

FORM NO. 2
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Report on the Scrutiny of Application

SB/DB

883

Presented by: Surat Singh and Mr. Anita Date of Presentation: 11-5-2011
Applicant(s): Shabbu and others Group: Casual laborer
Respondent(s): Union of India
Nature of grievance: Regular
No. of Applicants: One No. of Respondents: 4

Subject: Regular 28 Department: Railway CLASSIFICATION: 3 If S.B.

1. Is the application is in the proper form? (PROFORMA/COMPILATION)
(three complete sets in paper book form in two compilations).
2. Whether name, description and address of all the parties been furnished in the cause title? Yes
3. (a) Had the application been duly signed and verified? (SIGNED/VERIFIED)
(b) Have the copies been duly signed? Yes
(c) Have sufficient number of copies of the application been filed? Yes
4. Whether all the necessary parties are impleaded? Yes
5. Whether English translation of documents in a language other than English or Hindi been filed? Yes
6. (a) Is the application in time? (See Section 21) Yes
(b) Is MA for condonation of delay filed? Yes
7. Has the Vakalatnama/Memo of appearance/00 authorisation been filed? Yes
8. Is the application maintainable? (u/s 2,14,18 or U/R 6 etc.)
u/s 2, u/s 14, u/s 18
U/R 6, PT u/s, 25 file
9. Is the application accompanied by IPO/DD. for Rs.50/-? Yes
10. Has the impugned orders original/duly attested legible copy been filed? LEGIBLE/ATTESTED
11. Have legible copies of the annexure duly attested been filed? LEGIBLE/ATTESTED

CA 867/100039 ✓
MA 11207 ✓
12. Has the index of documents been filed and pagination done properly?

FILED/PAGINATION

13. Has the applicant exhausted all available remedies? *Ys*

14. Have the declaration as required by item 7 of Form-I been made? *Ys*

15. Have required number of envelopes (file size) bearing full address of the respondents been filed? *Ys*

16. (a) Whether the reliefs sought for, arise out of single cause of action? *Ys*

(b) Whether any interim relief is prayed for? *Ys*

17. In case an MA for condonation of delay is filed, is it supported by an affidavit of applicant? *MA*

18. Whether this case can be heard by Single Bench? *Ys*

19. Any other point?

20. Result of the scrutiny with initial of the Scrutiny Clerk.

The application is in order and may be registered and listed before the Court for admission/orders on;

- (a) MA for joining - U/R (5)(a)/4(5)(b)
- (b) MA U/R 6 of CAT Procedure Rules, 1987
- (c) PT u/s 25 under At ACT
- (d) MA for condonation of Delay: *12/5/20*

OR

The application has not been found in order in respect at item No(s) mentioned below;

- (a) Item Nos.
- (b) Application is not on prescribed size of paper.
- (c) MA U/R 4(5)(a)/4(5)(b) has not been filed.
- (d) Application/counsel has not signed each page of the application/documents.
- (e) MA U/R 6 has not been filed.

The application might be returned to the applicant for rectification of the defects within 7 days.

SCRUTINY CLERK

SECTION OFFICER

JOINT REGISTRAR

COURT NO. *83*

DATE *15/5/20*

145

In the Central Administrative Tribunal,

Principal Bench, New Delhi.

O.A. No. 887 of 2000.

IN THE MATTER OF :-

1. Jabbar and 21 others

... Applicants

v/s.

1. Union of India and Others

... Respondents.

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6. Vakalatnama. - 50.

NEW DELHI.

Dated: 9.5.2000

By: [Signature]

For: [Signature]

Filed: [Signature]

11 MAY 2000

Registrar/Dy. Registrar

Office No. 110001

883

FILED BY:

(SURAT SINGH & MS. ANITA)

Advocates.

Ch.No. 216, Patiala House Courts,

New Delhi-110001.

in the Central Administrative Tribunal Principal Bench :
NEW DELHI

O.A. NO. 867 of 2000

IN THE MATTER OF :

1. Jhabbu S/o Sh. Kewal Ram
2. Sumer S/o Sh. Sohan Lal
3. Narender Singh S/o Sh. Ram Singh
4. Munish S/o Murari Lal
5. Ajay S/o Sh. Ram Vir
6. Pankaj S/o Jagdish
7. Mohan Lal S/o Sohan Lal
8. Prasun S/o Jagdish
9. Vishnu S/o Ram Baksh
10. Hari Singh S/o Bhanwar Singh
11. Dalip S/o Mahesh
12. Raju S/o Ravinder
13. Satyender S/o Vidya Shanker
14. Shashi Ranjan S/o Narender
15. Jitender S/o Om Parkash
16. Lalit S/o Jai Dev
17. Maniraj S/o Shivraj
18. Mukesh S/o Sh. R.N. Kaushik
19. Vijay Kumar S/o Sh. Prabhati Lal
20. Krishan Dev S/o Makhan Yadav
21. Harivansh Yadav S/o Batan Kunwar Yadav

contd.....2



22. Shitla prasad S/o Ram Shanker Tiwari

All worked in Northern Railway zone III,

(Parcel Handling) Bikaner Divn. Palam
Cantt, Sarai)

and All residents of Labour Jhuggi,

Near Ganda Nala, Railway Yard,

Delhi Sarai Rohila., Delhi.

.... Applicants

V e r s u s

1. Union of India through

The Seceretary,

Ministry of Railway, Rail

Bhawan, New Delhi.

2. The General Manager,

Northern Railway, Baroda House,

New Delhi.

3. The Divisional Railway Manager,

Northern railway,

Division Bikaner.

4. M/s. Shri Ganesh Govt. Contracts & Rural Works

Prop. Prem Prabhakar, V-D-10, Hudco Qrs.

Jai Narain Vyas Colony, Bikaner, (Raj.)

.... Respondents

DETAILS OF THE APPLICATION :

1. PARTICULARS OF THE ORDER/ACTION AGAINST WHICH
APPLICATION IS MADE.

This application is being made against the action

of respondent No.1 & 2 by which the applicants have been illegally, arbitrary and discriminately denied of their right to be treated as regular employees of Northern Railway though similarly situated persons working at different Railway Stations of Northern Railway as well as other Railways discharging the same and similar duties as parcel porters, having been treated as employees of the Railways and the contract labour system which was earlier existing in all the railway stations for the loading and unloading of parcels has been abolished, in compliance of the Hon'ble Supreme Court Judgements (Annexure A/). But the benefit of Hon'ble Supreme Court judgements has not been granted to the applicants. Hence this O.A.

2. Jurisdiction of the Tribunal :

That the union of parcel porters having its registered office at 7, Jantar Mantar Road, New Delhi and the respondents 1 & 2 who are the main respondents and are bound to extend the benefits granted to the colleagues of the petitioners by the Hon'ble Supreme Court of India by way of passing various orders from time to time, are also having their offices at New Delhi. Since the respondents have not taken any steps so far for extending the benefits of the law declared by the Hon'ble Supreme Court of India in the case filed by the colleagues

of the petitioners, the cause of action has arisen at New Delhi. ~~the representations made by the~~

3. Limitation :

That the applicants further declare that the application is within the period of limitation as prescribed under Section 21 of the A.T. Act, 1985. The representations made by the applicants are still pending.

4. Facts of the case:

The facts of the case are as under :-

4.1 That the applicants are parcel porters and are working at Northern Railway Stations in Bikaner Division under the control and supervision of Railway authorities of Northern Railway. The details of the particulars of the applicants are annexed as Annex. 'A'.

4.2 That it is relevant to submit here that as per the directions of the Hon'ble Supreme Court of India in the cases filed by the colleagues of the applicants similarly situated, they are entitled to be treated as the employees of the Indian Railways (Northern Railway). The applicants are being treated as contract labours as they have been engaged for the loading and unloading of parcel goods through the contractor-societies. It is submitted that



some times these applicants are treated as contract labourers and some times when the contract period of the respondents (No.4) expires, the applicants are treated as Railway Employees and they are being paid by the Railways directly. It is also relevant to submit here that in almost all the railway stations except a few railway stations, the contract system in " parcel handling work has been abolished and all the parcel porters who are earlier treated as contract labourers have been treated as employees of the Railways.


- 4.3 That it is submitted that the petitioners are engaged in the work of loading and unloading the luggage, parcels and goods from the railway vans and wagons and carrying the luggage and parcels to the railway vans and wagons from the parcel booking offices and goods shed at different railway stations in Northern Railway. Parcel packages and heavy luggage and goods assigned to the Railways by their customers for transportation are booked by the Railways and the railway administration requires porters to lift and carry such luggage from the parcel and luggage booking offices and goods sheds to the platforms and to load such luggage in the luggage vans and wagon attached to various outgoing trains and to unload such luggage parcel and goods from the incoming trains and to shift the luggage and

parcels from the platform to the other platform of the station and the goods sheds.


4.4 That it is submitted that the facts that the petitioners/applicants are discharging the work of permanent and perennial nature and it is very essential for the Railway to continue its activities, which are clear from the following paras : -


- (a) One of the main activities of the railway is to transport parcels, luggage and heavy luggage/goods at from one station to another station. Every year thousands of lakhs of tonnes of parcels, luggage and goods assigned to the Railway are transported from one station to another all over India. In such circumstances, several thousands workers are required to load and unload the luggage parcels and goods from railway vans and to carry the same from one platform to another and from goods sheds to wagons and vice versa.
- (b) The applicants have been engaged as parcel porters since a long period and as such they are permanently required by the railways.
- (c) The Northern Railway and other railways are earning exorbitant income to the tune of Rs.17,000/- crores per annum by transporting goods from one Railway station to another and to continue their activity, the Railways require sufficient number of able-bodied

porters at almost all the railway stations. The Railway have their permanent offices ~~for~~ for booking the parcels/luggage/ goods and for the delivery of the parcels/luggage/goods at these stations.

- (d) The petitioners have been working for the Railways at the aforesaid railway stations under the direct control and supervision of the respective regional railway officials for carrying the parcels/goods luggage from one platform to another and from booking office to the railway vans and from goods sheds to wagons and back. Necessary instruments as well as trollies/hand carts, weighing, bridge etc. are to be provided by the Railways.
- (e) The contract forms which are signed by the petitioners are provided by the Railway Administration. In the forms it has been specifically stated that the Railway is the Principal Employer.
- (f) The petitioners have been continuously working as parcel Porters for the last 20 years or so. The main functions of the Petitioners as Parcel porters are to load and unload parcels/goods from one compartment to another compartment and from one platform to another platform. The parcels/goods which are booked by the passengers and other persons to be sent to other destinations are loaded in the compartment by the petitioners and the parcels/goods which are
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received by the Northern Railway, North-Eastern Railway and Eastern Railway at their different railway stations are unloaded from the goods / passenger train compartments by the petitioners and thereafter these parcels/goods are shifted from the platforms to the delivery office. Thus, the petitioners are discharging the permanent work for the benefit of these three Railways. The loading and unloading of the parcels/goods from one compartment to another compartment and the shifting of goods/ parcels/luggage from one platform to another platform and thereafter to the delivery office, is definitely a work of permanent nature.


- (g) All the facilities to enable the petitioners to discharge their duties as porters are to be provided by the Railways. The Railways have to provide big and small trollies to carry the parcels from one place to another place. In discharging the duties if some accident takes place, then the Railway has to provide medical facilities to the petitioners. The bronze badges which are being fixed by porters on their arms are also to be provided by the Railway Administration. During the time of loading, unloading and shifting of the goods parcels and packets, if some parcels are misplaced, it is the Railway who has to pay compensation to the owners of the parcels/goods.
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- (h) That the petitioners have to discharge their loading and unloading and shifting duties under the strict supervision of Railway authorities. The Railway has appointed several supervisors and parcel clerks to check the work of the petitioners. All the parcels/packets and the goods are shifted, loaded and unloaded by the petitioners under the supervision of Railway supervisors/parcel Clerks and a list of such parcel/goods are prepared by the Railway Parcel Clerks.
- (i) That the conduct and duties of the petitioners are being controlled by the Railway authorities and if the authorities are displeased with any of the parcel porters, then the Railway authorities punish such parcel porters and turn him out of the Railway stations and do not issue entrance passes as well as badges to such parcel porters.
- (j) That the work of loading/unloading and shifting of parcels from one railway compartment to another compartment belongs to the Railways. The platforms and railway compartments where the work is being carried out by the petitioners belong to Railway and the service charges for transporting the parcels/goods are received by the Railway authorities from the contractors and from the other persons. The petitioners render services to enable the Railways to carry on its business of
- 

of transportation of goods. The economic control over the petitioners and their continued employment depends upon the Railway. If the Railway for any reason shuts off the petitioners, the petitioners are virtually laid off. For example, if the regular employees of the Railways go on strike for one reason or the other, the petitioners cannot discharge their duties as not only they will not receive parcels from different stations/ cities but also they will not be asked to send parcels/goods to other railway stations.

(k) That the livelihood of the petitioners substantially and fully depend upon the labour rendered by them to produce services for the benefit and satisfaction of the railways. ~~and, therefore, the interest of~~

4.5 That the instant application is being filed by the applicants seeking the same relief which has been granted by the Hon'ble Supreme Court to the colleagues (similarly situated persons) of the petitioners similarly discharging the same and similar duties in similar circumstances. In the case entitled "Raghvendra Sumashta versus Union of India & Ors. decided on April 15, 1991 and there are in a bunch of writ petitions No. 507/92, 415/92, 838/92 and 82/93 titled "National Federation of Railway Porters, Vendors and Bearers Vs. Union of India & Ors. decided on 9.5.95 and said judgement was



reported in JT 1995(4), SC588. Copies of the judgements are annexed as Annex. A/2 to A/4.

4.6 That it is relevant to submit here that several writ petitions No. 588/95 , 711/95 28/96 and 78 /96 filed by similarly situated persons are pending disposal before the Hon'ble Supreme Court of India where in the Hon'ble Supreme Court vide order dated 5.2.96, was pleased to direct the respondents to make an enquiry regarding the service of the applicants/petitioners in those writ petitions and also directed to regularise services of the petitioners in the aforesaid writ petitions, if they are found eligible. X
(Annexure A/4).

4.7 That inspite of the repeated representations made by the petitioners to the respondents No.1 & 2 for extending the same relief which has been granted by the Hon'ble Supreme Court to the similarly situated persons of the applicants, however, no action has been taken by the respondent for granting the same relief to the applicants, as a result of which the petitioner are still working as contract labour under various contractors/labour contract societies while the similarly situated persons of the applicants on the same situations who had approached the

Hon'ble Supreme Court have been made regular employees of the Railways.

- 4.8 That the whole action of the respondents not granted the benefits of the Hon'ble Supreme Court judgement to the applicants is illegal, unjust, arbitrary, violated Art. 14 and 16 of the constitution of India, violation of the Hon'ble Supreme Court judgement/directions and, therefore, the applicants are also entitled for the same relief which has been granted to the similarly situated persons by the Hon'ble Supreme Court on the following grounds. The copies of the Hon'ble Supreme Court judgements and directions are annexed as Annexure A/2 to A/7 of this application.


G R O U N D S

In view of the facts stated above the claim of the applicants is based on the following grounds :-

- a) BECAUSE, the respondents No.1 to 3, ought to have extended the benefit of law declared by the Hon'ble Supreme Court in the case of the colleagues of the petitioners similarly situated as envisaged under Article 141 and 142 of the constitution of India.

