mohar Singh,
12. Nanak Ram S/o Sh. Gopi Ram,
13. Bhagwan Dass S/o Gopi Ram,
14. Shyam Sunder S/o Shri Ram Avatar,
15. Jangu Ram S/o Sh. Dupal,
16. Guru Sewak Singh S/o Sh. Dilwara Singh,
17. Suresh S/o Sh. Sita Ram,
18. Umed S/o Sh. Ram Partap,

All are working as Parcel Porter on contract basis at various stations of Northern Railway and their service particulars and addresses are in Annexure-A/1.

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India
through
the Secretary,
Ministry of Railway,
Rail Bhawan,
New Delhi.
 2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
 3. The DRM,
Northern Railway,
Bikaner Division,
Bikaner (Raj)
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8

4. The Secretary,
Parcel Porters Society,
C/o The Chief Parcel Supdt.,
Northern Railway Station,
Rewari (Haryana). Respondents.

(By Advocate: Shri P.S. Mahendru)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicants seek the benefit of Hon'ble Supreme Court's direction contained in judgment dated 15.4.91 in W.P. No. 277/88 and judgment dated 9.5.95 in W.P. No. 507/92 and seek regularisation as Northern Railway Employees.

2. Applicants are Parcel Porters working at Northern Railway Stations in Bikaner Division of Northern Railway. They contend that they have been working as such continuously, some of them for over 10⁷ years (Annexure-A/1) but respondents are treating them sometimes as Contract Labourers and sometimes, when the contract period of respondent No. 4 expires, they are being ^{paid} by the Railways directly.

3. Respondents in their reply deny that applicants are working at the railway stations under the direct control and supervision of railway officers or that they are paid by railways. Respondents contend that applicants are purely contract labourers, engaged by a Cooperative Society.

4. I have heard applicants' counsel Shri Yogesh Sharma and respondents' counsel Shri Mahendru.

5. The main argument advanced by Shri Mahendru is that the Tribunal has no jurisdiction to entertain this OA as it is a matter involving contract labour which is covered under section 10 Contract Labour

9

(Regulation & Abolition) Act, 1970. He places reliance on Hon'ble Supreme Court's judgment dated 8.4.97 in CA No.1358/86 B.N.Saha & Ors. Vs. UOI & Ors., wherein it had been held

"The CAT has correctly held that it has no jurisdiction to entertain the application filed on behalf of a Railway Contractor's labour since the contractor's labour cannot be considered as employed by the State....."

He states that applicants should pursue their remedies elsewhere.

6. However, Shri Sharma has drawn my attention to the Hon'ble Supreme Court's judgment dated 29.4.98 in UOI Vs. S.Mukharjee & Ors. 1998(2)SC SLJ 17, in which after noticing Biswanath Saha's case (supra) the Hon'ble Supreme Court has upheld the order of the CAT Calcutta Bench in OA No.1045/95 directing the authorities to absorb those persons as regular Group 'D' employees, or such of them who would be required to do the work which was available on perennial basis, if they were found fit etc. The Hon'ble Supreme Court delivered the aforesaid judgment in the particular facts and circumstances of the case, after noticing that in the case before them, unlike in Biswanath's case (supra) the work was of a perennial nature; there was already a society of which those persons happened to be members, and furthermore the order in Biswanath Saha's case (Supra) was a consent order. While delivering the aforesaid judgment in S.Mukharjee's case (supra), the Hon'ble Supreme Court left the question of law open.

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7. In the present case before me also, respondents have not expressly denied that applicants are working continuously as per details at Annexure A/1, from which it is reasonable to assume that the work is of a permanent nature, and respondents themselves admit that applicants are engaged by a cooperative Society. Furthermore the Hon'ble Supreme Court after noticing its order in Bishwanath Shaha's case (supra) has left open the question of law, as to whether CAT has jurisdiction in such matters. Moreover, the Hon'ble Supreme Court in its judgment dated 1.10.97 in CA No. 6953/97 *Rashtriya Chaturth Shreni Railway Mazdoor Congress (INTUC) Vs. UOI & Ors.* has set aside the CAT Allahabad Bench's order dated 8.1.96 in OA No. 1361/95 declining to entertain the OA on the ground that the Union had an alternative remedy before it. It directed the Tribunal to decide the issue itself on merits in the light of the principles laid down by them in the judgment in *National Federation of Railway Porters, Vendors and Bearers Vs. UOI & Ors.* 1995 (Supple) 3 SCC 152.

8. In the light of the foregoing, the objections on ground of jurisdiction raised by Shri Mahendru are rejected. This OA is disposed of with a direction to respondents to consider the applicants' claims in the light of the judgments, referred to by them in para 1 above to the extent that the same are applicable to the ^{facts and circumstances of the present case} ~~applicants~~ and pass a detailed, speaking and reasoned order thereon in accordance with law within

three months from the date of receipt of a copy of
this order, under intimation to applicants. No costs.

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

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