

10
56
CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 1156/1997
with OA 2729/1997

New Delhi, this the 6th day of April, 2004

Hon'ble Sh. Shanker Raju, Member (J)

OA 1156/1997

1. Northern Railway Steam Loco
Contract Workers Federation
through its Secretary
Pritam, S/o Ram Bharose Lal
having its office at Judge Saheb
Hatye, Subhash Nagar, Bareilly, UP.

2. Abdul Jabbar
C/o Bharat Ram
Tea Stall, Platform No.1
Bareilly Railway Station
Bareilly, UP.

3. Abdul Rahman
S/o Chuttan
Malgodam, Bareilly Junction
Bareilly, UP.

...Applicants

(By Advocate Sh. D.K.Garg)

V E R S U S

Union of India through

1. The Secretary
Ministry of Railways
Rail Bhawan, New Delhi.

2. Chairman
Railway Board
Rail Bhawan, New Delhi.

3. General Manager
Northern Railway
Baroda House, New Delhi.

...Respondents

(By Advocate Sh. Rajender Khatter)

OA 2729/1997

1. Steam Loco Contract Workers Association
through its Secretary
Mukesh Chand
S/o Sh. Niranjana Lal
R/o Railway Station Road
Hapur, Distt. Ghaziabad, UP.

2. Dilip Kumar
S/o Sh. Bhagwan Das

3. Shri Krishna
S/o Sh. Ram Chandra Agrawal

Sl. No.2 & 3 R/o near Railway
Station, Hapur, Distt. Ghaziabad, UP.

...Applicants

V E R S U S

Union of India : through

1. The Secretary
Ministry of Railways
Rail Bhawan, New Delhi.
 2. Chairman, Railway Board
Rail Bhawan, New Delhi.
 3. General Manager
Northern Railway
Baroda House, New Delhi.
 4. Hapur Sahkari Shram Samvida Samiti Ltd. Hapur
R/o near Railway Station Khurja-Hapur
having its registration No.2513/9-4-73
through its Secretary
Jai Kishan, S/o Sh. Jagan Nath
Collector Ganj, Hapur, Distt. Ghaziabad, UP.
...Respondents
- (By Advocate Sh. Rajender Khatter)

O R D E R (ORAL)

Shri Shanker Raju,

As both the OAs involve identical questions of facts and law are being disposed of by this common order.

2. Applicants who are Parcel Porters seek regularisation.

3. In the light of decision of the Supreme Court in WP (C) No.433 of 1998 **A.I.Railway Parcel & Goods Porters Union v. UOI & Ors.** decided on 22-8-2003. The following observations have been made :-

"We have carefully examined the report of the Assistant Labour Commissioner, the findings recorded therein and the counter affidavits, reply affidavits and rejoinder filed by the respective parties. The facts disclosed in the report and the findings recorded in regard to the perennial nature of work cannot be overruled. Though we have heard at length both the parties, the learned Additional Solicitor General appearing for the Railway Administration was not able to point out to us any valid reason as to why the present writ petitions should not be allowed in terms of the

order dated 15-4-91 made by this Court in similar Writ Petition No.277 of 1988 particularly when in the matter of absorption of contract labour by a public undertaking on a permanent regular basis. We feel, therefore, it is just and appropriate to issue the following directions to the respondent Union of India and the Railway Administration Units:

1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and the railway administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six months from the date of receipt of this judgment.

2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, the Railway Administration should absorb them permanently and regularize their services. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are not found medically fit/unsuitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by the Railway Administration as Railway Parcel Porters does not disable the Railway Administration from utilizing their services for any other manual work of the Railways depending upon its needs.

6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period of work.

7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work

done by them in the railway stations. The report shall be finalized and submitted after discussions and deliberations with the railway administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

8. While absorbing them as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continuous employment.

9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the railway administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the railway administration for premature termination of their contracts in respect of the contract labourers.

10. The railway administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment.

11. This judgment does not relate to the persons who have already been absorbed.

4. In view of above, Id. counsel for the applicant Sh. D.K.Garg contends that in so far objections to the financial constraint is concerned, the same has been repelled by the Apex Court in the aforesaid decision.

5. On the other hand, Sh. Rajender Khatter states that a letter dated 15-11-85 of Railway Board where on the subject of Award of Goods/Parcel Handling Contracts to Cooperative Labour Contract Societies - revision of rates during the currency of the contracts clearly stipulates that in case there is increase or decrease in the minimum fair which is notified by the local authority during the currency of the contractual period of any Labour Co-operative Society may be adjusted accordingly. This is a ground on which the Scheme is contested by the counsel for the respondents. According to him, the aforesaid letter could not be produced before the Apex Court which would have otherwise effected the results.

6. Accordingly, on consideration of the rival contentions and in view of the decision of the Apex Court where the issue has attained finality, whether this letter has been tendered or not, the same could have been agitated by way of review which they have failed to file this contention cannot be countenanced.

7. In the light of decision of the Apex Court, which is a binding precedent under Article 141 of the Constitution of India, respondents are directed to get an enquiry conducted through the Asstt. Labour Commissioner, Central Lucknow. Applicants are at liberty to lodge their claims for the purpose of scrutinising of the records before the Asstt. Labour Commissioner, Central Lucknow and in the light of the aforesaid enquiry, respondents are directed to consider the claim of the applicants.

8. OA stands disposed of accordingly. Depttl. records are returned.

9. Let a copy of this OA along with the copy of this order be sent to the Asstt. Labour Commissioner, Central Lucknow for information.

S. Raju
(Shanker Raju)
Member (J)

/vikas/