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- b) BECAUSE, juniors to the petitioners have been treated as employee of the Railway on the basis of ~~their~~ directions given by the Hon'ble Supreme Court while petitioners who are senior parcel porters are still being treated as contract labourers.
- c) BECAUSE the petitioner are entitled for the same relief which has been granted by the Hon'ble Supreme Court to the colleagues of the petitioners vide its judgement and order dated 15.4.91 and 9.5.95.
- d) BECAUSE, the petitioners are discharging the duties of permanent and perennial nature and, therefore, they cannot be treated as contract labourers.
- e) BECAUSE, the aforesaid work of loading and unloading of parcels packages and heavy luggage assigned to the Railways by their customers for transportation is an activity closely and intimately connected with the main activity of the Railways. This item of work is incidental to the nature of the activities carried on by the Railways which must be done everyday and there should be no difficulty in having regular workmen in the employment of the respondents to do this type of work. Almost
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all the Railways have regularised such parcel porters and even the Northern Railway have regularised such parcel porters and at almost all the stations they have abolished the contract labour system. However, arbitrarily, in some of the divisional of the Northern Railway is continuing with such type of labour contract system at the railway stations of Bikaner and Allahabad division.

- f) BECAUSE, the petitioners are discharging the work of permanent and perennial nature and are very essential for the Railways to continue its activities which is very clear from the facts mentioned in this petition.
- g) BECAUSE the Hon'ble Supreme Court of India observe in number of cases that similarly situated persons whether they have approached the Hon'ble Court not, are bound to be treated equally as per the directions given by the Hon'ble Supreme Court under Article 141 and 142 of the constitution of India. The applicants who are similarly situated are entitled for the same relief which has been granted to the colleagues of the applicants similarly situated persons by the Hon'ble Supreme Court and details of the Hon'ble Supreme Court judgement are as under :-

- i) Inder Pal Yadav Versus Union of India & Ors.

ii) D. Navin Chandra Versus Union of India & Ors.

1987(3) SCC 88

iii) K.C. Sharma & Others versus Union of India & Ors.

(Five Judges Bench) JT 1997(7) SC 58.

iv) Narayan Yeshwant Gore versus Union of India

1995(3) SLJ SC 188.

v) Girdhari Lal Versus Union of India & Ors.

SLP (C. No. 140005/92 and appeal No. 50805/96)

6. Details of the remedies exhausted :

That the applicants declare that they have availed all the remedies available with them by way of making representations but till date no action has been taken by the respondent to implement the finding of the Hon'ble Supreme Court judgement. It is submitted that applicants are not in the position to wait for the reply of the representation as the respondents starting dis-engaging the applicants from the present work. Hence this O.A. at this stage.

7. Matter not previous filed or pending before any other Court :

That the applicants declare that they havenot filed any other O.A. before any bench of the Tribunal and no case is pending before the Hon'ble Supreme Court of India.

8 Relief(s) sought :

In view of the facts stated above, the applicants pray for the following reliefs :-

- a) That the Hon'ble Tribunal may graciously be pleased to pass ~~an~~ an order directing the respondents to extend the same benefits to the applicants herein as has been given by the Hon'ble Supreme Court in Writ Petition No. 277/88 vide judgement dated 15.4.1991 and writ petition No. 507/92 vide judgement dated 9.5.95 which were filed by the colleagues of the petitioners/applicants where in the Hon'ble Supreme Court after enquiries held by the Labour Commissioner declared that the colleagues of the applicants are regular employees of the railways.
- b) That the Hon'ble Tribunal may further graciously be pleased to pass an order commanding the respondents to treat the applicants as employees of Northern Railway and give them the same benefits which have been granted to other regular parcel porters working at different railway stations of the Northern Railway.
- c) That the Hon'ble Tribunal may further graciously be pleased to pass ~~another~~ an order directing the respondents to stop treating the applicants as contract labours at railway stations of Northern Railway, who are working as parcel porters for loading and unloading of parcels as this work done



by the petitioners is of permanent and perennial nature.

- d) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants.

9. Interim order if prayed for :

Pending final disposal of the main O.A. the applicants pray for the following reliefs :-

- a) That the Hon'ble Tribunal may graciously be pleased to pass an order of restraining the respondent No.4 from terminating the services of the applicants during the pendency of the O.A.
- b) That the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondent No.1 to 3 to conduct an enquiry through senior officers of the Railways to ascertain as to whether the petitioners who are parcel porters have been working continuously as have been mentioned by the applicant in Annexure A/1 and as has been directed by the Hon'ble Supreme Court of India in the cases filed by the colleagues of the applicants similarly situated vide order dated 4.1.1989 and 30. 11.1992 which are Annexure A/ and A/ of this application

c) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted in favour of the applicants.

10. Para No. 10 is not applicable as the applications is being filed through the legal practitioner sh. surat singh & Ms. Anita Kumari Advocates.

11. Particulars of the postal order :

- i) Number of I.P.O. : 26 08847
- ii) Date of issuing : 9/5/2000
- iii) P.O. from issuing : Patel's House
Post office
- iv) P.O. at which payable : New Delhi.

contd.....19



12. List of Enclosures : As per Index

Applicants

Verification :

We (1) Jhabbu Ram (2) Sumer Chand (3) Narender Singh (4) Manish Kr. (5) Ajay (6) Pankaj, (7) Mohan Lal (8) Prasun (9) Vishnu (10) Hari Singh (11) Dalip (12) Raju (13) Satyender (14) Shashi Ranjan (15) Jitender (16) Lalit (17) ~~Manish Ranjan~~ Maniraj (18) Mukesh (19) Vijay Kumar (20) Krishan Dev (21) Harivansh & (22) Shitla Prasad (Particulars are annexed at Annexure A/1), the above named applicants do hereby verify that the contents of the above paras No.1 to 4 are true to the best of our knowledge and paras No.5 to 12 are to be believed on legal advice and that we have not suppressed any material facts.

APPLICANTS

NEW DELHI

Dt. :

- | | | | |
|---|--------------|----|--------------|
| ① | शब्बु राम | ②२ | शीतला प्रसाद |
| ② | सुमेर चन्द | ①८ | मुकेश |
| ③ | नरेंद्र सिंह | ①९ | विजय कुमार |
| ④ | मनीष कुमार | | |
| ⑤ | अजय | | |
| ⑥ | पंकज | | |
| ⑦ | मोहन लाल | | |
| ⑧ | प्रसून | | |
| ⑨ | विष्णु | | |
| ⑩ | नरेश सिंह | | |
| ⑪ | दलप | | |
| ⑫ | राजू | | |
| ⑬ | सत्येन्द्र | | |
| ⑭ | शशि रंजन | | |
| ⑮ | JITENDER | | |
| ⑯ | लीलाल | | |
| ⑰ | मनीराज | | |
| ⑱ | Krishan Dev | | |
| ⑲ | हरिवंश | | |

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Annex A

PARTICULARS OF THE APPLICANTS

<u>S. No.</u>	<u>Name / Father's Name</u>	<u>station</u>	<u>date of Engagement</u>	<u>Address</u>
1.	Jhabbu S/o Kewal Ram	Zone III (Parcel- Handling) Bikaner Division, palam Cantt. Sarai	15.5.91 to 31.8.92	Labour Jhuggi No.675, Railway Colony, Delhi Cantt,
2.	Sumer S/o Sohan Lal	-do-	-do-	vill. & P.O. Siya, Distt. Rewari (Haryana)
3.	Narender Singh S/o Ram Singh	-do-	-do-	Labour Jhuggi, Near Ganda Nala Railway Yard, Delhi Sarai Rohilla.
4.	Manish S/o Murari Lal	-do-	-do-	-do-
5.	Ajay S/o Ram Vir	-do-	-do-	-do-
6.	Pankaj S/o Jagdish	-do-	-do-	-do-
7.	Prasun S/o Ashok	-do-	-do-	-do-
8.	Vishnu S/o Ram Baksh	-do-	-do-	-do-
9.	Hari Singh S/o Bhanwar Singh	-do-	-do-	-do-
10.	Mohan Lal S/o Sohan Lal	-do-	-do-	-do-
11.	Dalip S/o Mahesh	-do-	-do-	-do-
12.	Raju S/o Ravinder	-do-	-do-	-do-
13.	Satyender S/o Vidya Shanker	-do-	-do-	-do-
14.	Shashi Ranjan S/o Narender	-do-	-do-	-do-
15.	K Jitender S/o Om Parkash	-do-	-do-	-do-
16.	Lalit S/o Jai Dev	-do-	-do-	-do-
17.	Maniraj S/o Shiv Raj	-do-	-do-	-do-
18.	Mukesh S/o R.N. Kaushik	-do-	-do-	-do-
19.	Vijay Kumar S/o Prabhati Lal	-do-	-do-	-do-
20.	Krishan Dev S/o Makhan Yadav	-do-	-do-	-do-
21.	Harivansh Yadav S/o Bal Kunwar Yadav	-do-	-do-	-do-
22.	Shitla Prasad S/o Rama Shanker Tiwari	-do-	-do-	-do-

SUPREME COURT OF INDIA

Before: K. Rameswamy and N. Venkatachala, JJ.

Writ Petition (Civil) No. 507 of 1992

Decided on 9.5.1995

National Federation of Railway Porters, Vendors & Bearers
Versus

Petitioner

Respondents

Union of India and others

Writ Petition Nos. 415 of 1992, 82 of 1993 and 838 of 1992
Constitution of India, Article 16-Absorption in Service-Railway Parcel Porter
on contract labour basis working continuously for sufficient long time-
Detailed guidelines and directions for absorption and regularisation issued.
(Para 6)Case referred to:
R.K. Panda v. State Authority of India, JT. 1994(4) SC 151.

JUDGMENT

Venkatachala, J.-In a writ petition, W.P. No. 277 of 1988 filed in this Court under Article 32 of the Constitution of India 166 Railway Parcel Porters working on contract labour in certain Railway Stations of Indian Railways had claimed for therein issuance of directions to the Union of India and its Railway Administration for their permanent absorption by Indian Railways as Railway Parcel Porters on a regular basis. When the claim in that writ petition was contested by the Union of India, Railway Administration and Societies of Railway Employees, this Court by its Order dated October 4, 1989 directed the Labour Commissioner, Uttar Pradesh to enquire as to whether the writ petitioners were contract labourer working in Railway Stations for several years as claimed by them and submit his report. Pursuant thereto, the Labour Commissioner, Uttar Pradesh, who held an elaborate enquiry after affording opportunity to the contesting parties in the writ petition to have their say, submitted his report dated October 17, 1990 to this Court. This Court, which examined the findings recorded in the said Record of the Labour Commissioner with reference to the arguments of learned counsel for parties, decided the writ petition by its Order dated April, 15, 1991, the material portion of which read:

In this Report, the Labour Commissioner has recorded findings that there was no evidence that the petitioners were the employees of the Society instead the petitioners were contract labourers provided by the Society under the agreement by the Northern Railway. The Labour Commissioner has held that the petitioners have been working with the Porters with effect from the date they claimed to be working with the Northern Railway. A list showing the names and addresses of the each of the petitioners is annexed to the finding which shows the date from which the petitioners have been working as Parcel Porters. On a perusal of the list, we find that most of the petitioners have been working since 1972 and some of them since 1980 and a few of them were employed in 1985. In this view, all the petitioners have completed more than 20 days of continued service.

Attested
True Copy
[Signature]

In view of the Labour Commissioner's findings, we allow the petition and direct the respondent, Railway Administration to treat the petitioners as regular Parcel Porters w.e.f. 15.4.1991 and to grant them the same salary which is being paid to regular Parcel Porters. There will be no order as to costs."

2. In the present writ petitions the prayers of the petitioners, who are working as Railway Parcel Porters in Railway Stations of Northern Railway, Northern Eastern Railway and Eastern Railway on contract labour is, that their writ petitions also should be disposed of in terms of the order dated 15th April, 1991 made by this Court in the aforesaid writ petition filed by Railway Parcel Porters who were in no way different from them.

3. Taking into consideration the nature of prayer in the presents writ petitions, this Court made an order therein on November 30, 1992, which read thus:

"We have heard learned counsel on either side and also the respondent No. 7 in person. On the facts and circumstances in this case, we are of the view that it is appropriate that the Assistant Commissioner (Labour), Central Govt. at Lucknow would conduct an enquiry into the allegations whether the petitioners who are porters have been working continuously and whether the work is a perennial source and the requirements of Section 10 of the Contract Labour (Abolition and Regulation) Act, 1972 have been satisfied. The Assistant Labour Commissioner is directed to issue notice to the respondents and M/s. Purshottam and Shivapujan Yadav, the petitioners in this case, after giving reasonable opportunity to adduce evidence in proof of other respective case, consider the evidence placed by the parties and to submit a report in this behalf within six months from the date of the receipt of this order. The enquiry would be confined to the parcel porters only. List the matters after the receipt of the report."

4. Pursuant to the above order of this Court and another similar Order dated April 26, 1993 made by this Court, a detailed enquiry being held by the Assistant Labour Commissioner (Central), Ministry of Labour, Government of India, after affording to all the parties concerned opportunity of participation in it, a report dated August 31, 1993 is submitted by him with the following findings :

(i) Writ petitioners have been working as contract labour Railway Parcel Porters continuously for a number of years.

(ii) The work of parcel handling is permanent and perennial in its nature and it could keep all the petitioners - parcel porters continuously engaged.

(iii) In certain Railway Stations the parcel handling work is done by a Railway Parcel Porters, regularly and permanently employed by Railways.

(iv) Contract labour for parcel handling is done by labour supplied to Railways through societies or private contractors.

5. We have carefully examined the above report of the Assistant Labour Commissioner and his findings recorded therein. The facts disclosed in the report and the findings recorded therein stand un rebutted. Though we have heard at length the learned counsel appearing for the respondents in the present writ petitions including the representative of the societies supplying contract labour to Railways, they were not able to point out to us any valid reason why the present writ petitions should not be allowed in terms of the

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Order dated April 15, 1991, made by this Court in similar Writ Petition No. 277 of 1988, already adverted to by us, particularly when in the matter of absorption of contract labour by a public undertaking on a permanent basis, an order is made by a three-judge Bench of this Court in *R.K. Panda and Others v. State Authority of India and Others*, JT 1994(4) SC 151 in the following terms :

"All the labourers who have been initially engaged through contractors but have been continuously working with the respondent for the last 10 years on different jobs assigned to them inspite of the replacement/change of the contractors, shall be absorbed by the respondent as their regular employees subject to being found medically fit and if they are below 58 years of age. Which is the age of superannuation under the Respondent."

6. However, when in the course of the arguments addressed before us in the present writ petitions we questioned the learned counsel for the petitioners whether the petitioners in the writ petitions would be satisfied by regularisation a few of them only if the Railway Administration concerned is not able to absorb all of them on regular basis having regard to the insufficiency of parcel handling work in a Railway Station concerned, the learned counsel for the writ petitioners, told us in categorical and unequivocal terms that the petitioners are ready and willing for absorption only few of them as Railway Parcel Porters on a permanent basis at the cost of others losing their employment, whenever the Railway Administration comes to the conclusion that all the Railway Parcel Porters working in the particular Railway Station on contract basis will not have sufficient work for employing them on a permanent basis and the decision of the Railway Administration made in that behalf will not be questioned. The claim of the writ petitioners for absorption as Railway Parcel Porters on a Permanent basis by the concerned Railway Administration, being considered as above and regard being given to the fact that the Railway Administration concerned has in most of the Railway Stations of the country employed Railway Parcel Porters on regular and permanent basis, and Railway Stations left out without such porters are hardly a few, we have thought it most just and appropriate to issue the following directions to the respondent Union of India and its Railway Administration Units :

- (1) That the Unit of the Railway Administration having control over the Railway Stations where the petitioners in the present writ petitions are doing the work of Railway Parcel Porters on contract Labour should be absorbed permanently as regular Railway Parcel Porters of those Stations, the number to be so appointed being limited to the quantum of work which may become available to them on a perennial basis.
- (2) When the petitioners in the writ petitions or any of them are appointed as Railway Parcel Porters on permanent basis, they 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) working in the concerned Railway Stations on contract labour who have not completed the superannuation age of 58 years.

Attorney General



24

Annex A/1

SERVICES LAW REPORTER

1995(2)

- (1) The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters (petitioners) who are not found meritorical fit for such employment.
 - (5) That the absorption of the 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 utilising their services for any other manual work of the Railway 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 are put in shorter period of work.
- The report dated August 31, 1993 of the Assistant Labour Commissioner (Central) can be made the basis in deciding period of contract labour work done by them in the Railway Stations. Further, as far as possible, the Railway Stations where the writ petitioners are working should be the places where they could be absorbed on permanent and regular basis and the information available in this regard in the report dated August 31, 1993 of the Assistant Labour Commissioner, could be utilised for the purpose.
- (3) The absorption and regularisation of the petitioners in the writ petitions, who could be appointed as permanent Railway Parcel Porters shall be done according to the terms indicated above and on such other terms to which they may be subjected to according to the rules or circulars of the Railway Board as expeditiously as possible, not being later than six months from today, those who have put in longer periods of work as Railway Parcel Porters on contract labour getting preference in the matter of earlier appointment.
- All the writ petitions are, therefore, allowed by issue of the above directions to the respondents. No costs. Orders Accordingly.

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25 A/12 A/5

SUPREME COURT OF INDIA
Before:- K. Ramaswamy and G.B. Pattanaik, JJ.
Writ Petition (C) Nos. 568 and 711 of 1995
Decided on 8.7.1996

National Federation of Railway Parcel Porters Union and others etc.
Versus

Petitioners

Union of India and Ors.

Respondents

Constitution of India, Article 16-Regulation of Services-Casual Porters working for a long period be regularised as per law laid down in the National Federation of Railway Porters, Vendors and Bearers v. Union of India [1995(2) SLR 709 (SC)]. (Para 2)

Case referred to:

National Federation of Railway Porters, Vendors and Bearers v. Union of India, 1995(2) SLR 709 (SC).

ORDER

By Order dated February 5, 1996, this Court directed the respondents to appoint a high level officer to enquire whether the petitioners have been working as Casual Porters for a long time as perennial source of work and if so why they have not been regularised in the light of the law of this Court laid in National Federation of Railway Porters, Vendors and Bearers v. Union of India and Ors. [JT (1995) 4 SC 568] : [1995(2) SLR 709 (SC)]. Pursuant thereto, the respondents have appointed Mr. Vikram Chopra, Chief Marketing Manager to enquire and submit a report to this Court. The said officer conducted the enquiry and stated that out of 503 petitioners in Writ Petition Nos. 568 and 711 of 1995 the claim of 430 petitioners were verified. They were on the rolls of the registered cooperative societies of the Lucknow, Moradabad and Allahabad Divisions. Despite their working as porters for several years, since their names do not find place in the earlier petitions, they could not be regularised thinking that relief in those writ petitions was confined to the persons whose names were expressly mentioned. Consequently, he recommended for regularisation of their services as mentioned thus:

"(i) In order to comply with the Hon'ble Supreme Court's Judgment that the Railway should absorb persons supplied by the societies to work as labourers for parcel handling, to the extent that posts which are of perennial and permanent nature can be justified, and to absorb persons as per their length of working as such parcel handling labour, it is recommended that Lucknow, Allahabad, Bikaner and Jodhpur divisions should be asked to fill in line with the section taken at Moradabad Division i.e. to:

- (a) Conduct a work study at all the stations where such parcel handling is still being done by such labour and arrive at the number of posts required on a permanent and perennial basis, and
- (b) Screen all such eligible labourers as per the guidelines of Hon'ble Supreme Court and as per the Railway rules and absorb them to the extent that posts are justified.

(ii) The case one person who is working at Lucknow Jn. of N.E. Rly. may be referred to General Manager/N.E. Rly., for necessary action."

2. He also found that he could not verify petitioners at Sl. Nos. 23 to 72 whose names have been mentioned in the list appended by him, as the contract of the society under which they claimed to be working was terminated w.e.f. November 7, 1991. As a result, he could not find any record to verify them. Shri M.N. Krishnamani, learned senior counsel undertakes to give all the details with correct facts regarding them to Mr. Vikram Chopra, C.M.M. who is directed to enquire into their claims and if they are found to be eligible, the benefit of the order passed by the Court in the above order would be made available to them. As regards petitioner No. 73, it was stated that he claims to be working in Lucknow Junction in Northern Eastern Railway and could not be verified. The General Manager, Northern Eastern Railway is directed to have the address of petitioner No. 73, namely, Mohd. Nafis, son of Aleem, verified and also whether he was working as a Casual Porter at Lucknow Junction Station and if so whether he is on par with those candidates whose services were directed to be regularised. In case he is found to be working the benefit of the directions given in the aforesaid decision would be available to him also. The service of all those petitioners be dealt with as per the law laid in the aforementioned judgment.

3. The writ petitions are accordingly disposed of to the above extent.

Order accordingly

Attested true copy
[Signature]

26 67 Annex A-6

SUPREME COURT OF INDIA
Civil Appeal No. 6953 of 1997

(From the Judgment and Order dated 8.1.96 of the Central Administrative Tribunal,
Allahabad in O.A. No. 1361 of 1995)
Decided on 1.10.1997

Rashtriya Chaturth Shreni Railway Majdoor Congress (INTUC) Appellant
Versus Respondents

Union of India & Ors.
For the Appellant: Mr. Sanjay Parkhi, Advocate
For the Respondents: Mr. V.C. Malajan, Senior Advocate. Mr. Parveen
Swarup, Mr. Arvind Kumar Sharma, Advocates with him
For the Respondent No. 4: Mr. O.P. Tiwari, Advocate, for M/s. O.P. Tiwari & Co.,
Advocates

PRESENT

The Hon'ble Mr. Justice A.S. Anand
The Hon'ble Mr. Justice K. Venkataswami

Contract Labourer--Regularisation--Appellant Union filed appli-
cation before Tribunal for regularisation of its member i.e. contract
labourers--Tribunal declined to entertain the application on the
ground that the Union has an alternative remedy available to it--Tri-
bunal directed to decide the question of appropriate Govt. as pointed
in the case of National Federation of Railway Porters' case instead of
directing Union to avail alternative remedy and then decide the ques-
tion of regularisation itself.

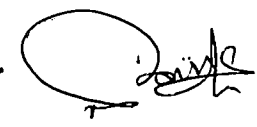
JUDGMENT

K. VENKATASWAMI, J.: Leave granted.

2. Heard counsel for the parties.
3. Aggrieved by the order of the Central Administrative Tribunal (hereinaf-
ter called the "Tribunal"), Allahabad Bench, dated January 8, 1996 in O.A. No.
1361/95, the present appeal is filed.
4. In the view we propose to take, it is not necessary to set out in detail the
facts leading to the filing of the said O.A. before the Tribunal.
5. The appellant union moved the Tribunal for regularising the services of its
members, on the ground that they have been engaged as contract labourers for
several years doing the job of parcel porters at Agra Fort (Railway Station) in the
light of the judgment of this Court in National Federation of Railway Porters,
Vendors and Bearers v. Union of India & Ors., (1995) 3 SCC 152.
6. According to the appellant, the said judgment of this Court was rendered
more or less in identical circumstances. The Tribunal, unfortunately, instead of
going into the matter and deciding the issue raised before it, decided to it.
the O.A. on the ground that the union has an alternative remedy.
7. The Union that was to be decided by the Tribunal in the light of the
order in National Federation of Railway Porters' case (supra)
"appropriate Government" to decide the question of regularisa-
tion to apply the principle laid down by this Court in National
Federation of Railway Porters, Vendors and Bearers v. Union of India & Ors.,
(1995) 3 SCC 152. In the facts and circumstances of this case and having
regard to the fact that the interests of labourers are involved, we think it would
be appropriate for the Tribunal to decide the question itself instead of di-
recting the union to seek the intervention of the Government.
8. Accordingly, we set aside the order of the Tribunal in O.A. No. 1361/95
and direct it to decide the issue itself on merits in the light of the principles laid
down by this Court in the judgment in National Federation of Railway Porters,
Vendors and Bearers v. Union of India & Ors. 1995 (Supp) 3 SCC 152.
9. The parties are at liberty to raise all the contentions available to them
before the Tribunal. The appeal is accordingly allowed. No costs.

All are parcel

(By Advocate)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH :
NEW DELHI

M.A. NO. 1120 of 2000

IN
O.A. NO. 867 of 2000

IN RE :

Jhabbu & Others.

... Applicants

vs.

U.O.I. & Ors.

... Respondents

APPLICATION FOR JOINING TOGETHER TO FILE A SINGLE
APPLICATION ORDER RULE 4(5) OF C.A.T. (PROCEDURE) RULE,
1987.

MOST RESPECTFULLY SHOWET H :

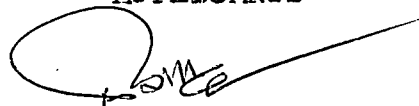
1. That the applicants who are employed under a common employer, namely Northern Railway, Baroda House, Delhi have common cause of action against common impugned order which could be disposed of by a common order of this Hon'ble Tribunal.

That in the circumstances applicants request that they may be allowed to join together to file a single application as permissible under the rule.

NEW DELHI
DT. :

THROUGH

APPLICANTS


COUNSEL

VERIFICATION :

Verified at New Delhi on this day of May, 2000 that the contents of above application are true to our knowledge and information received. Last para is prayer to this Hon'ble Tribunal.

APPLICANTS

- | (1) | Name and address of contractor |
|-----|---|
| | M/S. S.H.E. GAMESH GOVT CONTRACTS
K. RURAL WORKS, P.O.: S.H. DEEN FARGALIA KOT |
| (2) | Name and address of establishment in/under which contract is carried on |
| | M/S. S.H.E. GAMESH GOVT CONTRACTS & Rural works
X.D.10. HUDA QUILTERS, JAY NARAIN VILLAGES, RAIPUR (Raj) |
| (3) | Nature and location of work |
| | Luggage over. Zone III. Id of Bikaner Division.
D.R.M. |
| (4) | Name and address of principal employed |
| | BIKANER |
| (5) | Name and address of the workmen |
| | Village: SARAIKOTA. P.O. AMBARI. DIST. ASRAMGARH. C.P. |
| (6) | Age or date of birth |
| | 7-1-57 |
| (7) | Identification marks |
| (8) | Father's/Husband's name |
| | LT. S.Ant. RAM SHANKAR THAKUR |

S.No.	Total period for which employed	From	To	Nature of work done	Rate of wage (with particulars of unit in case of	Remarks

W02.7

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886014
unclassified

Handling of Boiling
Pan and melting

15-5-9170:31-8-92

For M/s Shri Ganesh Govt. Contracts

Rural Works

From Practice
BIO.

40 mg 2000

STANDARD

Service Certificate

- (1) Name and address of contractor M/s. Shri Ganesha Govt. Contracts and Rural Works Prop. Sh. Prem Prabhakar
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri Ganesha Govt. Contracts and Rural Works V.D.O. Huda. Quarters, Jai Narain Vyas colony, Bikaner
- (3) Nature and location of work Handling of Parcel and booking Luggage at Zone III of Bikaner Division
- (4) Name and address of principal employer D.R. N. Bikaner
- (5) Name and address of the workmen Thabbro Temp. Huts. No. 675, Rly. Colony, Delhi cant.
- (6) Age or date of birth Permanent address - Vill & Po. Siya DIST REWARI (HARYANA) 40 years
- (7) Identification marks
- (8) Father's/Husband's name Kamal Kumar

S.No.	Total period for which employed		Nature of work done	Rate of wage (with Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

Handling of Parcel and booking Luggage - minimum wages.

15-5-91 to 31-8-92,

Attended by Gm

Shri Ganesha Govt. Contracts
Rural Works
Prem Prabhakar
Prop.

Service Certificate

- (1) Name and address of contractor M/s. Shri. Ganesh Govt. Contracts and Rural Works.. Prop... Sh... Prem... Prabhakar.....
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri. Ganesh Govt. Contracts and Rural Works V.D. 10. Huda. Quarters. Jai Narain Vyas Colony. Bikaner (Ra
- (3) Nature and location of work Handling of Parcel and booking Luggage.. Over Zone. III of Bikaner division.....
- (4) Name and address of principal employer D. R. M. Bikaner.....
- (5) Name and address of the workmen Narender Singh Lab. huts. Near Gonda Mala Rly. yard Delhi Sarai Rohilly.
- (6) Age or date of birth
- (7) Identification marks
- (8) Father's/Husband's name Sh. Ram Singh.....

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

Handling of Parcel and booking - minimum Luggage - wages.

15.5.1991 To 31.8.92

Attested True Copy

[Signature]

For M/s Shri Ganesh Govt. Contracts

Rural Works

[Signature]
Prop.

Service Certificate

- (1) Name and address of contractor M/s. Shri. Ganesha Govt. Contracts and Rural Works, Prop.: Sh. Prem Prabhakar.....
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri. Ganesha Govt. Contracts and Rural Works, V.D.No. Hudeo Quaters, Jai Narain Vyas Colony, Bikaner (Raj).....
- (3) Nature and location of work Handling of Parcel and booking Veggage over Zone III of Bikaner division.....
- (4) Name and address of principal employer D.R.M. BIKANER.....
- (5) Name and address of the workmen ATAY.....
Temp address: Rly Huts Near Gonda Nalg. behind Rly line Kishanganj delhi
- (6) Age or date of birth 10.8.76.....
- (7) Identification marks
- (8) Father's/Husband's name Sh. Ram Veer.....

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

5. d. 15.5.1991 To 31.8.92, Luggage. Handling of Parcel and booked minimum wages

Attested true copy

[Signature]

For M/s Shri Ganesha Govt. Contracts & Rural Works
Prem Prabhakar
Prop.

Service Certificate

- (1) Name and address of contractor M/s. Shri Ganesh Gouti Contr
and Rural Works Prop. Sh. Prem Prabhakar
- (2) Name and address of establishment in/under which contract is
carried on M/s. Shri Ganesh Gouti Contrate and Rural
Works, T. D. 10 Huda Quaters, Jarnamain, Uyas colony Bikaner (Raj)
- (3) Nature and location of work Handling of Parcel and boat
Naggag. Over Zone III of Bikaner division
- (4) Name and address of principal employer D.R.M.
Bikaner
- (5) Name and address of the workmen Pankaj
Temp. Add. - Labor Huts Near Garra's Nalg. Ry. yard Kishanganj Odh.
- (6) Age or date of birth 10.10.73
- (7) Identification marks
- (8) Father's/Husband's name Sh. Jegdish

S.No.	Total period for which employed		Nature of work done	Rate of wage (With particulars of unit in case of piece work)	Remarks
	From	To			
1.	2.	3.	4.	5.	6.

15.5.91 To 31.8.91

Handling Parcel and boat
Luggage

Minimum
Wages

Shri Ganesh Gouti
Prop.

For M/s Shri Ganesh Gouti Contrate
& Rural Works

Prem Prabhakar
Prop.

FORM XV
(See Rule 77)

Annex B-7

Service Certificate

- (1) Name and address of contractor M/s. Shri. Ganesh Govt. Contracts and Rural Works, Prop. Sh. Prem. Prabhakar.....
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri. Ganesh Govt. Contracts and Rural Works, I.D. to Hudeo. Quaters. Jaipur. Vys. Colony Bikaner (R)
- (3) Nature and location of work Handling of Parcel and Booking Veggage over Zone III. of Bikaner division:.....
- (4) Name and address of principal employer D. R. M. Bikaner.....
- (5) Name and address of the workmen Mohan Lal..... Temp. addre: Labour. Hut's near Goods Wals. Rly. Jare/Kishanpaj Delhi
- (6) Age or date of birth
- (7) Identification marks
- (8) Father's/Husband's name Sh. Mohan Lal.....

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

15.5.91 To 31.8.92

Handling Parcel and
booking Luggage

minimum
Wages.

Shri. Ganesh Govt. Contracts

[Signature]

For M/s. Shri. Ganesh Govt. Contracts

[Signature]
Prop.

35
FORM XV
(See Rule 77)

Annex B-8

Service Certificate

- (1) Name and address of contractor M/s. Shri Ganesh Gouti and Rural Works Prop. Sh. Prem Prabhakar
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri Ganesh Gouti Contracts and Rural Works, V.D. Hudeo, Quarters Jai Narain Vyas colony, Bikaner
- (3) Nature and location of work Handling of Parcel and booking baggage over Zone III of Bikaner division
- (4) Name and address of principal employer D.R.M. Bikaner
- (5) Name and address of the workman Prasoon
Temp Address - Labhar Hut near Jamlana B. P. Yashwanthi, Delhi
- (6) Age or date of birth
- (7) Identification marks
- (8) Father's/Husband's name Sh. Ashok

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.
	15.5.91	To 31.8.92	Handling Parcel and booked Luggage		Minimum wages

Attested True Copy
[Signature]

For M/s Shri Ganesh Gouti Contracts
Rural Works

[Signature]
Prop.

22

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⑤

Handling of Parcel and booking minimum wages.

1/15-5-1991 to 31-8-92 लगाए गए

Shirley Ann Cox
Quinn

For M/s Shri Ganesh Govt. Contracts
& Rural Works

Rural Works
K. K. K. K. K.
Prop.

Service Certificate

FORM XV
(See Rule 77)

37

Annex B-11

- (1) Name and address of contractor M/s. Shree Gouth Govt. Contracte
civd. Rural works. P.O. Sh. Ratan. P.O. Sh. Ratan.
- (2) Name and address of establishment in under which contract is
carried on M/s. Shree Gouth Govt. Contracte, and Rural
works, N.D. 10. Hudco. Qutub Jan Nagar. Uda Colony. Bikaner
- (3) Nature and location of work Handing of P.O. and boat
Vijay. Govt. Zone III. of Bikaner. Chauran.
- (4) Name and address of principal employer. P.R.M.
Bikaner.
- (5) Name and address of the worker. Hari. Singh. and
Temp address: Laban Hussain. Gandanala. Rikhy and Rikhyani Bili
- (6) Age or date of birth
- (7) Identification marks
- (8) Father's/husband's name. Bhanwar. Singh

S.No.	Total period for which employed	From To		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	5.	6.

Handing Road and boat work
Bikaner

Attested for my
Signature

For M/s Shri Ganesh Govt. Contracte
B Rural Works
P.O. Sh. Ratan

FORM XV
(See Rule 77)

Annex B-11

Service Certificate

- (1) Name and address of contractor M/s. Shri Ganesh Govt. Control and Rural Works Prop. Sh. Prem Parabhar.
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri Ganesh Govt. Control and Rural Works V.D. 10. Jai Narain Vyas Colony. Huda. Outer Bikaner.
- (3) Nature and location of work Handling of Parcel and booked Luggage over Zone III of Bikaner division
- (4) Name and address of principal employer D.R.M. Bikaner
- (5) Name and address of the workman P. L. Lipi
Temp. Address: Labour House ^{Near} Ganesh Nala R. 7. Karel. Kishangarh Delhi
- (6) Age or date of birth About 30 years
- (7) Identification marks
- (8) Father's/Husband's name Sh. Mahesh Prakash

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

15.5.91 to 31.8.92

Handling Parcel and booked Luggage

Minimum wages

Attested True Copy

[Signature]

For M/s Shri Ganesh Govt. Control and Rural Works

[Signature]

Pls.

Service Certificate

- (1) Name and address of contractor M/s. Shri Ganesh Govt. Contr. and Rural Works. Prof. Shri. Prem Prabhakar.
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri Ganesh Govt. Contr. and Rural Works, V.D. 10 Hudeo. Outer. San Ngram. Nya. colony. Bikaner.
- (3) Nature and location of work Handling of Parcel and baggage. Outer. Zone III. of Bikaner. division.
- (4) Name and address of principal employer D.R.M. Bikaner.
- (5) Name and address of the workmen Ramy. Temp. Address. Laborer. Huts. Near. Canal. Nalg. Rly. Yard. Kishangarh De/b.
- (6) Age or date of birth 10.5.89. 1976.
- (7) Identification marks
- (8) Father's/Husband's name Sr. Ravindra. Bhardwaj.

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remark particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.
15	5.81	To 31.8.92	Handling Parcel and booked Luggage		Minimum wages

Attached True Copy
[Signature]

For M/s Shri Ganesh Govt. Contr. & Rural Works
[Signature]
Bikaner

Service Certificate

- (1) Name and address of contractor M/s. Shri Ganesh Govt. Contract and Rural Works Prop. Sh. Prem Prabhakar
- (2) Name and address of establishment in under which contract is carried on M/s. Shri Ganesh Govt Contract and Rural Works
10. Huda. Quaters Jamarain Vyas Colony Bikaner (R)
- (3) Nature and location of work Handling of parcel and booking
luggage over zone of Bikaner division
- (4) Name and address of principal employer D.R.M.
Bikaner
- (5) Name and address of the workmen Satyendra
Temp. Add. --- Labour Huts Near Gandanale Rly. Yard, Kisanganj, Delhi
- (6) Age or date of birth 20.12.63
- (7) Identification marks
- (8) Father's/Husband's name Vidhya Shankar

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

Handling of Parcel and booking
luggage - Minimum
Wages.

15.5.91 to 31.8.92

Shri Ganesh Govt
Contract

For M/s. Shri Ganesh Govt Contracts
& Rural Works

Prem Prabhakar
Prop.

Service Certificate

- (1) Name and address of contractor M/s. Shri Ganesh Govt. Contracts and Rural Works. Prop. Sh. Prem Prabhakar...
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri Ganesh Govt. Contracts and Rural Works N.D. 10. Hideo Cutters Jais Narain Vyas Colony Bikaner. (Raj)
- (3) Nature and location of work Handling of Parcel and booking luggage over Zone... III of Bikaner Division
- (4) Name and address of principal employer D.R.M. Bikaner
- (5) Name and address of the workmen Shashi Rangan
Temp. Address - Labar Hut near Gandhals P.O. Jaisalmer
- (6) Age or date of birth 10.08.1976
- (7) Identification marks
- (8) Father's/Husband's name Naren Chander

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

Handling of Parcel and booking - minimum wages.

15-5-1991 to 31-8-92 luggage

Shashi Rangan

For M/s Shri Ganesh Govt. Contracts & Rural Works

Prem Prabhakar
Prop.

Service Certificate

- 42/ Annex B-15
- (1) Name and address of contractor M/S. Shri Ganesh Govt. Central and Rural Works, Prop. Sh. Prem Prabhakar...
- (2) Name and address of establishment in/under which contract is carried on M/S. Shri Ganesh Govt. Central and Rural Works, I.D. Huda Quarters, Jai Narain, Vyas Colony, Bikaner
- (3) Nature and location of work Handling of Parcel and booking luggage over Zone III of Bikaner division (Raj)
- (4) Name and address of principal employer D.R.M. Bikaner
- (5) Name and address of the workmen Jiten Singh
Temp. Address - Labour Huts Near Gandanale Rev. Garh, Hispanagar, Delhi
- (6) Age or date of birth 10.10.1957
- (7) Identification marks
- (8) Father's/Husband's name Sh. Om Prakash

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.
	15-5-91	To 31-8-92	Handling Parcel and booked luggage		minimum wage

At the true copy

For M/S. Shri Ganesh Govt. Central & Rural Works
Prem Prabhakar
Prop.

Service Certificate

- (1) Name and address of contractor M/s. Shri. Ganesh Govt. Contracts and Rural Works, Prop. Sh. Prem Parabhar...
- (2) Name and address of establishment in/under which contract is carried on M/s. Shri. Ganesh Govt. Contracts and Rural Works, I.D.O. Huda. Quarters, Jai Narain Vyas colony Bikaner (Raj)
- (3) Nature and location of work Handling of Parcel and Loading Luggage. Dur. Zone II of Bikaner division
- (4) Name and address of principal employer P.R.M. Bikaner
- (5) Name and address of the workmen Lalit Kumar
Temp. Add. - Laban Huts Near Gandanala, P.O. Gopal Kishan Garh, Delhi
- (6) Age or date of birth 10.10.1976
- (7) Identification marks
- (8) Father's/Husband's name Sh. Jai Deo

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.
	15.12.91 - To 31.8.92		Handling - Parcel and booked Luggage	Minimum wages	

[Signature]

For M/s Shri Ganesh Govt. Contracts
and Rural Works

[Signature]
Prop.

FORM XV
(See Rule 77)

Service Certificate

- 14 Annex - B-1)
- (1) Name and address of contractor M/s. Shri. Ganesh. Govt. Contracts and Rural Works. Prop.: Sh. Prem. Prabhakar:.....
 - (2) Name and address of establishment in/under which contract is carried on M/s. Shri Ganesh. Govt. Contracts and Rural Works. J.D.O. H.H. Desai. Quarters. Jai. Narain. Vyas. Colony. Bikaner. (Raj)
 - (3) Nature and location of work Handling of Parcel and booking Luggage. Over. Zone III of Bikaner division.....
 - (4) Name and address of principal employer D.R.M. Bikaner.....
 - (5) Name and address of the workmen M. Anil. Ray..... Temp. Add.:... Labour Huts. Near. Gonda Nela. Rly. yard. Kishangarh. Delhi
 - (6) Age or date of birth
 - (7) Identification marks
 - (8) Father's/Husband's name Shiv. Ray.....

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

17 Handling of Parcel and booking - minimum Wages.
15.5.1991 To 31.8.92, Luggage

Amesha Inc. Co.
Amesha

For M/s. Shri. Ganesh. Govt. Contracts and Rural Works
Prem. Prabhakar
Prop.

Service Certificate

- (1) Name and address of contractor *M/s. Shri. Ganesh Govt. Contracts and Rural Works Prop. Shri. Prem Prabhakar*
- (2) Name and address of establishment in/under which contract is carried on *M/s. Shri. Ganesh Contractt. and Rural Works V.D. 10. Huda. Quaters. Jainmari. Nya. Colony. Bikaner (Raj)*
- (3) Nature and location of work *Handling of Parcel and booking Luggage over Zone II of Bikaner Division*
- (4) Name and address of principal employer *D.R.M. Bikaner*
- (5) Name and address of the workmen *Mukesh Temp. Address: Labor Huts near Grand Nala Bypass, Kisangan, Dist.*
- (6) Age or date of birth
- (7) Identification marks
- (8) Father's/Husband's name *Sh. R.N. Kaushtik*

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

Handling of parcel and booking minimum luggage wages.

15-5-91 to 31-8-92,

Attested True Copy

For M/s Shri Ganesh Govt. Contracts & Rural Works

Prem Prabhakar Prop.

FORM XV
(See Rule 77)

Service Certificate

- (1) Name and address of contractor *M/s. Shri. Ganesh Govt. Contracts and Rural Works. Prop. Shri. Prem Prabhakar....*
- (2) Name and address of establishment inductor which contract is carried on *M/s. Shri. Ganesh Govt. Contracts Rural Works, I.D.O. Hudeo. Quaters Jai Narain. Vyas Colony Bikaner*
- (3) Nature and location of work *Handling of parcel and booked Luggage over Zone III of Bikaner Division....*
- (4) Name and address of principal employer *D. R. M. N. R. V. Bikaner.*
- (5) Name and address of the workmen *Harish Bansi Yadav... Village: Jasui P. Bhatpur Rani Dist. Deorath (U.P.)*
- (6) Age or date of birth *30 Years....*
- (7) Identification marks *.....*
- (8) Father's/Husband's name *L. S. Shri. Ball. Kumar Yadav....*

S.No.	Total period for which employed		Nature of work done	Rate of wage (With particulars of unit in case of piece work)	Remarks
	From	To			
1.	2.	3.	4.	5.	6.

15-5-91 To 31-8-92	Handling of parcel and Booked Luggage	minimum days
--------------------	---------------------------------------	--------------

Attended this Com
One

For M/s Shri Ganesh Govt. Contracts
Rural Works
Prem Prabhakar Prop.

Service Certificate

(1) Name and address of contractor M/s. Shri. Gimesh Govt. Contracts and Rural Works Prop. Sh. P. P. Bhakker.

(2) Name and address of establishment in which contract is carried on M/s. Shri. Gimesh Govt. Contract and Rural Works, P.O. Hades, J. Narayan Vya. Colony, Bikaner.

(3) Nature and location of work Handling of parcel and bedding of baggage over zone III of Bikaner division.

(4) Name and address of principal employer Sh. R. M. Bikaner.

(5) Name and address of the workmen Kashin. Ch. Yadav. Village - Darna. P.O. Bhat. P.O. Raj. Dist. Jaipur (R.P.O. 257-260/99).

(6) Age or date of birth 1st August 1964.

(7) Identification marks

(8) Father's/Husband's name Sh. N. K. M. Yadav.

S.No.	Total period for which employed	From To		Nature of work done	Rate of wage (with Remarks particulars of unit in case of piece work)	5.	6.
		From	To				

Handling of parcel and booking - minimum wage. Lagage.

15.5.91 to 31.8.92

Shri. Gimesh Govt. Contracts

For M/s. Shri. Gimesh Govt. Contracts
Bikaner
Prop.

Service Certificate

Uf Annex B-21

- (1) Name and address of contractor *M/s. Shri Ganesh Govt. Contracts and Rural Works. Prop. Shri Prem Prabhakar.*
- (2) Name and address of establishment in/under which contract is carried on *M/s. Shri Ganesh Govt. Contracts and Rural Works, V.D.O. Huda Quarters, Jai Narain Colony, Bikaner (Raj)*
- (3) Nature and location of work *Handling of Parcel and booking of luggage over Zone II of Bikaner Division*
- (4) Name and address of principal employer *D. R. M. Bikaner*
- (5) Name and address of the workmen *Sumar, Tem. Rly. Huts No. 675, Near Rly. Colony, Delhi Cantt.*
- (6) Age or date of birth
- (7) Identification marks
- (8) Father's/Husband's name *Sohan Lal*

S.No.	Total period for which employed		Nature of work done	Rate of wage (With Remarks particulars of unit in case of piece work)	
	From	To			
1.	2.	3.	4.	5.	6.

Handling of Parcel and booking of luggage - minimum wages.

15-5-91 to 31-8-92

Attested by

For M/s Shri Ganesh Govt. Contracts & Rural Works
Prem Prabhakar
Prop.

h

Annex B-22

- [illegible]

S.No.	Total period for which employed	From	To	Nature of work done	Rate of wage (with particulars of unit in case of piece work)	Remarks

OL WJCM

nl:ee worK)

UNIT + IN CASE OF

particulars of

Rate of wage (with remarks)

Handling of goods/forals

66M. W. W.

For Miss Shri Ganesh Gow. Contract
Burial Works
J. S. J. Prop.

Signatures

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

ORIGINAL APPLICATION No.

867

OF

2000

IN THE MATTER OF :

Shri Jhabbu & Ors.

.....Applicant s

VERSUS

Union of India & Others

.....Respondents

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प्रधान न्यायाधीश/CAI (Fb)
द्वारा दाखिल किया

Filed Today

28 MAR 2001

दाखिल नं./Filing No. 2992
उप-निर्वाहक/Dy Registrar

New Delhi

Dated 26-3-2001.

(R.L. Dhawan) Advocate

Counsel for the Respondents

C-8, Anand Vihar,

Vikas Marg Ext.

Delhi-110092

Tel. Nos. 2155350, 2166721

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

O.A. No. 867 of 2000

In the matter of

Sh. Jhabbu & others Applicants

Versus

Union of India & others Respondents


Counter reply on behalf of the
respondents No. 1 to 3.

MOST RESPECTFULLY SHOWETH

PRELIMINARY SUBMISSIONS

Before giving parawise reply to the O.A.
the Respondents crave leave of this Hon'ble Tribunal
to submit the following material facts which are
relevant for proper adjudication of the matter in
dispute.

1. That at 56 stations over Bikaner Division
parcel handling work was previously managed
through contractors on contract basis. As
per Hon'ble Central Administrative Tribunal's
judgement in various Original Applications
of Bikaner Division, Hon'ble court has
directed to regularise the parcel porters
on the basis of directions issued by the Hon'ble
Supreme Court ~~of Railway~~ in Ravinder Gumasta and
National Federation of Railway Porters, vendors
and Bearers Vs. U.O.I. & ors.
2. That in view of the above, a reference was
made to RLCS/ALCS Chandigarh, Ajmer, DEE,

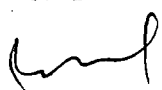

Divl. Commercial Manager
N. Rly, BIKANER

: 2 :

Lucknow and Kanpur etc. to have their recommendations in regard to whether there is perennial nature of work and for verifying factual working days of contractors' labour Parcel Porters.

3. That after receiving the above reports, a list of contractors' labour parcel porters was prepared and circulated to all stations calling for objections.
4. That after obtaining and screening of these objections given by the said contractors labour parcel porters engaged by contractors, a consolidated list of 285 contract labour parcel porters was prepared and filed before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.
5. That in compliance with the orders passed by this Hon'ble Tribunal, in some other O.As pertaining to contractor's labour, a work study was conducted by a Team of Claim Inspectors for ascertaining justification of posts of Parcel Porters. The competent authority accorded sanction for 61 posts of parcel porters in Group 'D' category .
6. That after processing through a Screening. Parcel Committee, 60 Contractor Labour/porters have been put on the panel vide letter dated 29.3.2000, a copy of which is filed and marked as Annexure R-I. They have since been given appointment as Parcel Porters in Group 'D' category after medical examination and police verification.

Annexure
R-I



Divl. Commercial Manager
N. Rly., BIKANER

: 3 :

7. That a proposal was sent to Northern Railway Headquarters office, New Delhi for their approval for closing 40 Stations having uneconomical and of lesser importance in regard to parcel work and earning. The Northern Railway Headquarters office have ~~40 Stations have~~ approved the above proposal. Accordingly 40 Stations have been closed for inward, outward, local and foreign parcel traffic vide letter dated 28.3.2000 (Copy filed and marked as Annexure R-2). At present there is no contractors' labour engaged for parcel handling work on the entire Bikaner Division.

Annexure
R-2

8. That the Hon'ble Supreme Court have been pleased to pass order dated 8.9.2000 (copy filed and marked as Annexure R-3) that "pending disposal of the petitions there shall be no regularisation of the parcel porters working at different Railway Stations notwithstanding any order of any Court, Tribunal or other authority.

Annexure
R-5

PRELIMINARY OBJECTIONS

1. That the application is not maintainable under Section 14 of the Administrative Tribunal Act, 1985. It is submitted that the applicants have never been in the service of the respondents and they are not civil servant. The Hon'ble Supreme Court have held in Civil Appeal No. 1356/86 and SLP (C) Nos. 3740-41/97 that Railway contractors' labour cannot be considered as employed by the Railway


Divl. Commercial Manager
N. Rly., BIKANER

: 4 :

Annexure
R-3

and the Central Administrative Tribunals have no jurisdiction to entertain their application. A copy of the judgement dated 3.4.97 passed by the Hon'ble Supreme Court is filed and marked as Annexure R-3. Following the law laid down by the Apex Court, this Hon'ble Tribunal have dismissed the case of Ram Veer & ors vs. U.O.I. & Ors vide their judgement dated 15.2.99, a copy of which is filed and marked as Annexure R-4.

Annexure
R-4

2. That the application is barred by limitation and not maintainable under 21 of A.T. Act ~~and~~ ~~xxx xxxxx~~ 1985. The applicants claim to have worked as contractors' labour during the period May 1991 to Aug. 1992 and the present application filed in the year 2000 is clearly barred by limitation.
3. That no cause of action has accrued in favour of the applicants and against the respondents. The application is totally devoid of any merit and is liable to be dismissed with costs.
4. That the instant Original application of the applicants is misconceived and not maintainable under law.

PARAWISE REPLY

At the outset, the respondents deny each and every allegations made in the O.A. except those which are specifically admitted herein after and those

[Signature]
 Divl. Commercial Manager
 N. Rly., BIKANER which are a matter of record.

xx

1. The contents of this para are wrong and denied. It is submitted that this Hon'ble Tribunal in various O.As. of Bikaner Division have been pleased to pass orders to regularise the contractors labour parcel porters on the basis of directions issued by the Hon'ble Supreme Court in Ravinder Gumasta and National Federation of Railway Porters, Vendors and Bearers Vs. U.O.I. & ors. In compliance of the said directions a reference was made to RLGS/ALGS Chandigarh, Ajmer, DEE, Lucknow and Kanpur etc to give their recommendations in regard to whether there is a perennial nature of work and for verification of factual working days of contractors labour parcel porters. After receiving the reports from the said RLGS/ALGS, a list of contractors' labour parcel porters was prepared and circulated to all Stations calling for objections. Objections received from the contractors' labour parcel porters were scrutinised and thereafter a consolidated list of 285 contract labour parcel porters was prepared and filed before this Hon'ble Tribunal. The persons included in the said seniority list were given screening test by a Team of 3 Assistant Officers and 60 selected persons have been given appointment as Parcel porters in group 'D' category against the newly sanctioned post, including the appointments against reserved quota of SC/ST/OBC. If the applicants were not included in the said seniority list of contractor labour parcel porters, they ought to have approached the concerned RLC/AIC with documentary proof

of their number of working days as contract labour parcel porters.

2. Jurisdiction of this Hon'ble is denied as explained in the preliminary objections.
3. In reply, it is submitted that OA is barred by limitation as explained in preliminary objections.

4. FACTS OF THE CASE

4.1 The contents of this para are wrong and denied. It is submitted that the applicants have claimed to have worked as Railway contractors' labour and at no point of time, they were in service of the answering respondents. It is submitted that recruitment to Group 'D' artisans cadre and Group 'C' is made as per Recruitment Rules contained in Indian Railway Establishment Manual Vol. I. The persons are recruited subject to rigorous standards, as age limit, educational qualifications, medical fitness, character verification etc. which standards are, however, not adopted by the private contractor while making engagement of his persons. It is the discretion of contractor to whom he may engage labour and for how many days. It is specifically denied that Rly. Administration exercised any contracted supervision over the contractors labour parcel porters.

4.2 The contents of this para are wrong and denied. It is submitted that in the light of the Hon'ble Tribunal's judgement, the matter was referred to concerned RLCS/ALCS for verification

: 7 :

and to provide a list of claimants in order of total number of working days. After verification of factual working days of contract labour parcel porters, on the basis of the reports furnished by the concerned RICS/ALCS, a provisional seniority list of contract labour parcel porters was drawn up and circulated for information of all concerned inviting objections, if any. The objections received were duly verified and a consolidated list of 285 contract labour parcel porters was prepared and filed before this Hon'ble Tribunal. If the applicants were aggrieved for non-inclusion of their names in the aforesaid seniority list, they ought to have approached the concerned RICS/ALCS along with documentary proof of their number of working days as contract labour parcel porters, for inclusion of their names in the seniority list.


- 4.3 The contents of this para are wrong and denied. It is submitted that 40 stations on Bikaner Division have been closed for inward, outward, local and foreign parcel traffic vide letter dated 28.3.2000 (Annexure R-2) being uneconomical and of lesser importance in regard to parcel work and earning therefrom. It is further submitted that at present no contractors' labour is engaged on Bikaner division for parcel handling work.

: 8 :

4.4 The contents of this para are wrong and denied.
Reply to sub paras given as under:-


- (a) The contents of this sub para need no comments except that recruitment of Parcel porters in group 'D' category is now made through agency of Railway Recruitment Boards vide Railway Board's instructions circulated under General Manager (P) Northern Railway's letter No. 220-E/Ply/Gp.D/Rectt. dated 10.2.2000 (copy filed and marked as Annexure R-5).
- (b) The contents of this para are wrong and denied. It is submitted that the applicants have claimed to have worked as contractors labour parcel porters during the period May 1991 to Aug 1992.
- (c) The contents of this para are wrong and denied. It is submitted that 40 stations on Bikaner Division have been closed for parcel handling work w.e.f. 1.4.2000 taking into account the poor economy. At present no contractor's labour is engaged on Bikaner Division for parcel handling work.
- (d) The contents of this para are wrong and denied
&
(e) It is submitted that the applicants have claimed to be Railway contractor's labour for loading and unloading of parcels. It is further submitted that the respondents do exercise any administrative control over the functioning of the contractor's labour parcel porters.

Annexure
R-5


Divl. Commercial Manager
N. Rly., BIKANER

: 9 :

- (f) The contents of this para are wrong and denied. It is submitted that the applicants have themselves claimed to have worked as contractors' labour during the short period from May 1991 to Aug. 1992. It is submitted that 40 stations on Bikaner Division have been closed for parcel handling work w.e.f. 1.4.2000 taking into account the poor economy. At present no contractor's labour is engaged on Bikaner Division for parcel handling work.
- (g) The contents of this para are wrong and denied. It is submitted that the applicants have claimed to be Railway contractor's labour for loading and unloading of parcels. It is further submitted that the respondents do exercise any administrative control over the functioning of the contractor's labour Parcel Porters.
- (h) The contents of these paras are wrong and
to
(k) denied. It is submitted that the applicants have claimed to have worked as Railway Contractors' labour and at no point of time they were in service of the answering respondents. It is submitted that recruitment to Group 'D' artisans cadre and Group 'C' is made as per Recruitment Rules contained in Indian Railway Establishment Manual Vol.I. The persons are recruited subject to rigorous standards, age limit, educational qualifications, medical fitness, character


Divl. Commercial Manager
N. Rly., BIKANER

: 10 :

verification etc. which standards are, however, not adopted by the private contractor while making engagement of his persons. It is the discretion of contractor to whom he may engage labour and for how many days. It is submitted that 40 stations on Bikaner division have been closed for inward, outward, local and foreign parcel traffic vide letter dated 28.3.2000 (Annexure R-2) being uneconomical and of lesser importance in regard to parcel work and earning therefrom. It is further submitted that at present no contractors' labour is engaged on Bikaner Division ^{for} ~~for~~ parcel handling work.

4.5
to
4.7

The contents of these paras are wrong and denied. It is submitted that in the light of Hon'ble Tribunal's judgement, the matter was referred to concerned ALCs for verification and to provide a list of claimants in order of their total number of working days. After receiving the list and detailed information from the concerned ALCs, a provisional seniority list was prepared and circulated displayed at various places inviting objections. After examining and finalising the so-called information received, a final seniority list of 285 contract labour parcel porters was prepared. If the names of the applicants have not been included in the said seniority list, they ought to have approached the ALCs concerned along with number of their working days for inclusion of their names in the said seniority list.


Divl. Commercial Manager
N. Rly., BIKANER

: 11 :

4.8 The contents of this para are wrong and denied. It is submitted that if the applicants were aggrieved due to non-inclusion of their names in the Seniority list of contract labour Parcel Porters, they ought to have approached the concerned AICs along with proof of their working days. It is submitted that at present no contract labour is now engaged on Bikaner Division for parcel handling work. It is further submitted that the recruitment in group 'D' category is now made through Railway Recruitment Board and if the applicants consider that they possess the requisite qualification, they may compete along with other as and when direct recruitment of Group 'D' category is made by the Railway Recruitment Board.

5. Reply to Grounds

The contents of paras 5(a) to 5 (g) of the Grounds are wrong and denied. The applicants have merely repeated the facts stated in para 4. As such the respondents crave leave of this Hon'ble Tribunal to refer and rely on the replies given in para 4. However, reply to legal submissions will be made at the time of arguments.

6. In reply it is submitted that the application is not maintainable under Section 20 of the Administrative Tribunal Act, 1985.

7. Denied for want of knowledge.

8. In view of the submissions made herein above, the applicants are not entitled to the relief

[Signature]
Divl. Commercial Manager claimed by them in the O.A which is liable
N. Rly., BIKANER

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: 11 A -


to be dismissed.

9. In view of the submissions made herein above, the applicants are not entitled to the interim relief prayed for.

10-12 These paras being formal need no comments.

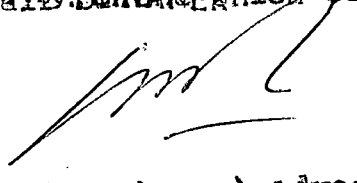
P R A Y E R

In view of the submissions made herein above, it is MOST RESPECTFULLY prayed that this Hon'ble Tribunal may be pleased to dismiss the application of the applicants, in the interest of justice.


Respondents
Divl. Commercial Manager,
N. Ry. Bikaner Division of India

For and on behalf of


through


(R.L. Dhawan) Advocate
Counsel for the respondents.

Verification

I, Vivek Angra, Divl. Commercial Manager, Northern Railway, Bikaner Division, Bikaner, do hereby verify that the contents of paras 1, 4 to 7 and preliminary submissions are true to my knowledge based on official records which are regularly kept and information received from the concerned officials while those of paras 2, 3, 8 to 12 and of preliminary Objections believed to be true on legal advice received and that I have not suppressed any material fact, Last para is prayer to this Hon'ble Tribunal.

verified at Bikaner, this 19th day of March
February, 2001.


Respondents
Divl. Commercial Manager,
N. Ry. Bikaner Division of India
For and on behalf of

Divisional Office,
Bikaner.

29th March-2000.

No. Coml./25-AC/Policy/Seniority/99,

The Divisional Personnel Officer,
Northern Railway, Bikaner.

Annexure R-I

Sub.: Screening of Parcel Porters and result thereof.

...

As a result of screening of Parcel Porters, which was held at Bikaner on 13.2.2000 & 14.2.2000, the following candidates are placed on the provisional panel for giving them appointment on group 'D' post of Parcel Porter gr.2550-3200(RP).

S.No.	Nam./Father's name	Wkg. stn.	Category.
1.	S/Shri Arjun Singh/Kalu Singh	SDLP	Genl.
2.	Prabhu Dayal/Budh Ram	BNW	-do-
3.	Mani Ram/Kanhiya Lal	SSB	SC
4.	Inder Singh/Ramji Lal	SSA	Genl.
5.	Lila Ram/Amar Singh	SSA	SC
6.	Dayal Kishan/Kanhiya Lal	DEE	Genl.
7.	Dharamvir Singh/Mohar Chand	DEE	SC
8.	Heera Lal/Surja Ram	CUR	SC
9.	Banwari Lal/Kanhiya Lal	SSA	SC
10.	Sheokat Ali/Ahmed Khan	HMH	Genl.
11.	Bhanwar Lal/Net Ram	HMO	SC
12.	OmPrakash/Badru Ram	SDGH	Genl.
13.	Madan Singh/Balu Singh	ENB	Genl.
14.	Jagdish Singh/Duli Ram	DEE	OBC
15.	Ram Dularey/Bajinath Yadav	GGN	Genl.
16.	Mumtaz Khan/Suleman Khan	TSD	OBC
17.	Ranbir Singh/Mohar Singh	BNW	Genl.
18.	Sher Singh/Subh Ram	HSR	SC
19.	Bhanwar Dan/Kan Dan	RTGH	OBC
20.	Gopal Dan/Kan Dan	RTGH	OBC
21.	Bhikham Singh/Balwant Singh	RTGH	Genl.
22.	Sham Khan/Yakub Khan	HMH	Genl.
23.	Bharat Singh/Lila Ram	CKD	SC
24.	Yakub Ali/Ali Sher	NHR	OBC
25.	Jagmal Singh/Bharwar Singh	NHR	Genl.
26.	Magbool /Ali Sher	SG NHR	OBC
27.	Babu Lal/Sohan Lal	SG	Genl.
28.	Dulla Ram/Ganasha Ram	CUR	SC
29.	Puran Chand/Suraja Ram	SGNR	SC
30.	Kurda Ram/Ganga Ram	SGNR	SC
31.	Ramesh /Desh Raj	MHRG	SC
32.	Babu Khan/Suleman Khan	TSD	OBC
33.	Ratan Lal/Kishan Lal	CUR	SC
34.	Puran Singh/Girdhari Lal	HSR	OBC
35.	Sadhu Ram/Nanak Chand	SSA	OBC
36.	Aju Khan/Mohan Khan	RTGH	OBC
37.	Nagarmal/Sukha Ram	"	SC
38.	Data Ram/Mohar Singh	SDLP	SC

contd....2

39. Sita Ram / Triloka Ram	PTGH	SC
40. Sultan Khan/Bhanwaroo Khan	RTGH	OBC
41. Ghisa Ram/Baru Ram	BNW	SC
42. Shiv Narayan/Sri Ram	DEC	SC
43. Jetha Ram/Girdhari Lal	SRDE	SC
44. Ran Singh/Nathu Ram	LHU	SC
45. HarKishan/Bhikh Ram	DEC	SC
46. Madan/Bhanwar Dan	RTGH	OBC
47. NavrangLal/Govind Ram	HSR	OBC
48. Mal Ram/Mawa Ram	SOG	OBC
49. Rakesh Kumar/Bhanwar Lal	CUR	SC
50. Bhanat Ram/Sowak Ram	BHTMEY	SC
51. Budh Ram/Manohar Lal	BHT	SC
52. Yunus Ali/Ajim Khan	EKN	OBC
53. Noor Mohd./Rustam Khan	EKN	OBC
53. Taj Mohd./Alladin Khan	EKN	OBC
54. Noor Mohd./Rustam Khan	EKN	OBC
55. Nasir Ahmed/Mohd. Rafiq	EKN	OBC
56. Daulat Ram/Dana Ram	KESR	OBC
57. Bhanwar Lal/Roop Ram	SDLP	ST
58. Rajender Kumar/Bhagirath	RSNR	OBC
59. Mohd. Qam/Hakam Ali	EKN	OBC
60. Rajpal/Manigar	DEC	OBC

The panel shall be provisional, subject to final out-come of Court cases pending in various Courts, Medical fitness, and Police verification, and other unforeseen circumstances as the case may be.

29/3/22
Divl. Commercial Manager,
Northern Railway,
Bikaner.

Copy to - All concerned from S.No.1 to 60 above at their Home Address.

2) Stn.Supts./ SDLP BNW SSADEECUR HHM HMO SDGH ENB
GGN TSD HSR RTGH CKD NHR SOG SCNR MHRG DEC SRDE
LHU MBY BHT EKN,*KESR & RSNR.

3) Shri _____

This Annexure R-1 is the true
copy of the original.

(R. L. DILLI, Advocate)

Northern Railway

Divl. Office,
Bikaner.

No. 13-MC/Parcel Traffic/2000
Dated:-28.3.2000.

All Station Suptd/Asstns on Bikaner Division.
Copy:-All CMIs on Bikaner Division.

Sub:- Closure of 40 stations for booking of
parcel traffic both inward and outward
over Bikaner Division.

It has been decided by the competent authority
1. e. GCM/FM, N. Ry., Beroke House, New Delhi to close the
following 40 stations for parcel traffic both inward and
outward for local and through booking w.e.f. 31.3.2000 over
Bikaner Division.

All concerned staff should note and act accordingly.

List of station:

1. Anupgarh 2. Bardsahi 3. Bhatu 4. Cherkhi Dadi
5. Dudhwa Khara 6. Dug 7. Elianabad 8. Gurgaon 9. Charkhi
10. Bhatu 11. Jamsar 12. Kishoreganj 13. Kanina-
14. Kailash 15. Kailash 16. Kailash 17. Lalgarh
18. Lunkaransar 19. Mahendergarh 20. Mahajan 21. Nohar
22. Napsar 23. Pilibhangan 24. Patandi Road. 25. Pilsingh-
26. Ramnagar 27. Rajaldesar 28. Sangaria 29. Sadi Bahar
30. S. Bikaner 31. Set Road 32. Sivan 33. S. Bikaner
34. S. Bikaner 35. Sider 36. Sider 37. Tehsil-
- Bahdra 38. Tibi 39. Gajsinghpur 40. Mandi Adampur.

For Divl. Coml. Manager,
Bikaner

26/3/20

This is the true
copy of the original document.

(R. L. DHAWAN) Advocate

14

Annexure R-2

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No. 433/1998.

A.I.R.LY. PARCEL & GOODS PORTERS UNION

VERSUS

Petitioner (s) .

U.O.I. & ORS.

Respondent (a).

[With Appln(s). for stay and impleading party
and directions and exemption from filing O.T.]
(With Office Report)
(With Appln. for permission to implead responde

Certified to be true copy

Asst. Dir. of Health (J. H. H.)

13/4/1904

With

W.P(C)No. 278/1999, and W.P(C)No. 457/1998.

Date : 08/09/2000 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL.

For Petitioner (s)

Mr. I. N. Rao, Adv.
Ms. Renu George, Adv.
Mr. Dinesh Kumar Garg, Adv.
Mr. Ashok Sharma, Adv.

For Respondent (S)

Mr. Harish N Salve, S.G.
Mr. R.N. Rawal, A.S.G.
M/s Indira Sawhney, Anjani Aiyagari,
Mrs Anil Kalliyar, Advy.

[illegible]

Rev. John Jay Smith, Secy.

UPON hearing counsel the Court made the following
O R D E R

Application for exemption from filing O.T. is allowed.

Pending disposal of these petitions, there shall be no regularization of parcel porters working at different railway stations notwithstanding any order of any Court, Tribunal or other authority.

Call after six weeks.

Charanjit

1 Meena Tripathi
Court Master

This Annexure... 23... is the true copy of the original document.

(R. L. DHAWAN) Advocate

COURT OF APPEALS
CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 1350 OF 1906

Bishu Nath Saha and Others

Appellants

V. State

Minister of India and Others

Respondents

WITH

1906 appeal No. 1356/06, 1357/06, W.P.(C) No. 433/93, 1024/89, 2681/80, 2682/80, J.L.P.(C) No. 19579/94, W.P.(C) No. 234/80. and C.A. 1111/97
ALLIANCE CASE OF J.L.P.(C) No. 3740-3741/97

ORDER

The Central Administrative Tribunal 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 Railways. The Eastern Railway, however, in the affidavit filed on its behalf by Shri S. Maji, Chief Mechanical Engineer (Running) Eastern Railway, Calcutta dated 13th of April, 1993 offered, on humanitarian grounds, that the contractor's labours can form their co-operative societies and participate in handling and other contracts issued by the Railways from time to time and the co-operative societies thus formed may get all the benefits as laid down in the Railway Board's

...2/-

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Assistant Commercial Manager,
E. R. प्रबंधक/WR. ASMR

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18/10/1997

Letter No. 72/X/Co-op./L/1/5 dated 21.9.1973 as modified from time to time. The appellants/petitioners state that they will accept the scheme. It is directed accordingly. The appellants/petitioners have also contended that whenever possible the labourers employed by the contractors should be absorbed by the concerned Railway as and when any vacancy arises and the turn of such labourers comes. In some of the matter which are before us, the concerned Railway authority has in fact, absorbed some of the contractors' labourers rendered surplus in the vacancies which were available with them. It will be for the concerned Railway to take such measures as they may consider appropriate in this regard.

The civil appeals, writ petitions and the special leave petition are disposed of accordingly.

S.L.P. (C) Nos. 3740-11/97

Heard both sides. For the reasons stated above, leave is granted, the impugned order of the Tribunal is set aside and the appeal is allowed in the same terms.

For the Appellant
S. L. DHAWAN, Advocate

.....
(SUJATA V. HANDEKAR)

New Delhi,
April 3, 1997.

.....
(V.H. KUMAR)

This Annexure is the true copy of the original document

[Signature]
(R. L. DHAWAN) Advocate

(16)

Annexure R-5⁶⁸

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 807/98

New Delhi this the 5th Day of February 1999

Hon'ble Shri R.K. Ahooja, Member (A)

1. Shri Ram Vir
S/o Shri Ram Charan Lal
C/o Shri V.K. Saxena, HIG D/70
Dinadlal Nagar, MDA Colony
Moradabad.
2. Jahjahan Lal,
S/o Shri Sohan Lal
C/o Village Been Khera,
P.O. Rahali,
Distt. Moradabad.
3. Rishi Ram,
S/o Shri Hoori Singh,
P/o Village Ratanpur,
(Guxradh), Muara Khera,
Distt. Moradabad.
4. Vijay Pal
S/o Shri Inder Singh,
R/o Village Nameni Gathi,
Post Kausharanpur,
Distt. Moradabaed.
5. Lokender Singh,
R/o Shri Ram Prasad Singh,
Village Patanpur,
Guradh, Post Muanda Khera,
Distt. Moradabad.
6. Mehender Singh,
S/o Shri Ram Pal Singh,
Village Molagarh,
P.O. Malagarh,
Distt. Moradabad.
8. Kailash,
S/o Shri Ram Swroop,
R/o Village Farida Kala,
P.O. Guredhi,
Distt. Moradabad.
9. Mohan Singh,
S/o Shri Bhagwan
R/o Village. Roghpur Mithani,
Post Soirkola,
Distt. Moradabad.
10. Vijay Pal,
S/o Shri Khem Singh,
Village. Sitapur,
P.O. Chakperi,
Distt. Moradabad.

Bench, New Delhi

PM

11. Sohan Lal,
S/o Shri Bhim Sein,
Village. Bangla,
Police Chowki,
Near Gali No. 1.
Moradabad.
12. Charan Singh,
S/o Sunder
R/o Village Didoli,
P.O. Paghwas,
Distt. Moradabad.
13. Bharat Singh
S/o Shri Tota Ram,
P.O. Vacha Gaav,
Distt. Moradabad.
14. Rajeev Kumar Sharma,
S/o Shri Shiv Kumar Sharma,
R/o H.No. H/311,
Distt. Moradabad.
15. Shiv Charan,
Fulashi Ram,
Village Banga Gaav,
Near Wine Shop,
Moradabad.
16. Ram Swroop
S/o Bhoga Ram,
Mohalla Kat Gar,
Moradabad.
17. Bhagwan Dass,
S/o Shri Lakshman Singh,
Village Bhoghpur Mathani
P.O. Sirkola,
Moradabad.

Applicant

(By Advocate: Shri B.S. Mainee)

-Versus-

Union of India:

1. The Secretary,
Ministry of Railways,
(Rail Board),
Rail Bhawan,
Raisina Road,
New Delhi-110 001.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Moradabad Division,
Moradabad (U.P.)

Respondents

(By Advocate: Shri R.L. Dhawan)



ORDER

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The applicants, 17 in number, claim to be working in the Railway canteen in the office of Divisional Railway Manager, Northern Railway, Moradabad Division (UP). They say that this canteen has been in existence for about fifteen years. It was earlier managed by the staff themselves but on 16.12.1971 the Executive Committee of the canteen resigned due to the unsatisfactory financial position of the canteen. Thereafter, Respondent No.3, viz., DRM, Moradabad set up an ad hoc committee consisting of three officers under him and the present canteen started functioning from 18.1.1972. Thereafter the DRM wrote to the Railway Board to grant recognition to this canteen as such a recognition will result in the applicants' being treated as regular railway employees. They have also submitted several representations on this point. Their grievance is that the Railway Board have so far not taken any decision on their representations as well as recommendations of the DRM, Moradabad.

2. When the matter came up for final hearing, Shri B.S. Mainee, learned counsel for the applicants submitted that the only relief sought for by the applicants is a direction to the respondents to decide the matter finally. Shri R.L. Dhawan, learned counsel for the respondents, however, raised a preliminary objection that the present application is not maintainable under Section 14 of the A.T. Act, 1985, since the applicants are not holding any civil posts and are not engaged by the railways. In support of his arguments, he relied on the decision of the Hon'ble Supreme Court in Civil Appeal No. 1358/86 and the

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latest order of the Hon'ble Supreme Court in Union of India & Ors. Vs. Choteylal and Ors., SCS L&J 1999(1) SC 67. I find that the latest judgement of the Hon'ble Supreme Court in Union of India & Anr. Vs. Choteylal & Ors., settles the law on the subject. In that case certain persons appointed as Dhobis to wash clothes of cadets at NDA, Khadkwasla and paid from the regimental fund sought their regularisation before the Hon'ble Bench of the Tribunal and taking into account the fact that the applicants were working for nearly 30 years, a direction was given to the NDA for preparing a scheme for the appointment of the applicants on a permanent basis. On the appeal being filed by the Union of India, the Supreme Court upheld their plea that even though the applicants were being paid by the regimental fund which was under the Commanding Officer of the Institution and even though certain control was exercised by the Commanding Officer over the applicants who were Dhobis, it could not be concluded that the post of Dhobis was a civil post and that payments to the holders of such post was made from out of the Consolidated Fund of India. Hence, it was held by the Hon'ble Supreme Court that this Tribunal had no jurisdiction to go into the question of service conditions of such Dhobis.

3. In the present case also, it is an admitted position that the applicants are not being paid from the public funds. Undoubtedly, an ad hoc committee under the control of respondent No. 3 is running the canteen but the exercise of such control cannot, in terms of the law laid down by the Supreme Court in Union of India Vs. Choteylal (Supra) bring the applicants within the purview

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of Section 14 of the AT Act. The argument advanced by Shri B.S. Mainee, learned counsel for the applicants that as the DRM himself has taken up the case for recognition of the canteen, the canteen is situated on the railway premises and that it is meant for the welfare of the railway employees in terms of statutory provisions, does not change the basic position that the applicants are neither railway employees nor casual labourers engaged by railways and paid out of railway funds. In these circumstances this Tribunal does not have jurisdiction in their service matters.

In the light of the above discussion, this O.A. is dismissed as not maintainable.

Mittal

(R.K. AHOOJA)
Member(A)

ORIGINAL COPY

18/7/99

Principal

This Annexure R-5 is the true copy of the original document.

(R. L. DHAWAN) Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A. No. _____/2001

IN

O.A. No. 867 of 2000

IN THE MATTER OF

Shri Jhabbu & others Applicants

Versus


Union of India & others Respondents

REPLY ON BEHALF OF THE RESPONDENTS
TO THE MISC. APPLICATION FILED BY
THE APPLICANTS FOR JOINING TOGETHER

MOST RESPECTFULLY SHOWETH

PARAWISE REPLY

1. The contents of the para are disputed and denied
It is submitted that the applicants have claimed
to be Railway contractor's labour for loading/
unloading of parcels. It is further submitted
that the applicants have never been in the
service of the respondents and are not Railway
employees and the application is not maintainable
under section 14 of the Act. It is further
submitted and denied that the applicants have
a common cause of action. It is further denied
that common relief can be prayed for or common
relief can be granted. The applicants do not
have a common cause of action or a common
grievance. Grievance, if any, of the applicants
should have been agitated by each of the applicant


Divl. Commercial Manager
N. R. EKANER

: 2 :

separately. The application is, therefore,
bad in law and deserves to be dismissed
on this count alone.

Through

(R.L.Dhawan) Advocate
Counsel for respondents

RESPONDENTS
For and on behalf of Union of India
N. Ry., BIKANER

verification

I, Vivek Angra , Divisional Commercial
Manager, Bikaner Division, Northern Railway, Bikaner
do hereby verify that the contents stated above are
true to my knowledge based on official records
and nothing material has been suppressed.

verified at Bikaner this 19th day of ^{March} ~~February~~,
2001.

Respondents
Div. Commercial Manager
For and on behalf of Union of India
N. Ry., BIKANER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

M A/P T 1947 2010
IN
O A 867/2000

In the above mentioned case the applicant(s)/Respondent(s) has/have filed
The Present Misc. Application /Petition for transfer praying for Execution
The Misc. Application/Petition for Transfer is
in order and may be listed on 03/8/10 in Court No S. B.

SECTION OFFICER(F)

307/10

DEPUTY REGISTRAR(J)

30/7

307/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

M.A.No. 1942/2010
IN
O.A.NO. 867/2000

In the matter of :
Jhabbu & ors.

-Applicants

Versus

U.O.I. & others.

-Respondents

I N D E X

<u>Sr.No.</u>	<u>Particulars of the Documents</u>	<u>Page No.</u>
1.	Misc. application under rule 24 of teh CAT(P) Rules.	1-8
2.	Annex.M-1: CAT Judgment dt.21.5.04	9-14
3.	Annex.M-2: RLC order dt.10.10.2009	15
4.	Annex.M-3: SC Judgment 2003	16-28
5.	Annex.M-4: SC Judgment.	29-36.

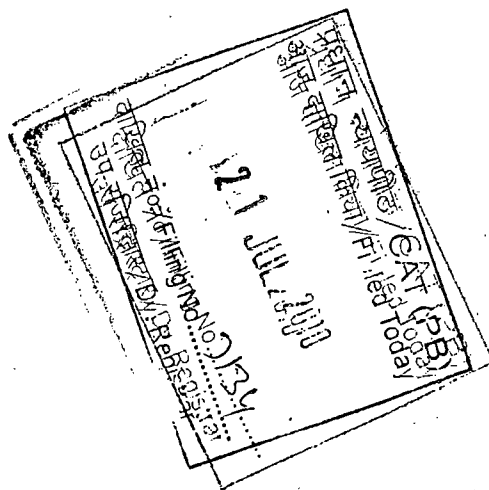
copy received.

M Sharma
21/7

Applicant

Through counsel:

Yogesh
(Yogesh Sharma) Advocate
CAT Bar Room, Copernicus Marg
New Delhi.
T.No.9818148728



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

^{MA}
^{IN}
O.A.NO. 867 /2000

In the matter of :

1. Ajay s/o Sh. Ramvir, (Applicant No.5 in OA)
2. Mohan Lal s/o Sh. Sohan Lal, (Applicant No.7 in OA)
3. Vishnu s/o Sh. Ram Baksh (Applicant No.9 in OA)
4. Hari Singh s/o Sh. Bhanwar Singh (Applicant No.10 in OA)
5. Dalip s/o Sh. Mahesh (Applicant NO.11 in OA)
6. Ramu s/o Ravinder (Applicant No.12 in OA)
7. Satyender s/o Sh. Vidya Shankar (Applicant No.13 in OA)
8. Shashi Ranjan s/o Sh. Narender (Applicant No.14 in OA).

.....Applicant.

Versus


Union of India & Ors.

.....Respondents.

Misc. Application under rule 24 of the CAT(P) Rules, for issuing an appropriate directions to given effect and to implement the judgment dated 21.5.2004 in OA No.867/2000.

MOST RESPECTFULLY SHOWETH:

1. That the applicants have served in the Railway department as Parcel Porter through contractor and filed the above noted OA for seeking the benefits of directions/judgment passed by the Hon'ble supreme court for absorption and regularization of the services of the parcel porters and the contents stated in the main OA be treated as a part and parcel of this Misc. Application.
2. That the OA of the applicants was decided by the Hon'ble Tribunal on merits after issuing notices and after considering the reply filed by the



respondents vide judgment dated 21.5.2004 with the following directions:

"8. I am satisfied that the applicants being a non-arty before the apex court are similarly circumstances and in view of the constitution Bench decision of the Apex court in K.C.Sharma Vs U.O.I.(JT 1997(7)SC 258) cannot be deprived of the benefit of the Apex court.

9. Accordingly OA is disposed of with the directions in terms of the decision of the apex court(supra). No costs."

3. That in compliance of the judgment of the Hon'ble Tribunal and as directed by the Hon'ble Supreme court, the respondents forwarded the case of the applicants to the Regional Labour Commissioner(C) Lucknow and the Regional Labour Commissioner, after issuing the notices to all the concerned and after giving opportunity to the concerned parties, submitted his report vide dated 10.10.2009 to the Sr.DCM, Bikaner for further action.
4. That as per the knowledge of the applicants, the RLC verified the services record of 8 persons out of total 22 persons i.e. services record of the applicants.
5. That it is submitted that the RLC submitted his report on 10.10.2009 and know more than seven months have been passed but till date no further action has been taken by the respondents.
6. That the writ petition No.433/1998 was decided by the Hon'ble Supreme court vide judgment dated 22.8.2003 with the following directions:
 - "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 service. 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 station 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."

7. That the Railway board vide circular dt.25.4.2005 issued some Guidelines for absorption of the Parcel Porters in Railway department and prescribed three main conditions which are as under;

- (i) Continuous service of 10 years or more.
- (ii) C.L. to be so considered for appointment must not have reached the age of superannuation.
- (iii) C.L. to be so considered for appointment must have the requisite education qualification as per railway recruitment rules for Group D (i.e. 8th class)



8. That now the Hon'ble Supreme court while deciding the Five Writ Petitions of Parcel porters in main Writ petition No. 640/2007 decided on 17.11.2009 declared that conditions put by the Railway Board for absorption of the parcel porter regarding 8th class and other conditions are not correct and relevant para of the judgment is reproduced here as under:

"10. In that view of the matter, as far as the writ petitions are concerned, we allow the writ petitions and direct that in terms of the directions given in the case of A.I.Railway Parcel & Goods porters's Union (Supra), the respondents shall take immediate steps to absorb the writ petitioners but taking into consideration only those conditions which have been indicated in paragraph 34 of the judgment. Such exercise should be completed with in three months from the date of communication of this order."

9. That it is relevant to mention here that in para 34 of the judgment in A.R.Railway Parcel & Goods Porters Union Vs Union of India and others, 2003(11) SCC 590, there are no such condition of 10th years continuous service and 8th pass conditions and therefore, both the conditions as stated in the Railway Board circular dt.25.4.2005 are deemed deleted from the circular and cases of the applicants should be considered to their absorption, as per the directions of the Hon'ble Tribunal as well as Hon'ble Supreme court of India.

Prayer:

- (i) That Hon'ble Tribunal may graciously be pleased to pass an appropriate order, directing the respondents to consider and to finalise the case of the applicants for their absorption and regularization as per the directions of the Hon'ble Supreme court in compliance of Hon'ble Tribunal judgment dated 21.5.2004.
- (ii) That the Hon'ble Tribunal may graciously be pleased to treat the present MA as a contempt of court petition if necessary in the facts and circumstances of the case.

- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant.

Applicant.

1. डॉ. वी. ए. शर्मा

2. डा. जय कुमार

3. डॉ. नू

4. लक्ष्मण शर्मा

5. श्री शिखर

6. मोहन लाल

7. ए. ए. सिंह

8. विपुल

New Delhi
H-1576/18

गुजर

Handwritten signature

New Delhi
Dt-15/6/24

Applicant.
Handwritten signature

suppressed any material facts.

knowledge and paras are to believed on legal advice that I have not
Do hereby verify that the contents of above paras are true to the best of my

r/o A-17, Pundarik Vihar off. Saranswati Vihar New Delhi.
I. Satyender s/o Sh. Vidya Shankar. Aged 38 years,

Verification:

Applicant.
Handwritten signature

suppressed any material facts.

knowledge and paras are to believed on legal advice that I have not
Do hereby verify that the contents of above paras are true to the best of my

r/o A-17, Pundarik Vihar, off. Saranswati Vihar New Delhi.
I. Renu s/o Sh. Ravinder. Aged 38 years,

Verification:

Applicant.
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suppressed any material facts.

knowledge and paras are to believed on legal advice that I have not
Do hereby verify that the contents of above paras are true to the best of my

r/o Flat no-E-108-B, LIG Flat Near Matha Dairy Narek Han New Delhi.
I. May Kumar s/o Sh. Ramm Lal. Aged 37 years,

Verification:

Applicant.
Handwritten signature

suppressed any material facts.

knowledge and paras are to believed on legal advice that I have not
Do hereby verify that the contents of above paras are true to the best of my

r/o Flat no-E-108, B, LIG Flat, Near Matha Dairy, Narek Vihar New Delhi.
I. Balbir Singh s/o Sh. Mohan. Aged 44 years,

Verification:

Handwritten mark

8

Verification:

I. Sashi Ranjan s/o Sh. Narendar Aged 38 years,
r/o A-17, Pundarik Nhar, opp. Saraswati Nhar New Delhi,

Do hereby verify that the contents of above paras are true to the best of my knowledge and paras are to believed on legal advice that I have not suppressed any material facts.

21/2/23
Applicant. 5

Verification:

I. Mohan Lal s/o Sh. Sohan Lal Aged 37 years,
r/o Railway Jhuggi Near Ganda Nala Rly yard Kishanganj Delhi

Do hereby verify that the contents of above paras are true to the best of my knowledge and paras are to believed on legal advice that I have not suppressed any material facts.

21/2/23
Applicant. 6

Verification:

I. Hari Singh s/o Sh. Bhawar Singh Aged 45 years,
r/o Rly. Jhuggi Near Ganda Nala Rly yard Kishanganj Delhi

Do hereby verify that the contents of above paras are true to the best of my knowledge and paras are to believed on legal advice that I have not suppressed any material facts.

21/2/23
Applicant. 7

Verification.

I. VISHNU s/o Sh. Ram Baksh Aged 38 years,
r/o Rly. Jhuggi Near Ganda Nala Rly yard Kishanganj Delhi.

Do hereby verify that the contents of above paras are true to the best of my knowledge and paras are to believed on legal advice that I have not suppressed any material facts.

21/2/23
Applicant. 8

New Delhi
21-15/6/23

yogz

5797/S

9

M/1

PRINCIPAL BENCH.

61/35, Copernicus Marg,
New Delhi - 110 001.
Date :

From
The Principal Registrar
Central Administrative Tribunal
Principal Bench, New Delhi.

10.6.2004

To

1. Shri Yogesh Sharma, Counsel for the applicant,
CAT., Bar Room, New Delhi
2. Shri R.L. Dhawan, Counsel for the respondents,
CAT., Bar Room, New Delhi

Regn.No. O.A..... 867/2000

Jhabbu & Drs.

..... Applicant

Versus

UGI & Drs.

..... Respondent

Sir,

I am directed to forward herewith a copy of Judgement/Order
Dt. 21.5.2004..... passed by this Tribunal in the above mentioned
case for information and necessary action, if any.

Please acknowledge the receipt.

Yours faithfully,



(SECTION OFFICER)
JUDL.-II

FOR PRINCIPAL REGISTRAR

8/11/6

Encl. : As above



10
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-867/2000

New Delhi this the 21st day of May, 2004.

Hon'ble Shri Shanker Raju, Member(J)

1. Jhabbu S/o Sh. Kewal Ram
2. Sumer S/o Sh. Sohan Lal
3. Narender Singh S/o Sh. Ram Singh
4. Munish S/o Sh. Murari Lal
5. Ajay S/o Sh. Ram Vir
6. Pankaj S/o Sh. Jagdish
7. Mohan Lal S/o Sh. Sohan Lal
8. Prasun S/o Sh. Jagdish
9. Vishnu S/o Sh. Ram Baksh
10. Hari Singh S/o Sh. Bhanwar Singh
11. Dalip S/o Sh. Mahesh
12. Raju S/o Sh. Ravinder
13. Satyender S/o Sh. Vidya Shanker
14. Shashi Ranjan S/o Sh. Narender
15. Jitender S/o Sh. Om Prakash
16. Lalit S/o Sh. Jai Dev
17. Maniraj S/o Sh. Shivraj
18. Mukesh S/o Sh. R.N. Kaushik
19. Vijay Kumar S/o Sh. Prabhati Lal
20. Krishan Dev S/o Sh. Makhan Yadav
21. Harivansh Yadav S/o Sh. Batan Kunwar Yadav
22. Shitla Prasad S/o Sh. Ram Shankerr Tiwari

All are r/o Labour Jhuggi, Near Ganda Nala Railway
Yarrd, Delhi Sarai Rohila, Delhi.

(through Sh. Yogesh Sharma, Advocate)

Versus

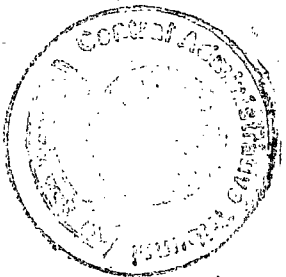
1. Union of India through
the Secretary,

4. In this view of the matter it is stated by learned counsel of applicants that the applicants were not among 285 Parcel Porters whose list after verification was prepared by the respondents. Their cases were never verified by ALO as such he attempts to distinguish the decision of this Court in Mahavir Singh Vs. U.O.I. & Ors. (OA-1280/2000) decided on 17.5.2004.

5. On the other hand respondents' counsel Sh. R.L. Dhawan vehemently opposes the contention and stated that in pursuance of directions of the Tribunal, a consolidated list of 285 contract Parcel Porters was prepared and the persons who were shown in the seniority were regularised after subjected to a screening test. Applicants despite knowledge had not taken any objection to the seniority.

6. Learned counsel by referring to an order passed by the Divl. Commercial Manager Bikaner Division on 28.3.2000 contended that 40 stations in Bikaner Division in so far as it relates to booking of Parcel Traffic both for inward and outward had been closed. As such, for want of any post the applicants' claim cannot be countenanced.

7. I have carefully considered the rival contentions and perused the material placed on record. The Apex Court in A.I. Railway Parcel & Goods Porters Union Vs. U.O.I. & Ors. (2003(6)Scale 774) and in the light of the fact that the Parcel Porters had



10
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-867/2000

New Delhi this the 21st day of May, 2004.

Hon'ble Shri Shanker Raju, Member(J)

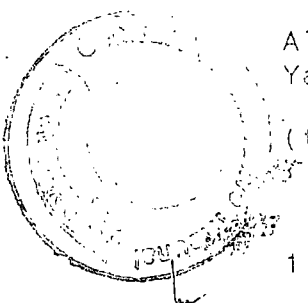
1. Jhabbu S/o Sh. Kewal Ram
2. Sumer S/o Sh. Sohan Lal
3. Narender Singh S/o Sh. Ram Singh
4. Munish S/o Sh. Murari Lal
5. Ajay S/o Sh. Ram Vir
6. Pankaj S/o Sh. Jagdish
7. Mohan Lal S/o Sh. Sohan Lal
8. Prasun S/o Sh. Jagdish
9. Vishnu S/o Sh. Ram Baksh
10. Hari Singh S/o Sh. Bhanwar Singh
11. Dalip S/o Sh. Mahesh
12. ⁿRaju S/o Sh. Ravinder
13. Satyender S/o Sh. Vidya Shanker
14. Shashi Ranjan S/o Sh. Narender
15. Jitender S/o Sh. Om Prakash
16. Lalit S/o Sh. Jai Dev
17. Maniraj S/o Sh. Shivraj
18. Mukesh S/o Sh. R.N. Kaushik
19. Vijay Kumar S/o Sh. Prabhati Lal
20. Krishan Dev S/o Sh. Makhan Yadav
21. Harivansh Yadav S/o Sh. Batan Kunwar Yadav
22. Shitla Prasad S/o Sh. Ram Shankerr Tiwari

All are r/o Labour Jhuggi, Near Ganda Nala Railway
Yarrd, Delhi Sarai Rohila, Delhi.

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through
the Secretary,



Ministry of Railway,
Rail Bhawan, New Delhi.

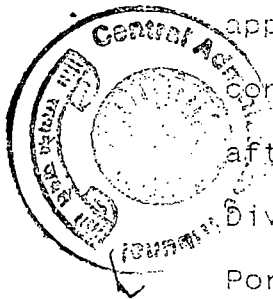
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divl. Railway Manager,
Northern Railway,
Division Bikaner.
4. M/s Sh. Ganesh Govt.
Contracts & Rural Works
prop. Prem Prabhakar,
V-D-10, Hudco Qrs.,
Jai Narain Vyas Colony,
Bikaner(Raj.) Respondents
(through Sh. R.L. Dhawan, Advocate)

ORDER (ORAL)
Hon'ble Shri Shanker Raju, Member(J)

Heard the learned counsel.

2. Applicants who are Parcel Porters working at Northern Railway Stations in Bikaner Division seek extension of benefit of the decision of Apex Court in Writ Petition (Civil) 433/1998 where directions have been issued in the event verification has not been conducted in the case of contract Parcel Porters to have fresh verification conducted through ALO and thereafter to further process, absorption and regularisation of service of the Parcel Porters.

3. Learned counsel states that the applicants had been engaged as Parcel Porters and continued to perform their duties till the time when after selection of 60 Parcel Porters the Bikaner Division had closed down engaging contract Parcel Porters.

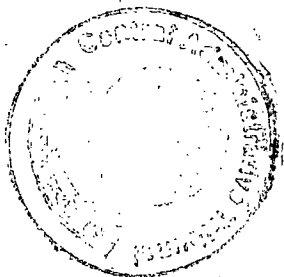


4. In this view of the matter it is stated by learned counsel of applicants that the applicants were not among 285 Parcel Porters whose list after verification was prepared by the respondents. Their cases were never verified by ALO as such he attempts to distinguish the decision of this Court in Mahavir Singh Vs. U.O.I. & Ors. (OA-1280/2000) decided on 17.5.2004.

5. On the other hand respondents' counsel Sh. R.L. Dhawan vehemently opposes the contention and stated that in pursuance of directions of the Tribunal, a consolidated list of 285 contract Parcel Porters was prepared and the persons who were shown in the seniority were regularised after subjected to a screening test. Applicants despite knowledge had not taken any objection to the seniority.

6. Learned counsel by referring to an order passed by the Divl. Commercial Manager Bikaner Division on 28.3.2000 contended that 40 stations in Bikaner Division in so far as it relates to booking of Parcel Traffic both for inward and outward had been closed. As such, for want of any post the applicants' claim cannot be countenanced.

7. I have carefully considered the rival contentions and perused the material placed on record. The Apex Court in A.I. Railway Parcel & Goods Porters Union Vs. U.O.I. & Ors. (2003(6)Scale 774) and in the light of the fact that the Parcel Porters had



continuously worked and their cases had not been verified, there may be a fresh scrutinisation of record by the Estate Labour Commission and thereafter subject to the enquiry and report submitted, Railways has been directed to consider regularisation of the services.

8. In Mahavir's case the facts were entirely different as raised in the present case. Therein after verification of record by ALO and despite knowledge of seniority list of 285 applicants had not staked their claim and had not participated in the screening. Accordingly for want of post as the regularisation process had already been completed, his case was turned down. Whereas in the present case applicants records had never been verified in the past and they were not included in the list of 285 in so far as seniority of Parcel Porters is concerned. Accordingly, this is a case where ALO has to scrutinize the records of the applicants. In so far as the question whether they had worked upto 29.3.2000 whereas the booking of Parcel Porters had been closed down in Bikaner Division is not relevant to the issue. Accordingly, I am satisfied that the applicants being a non-party before the Apex Court are similar circumstance and in view of the Constitution Bench decision of the Apex Court in K.C. Sharma Vs. U.O.I. (JT 1997 (7) SC 258) cannot be deprived of the benefit of the Apex Court.



9. Accordingly O.A. is disposed of with the directions in terms of the decision of the Apex Court (supra). No costs.

(Shanker Raju)
Member(J)

/vv/



RECEIVED TRIBUNE COPY
10/05/2011
प्रमुख अधिकारी/Secretary
केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal
प्रधान न्यायाधीश, नई दिल्ली
Chief Justice, New Delhi

15- M/2
Government of India
Ministry of Labour & Employment
Office of the Regional Labour Commissioner(Central)
Hall No.2, 8th Floor, Kendriya Bhawan
Sector H, Aliganj
Lucknow

No.LKO OA-867/2009

Dated 10/10/2009

To

✓ Sr Divisional Commercial Manager
North Western Railway
Divisional Office
Bikaner

Subject: Verification of working days as per order of Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 867/2000 filed by Shri Jhabhu & 21 others vs Union of India and others- Reg.

Sir,

Kindly refer to your letter No Commercial/25/AC/Parcel porter/867 dated 19/09/2005 on the above noted subject.

2. In this connection it is informed that the enquiry on the subject has been conducted by this office on various dates and finally on 09/10/2009. Thereafter the verification report is being sent herewith for your kind information and necessary action in the matter. It is also requested to inform and provide a copy of report to concerned petitioners involved in the said O.A.

Encl: As above.

Yours faithfully,

(D.P.Singh)

Regional Labour Commissioner(C)
Lucknow

Copy alongwith a copy of verification report to

1. Shri Jhabhu & others, Labour Jhuggi, Near Ganda Nala Railway Yard, Delhi Sarai Rohilla.
2. Dy ELC(C), Kanpur

Regional Labour Commissioner(C)
Lucknow

may be made about the financial constraints, if any, but it cannot be to the extent of virtual denial of any benefit. Before taking a final decision in the matter, an opportunity of hearing be allowed to the management as well as to the workers to enable them to place their respective stands before the decision making authority. The decision should be taken within four months from the date of this judgment and the same should be implemented within two months thereafter.

13. The learned counsel for the Union of India relied on a recent judgment of this Court in *A.K. Bindal and another vs Union of India* [(2003) 5 SCC 183] in support of this contention that pay revision should not be allowed. This was a case of public sector company employees seeking revision of their pay scales. It was held that employees could not claim such a right and such additional burden could not be placed on the Government in the absence of material placed before Court justifying the same. This case pertains to public sector undertaking namely Fertilizer Corporation of India. This case is not attracted in the facts of the present case. First, here the Government has a statutory liability for the wages, salaries and dues of the workers. Second, pay revision was being allowed in case of one category of workers within the same organisation, while it was being denied to another category of workers, giving rise to discrimination. Therefore, *Bindal's* case has no relevance so far as the present case is concerned.

14. So far as the argument regarding no relief being admissible to the workers in the Mills in view of rehabilitation schemes being worked out before the BIFR, we have to note that the proceedings have been pending since 1993, i.e. for more than ten years. The management was all along fully aware of the demand of the workers of the Mills in this behalf. Their cases have been pending in courts since much before the rehabilitation schemes were conceived of. How long shall the concerned workers be continued to be denied their legitimate claims? In the various deliberations with the workers it has been noted that rehabilitation schemes are independent of any orders that may be passed by this Court. Therefore, pendency of the rehabilitation schemes before the BIFR is not a sufficient ground for us to deny relief to the staff/sub staff working in the Mills. As per the provisions of Section 5(2) (c) of the Sick Textile Undertakings (Nationalisation) Act, 1974, the wages, salaries and other dues of the employees of the sick textile undertakings after the takeover of their managements by the Central Government are the responsibility of the Central Government. The Central Government has failed to discharge its responsibility for all these by raising such specious pleas. The Central Government has to discharge its responsibility de hors the BifR schemes. The argument therefore, is rejected.

15. The appeal as well as the various writ petitions and transfer petitions are disposed of in above terms.

SUPREME COURT OF INDIA

(Under Art 32 of the Constitution of India)

Writ Petition (Civil) No. 433 of 1998

With

Writ Petition (Civil) Nos. 457 of 1998, 278 of 1999,

530 of 2000, 599 of 2000, 45 of 2001, 121 of 2000, 262 of 2002 and 19 of 2003.

Civil Appeal No. 57 of 2001 and

Civil Appeal No. 6508 of 2003

@ Special Leave Petition (Civil) No. 6560 of 2001.

Decided on 22.8.2003.

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2004(1) A.I. Railway Parcel & Goods Porters Union v. Union of India 151

A.I. Railway Parcel & Goods Porters Union
Versus

Appellants.

Union of India Ors.

Respondents

For the Appearing Parties: Mr. Raju Ramchandran, Additional Solicitor General, Mr. P.P. Malhotra, Sr. Advocate, Mr. Dinesh Kumar Garg, Ms. Ritu Pun, Mr. Rohit, Mr. Ashok Sharma, Mr. R.D. Upadhyay, Mr. Imtiaz Ahmed, Ms. Nagma Imtiaz, Mr. Ranbir Yadav, Mr. V.N. Raghupathy, Dr. Sumant Bharadwaj, Ms. Indula Ray Bharadwaj, Ms. Indra Sawhney, Mr. Amit Mahajan, Ms. Smika Inna, Ms. Anjani Aiyangan, Ms. Anil Katiyar, Ms. Sushma Sun, Ms. D.S. Mahara, Mrs. Suman Bala Rastogi, Mr. R.C. Kaushik, Mr. S.K. Bhattacharya, Mr. B.M. Goswami and Ms. Sarla Chandra Advocates

PRESENT

The Hon'ble Mr. Justice S. Rajendra Babu

The Hon'ble Mr. Justice AR. Lakshmanan

The Hon'ble Mr. Justice G.P. Mathur

Contract Labour (Regulation and Abolition) Act, 1970— Section 10— Regularisation— Petitioners are working as parcel porters from last 10 - 30 years in different Railway Stations of Northern Railway— Claim relief of regularisation which was granted to their colleagues by this Court— No material produced by the Contractors before the Asstt. Labour Commissioner— Railway also complained that no opportunity given to it to verify the veracity of the documents as well as the period of working of the petitioners— Asstt. Labour Commissioner directed to again scrutinize the records placed by the contractors and Railway Administration— Further Railway Administration is directed to absorb the petitioners permanently and regularise their service subject to the outcome of the fresh enquiry and the report submitted by the Asst. Labour Commissioner

Cases referred:

1. National Federation of Railway Porters, Vendors and Bearers v. Union of India and Others, 1995 Supp (3) SCC 152.
2. R. K. Panda and Others v. Steel Authority of India and Others, JT 1994 (4) SCC 151.
3. Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha and Others, AIR 1995 SC 1893.

JUDGMENT

Dr. AR. Lakshmanan, J.— Leave granted in Special Leave Petition No. 6569 of 2001.

2. This group of writ petitions and appeals raise common questions of law relating to the abolition of contract system of labour. Writ Petition No. 433 of 1998 was filed by the All India Railway Parcel and Goods Porters Union praying for the following reliefs:

- (a) Issue appropriate writ in the nature of mandamus or any other writ, direction or order commanding the respondents to treat the petitioners who are working as Parcel Porters as permanent employees of the northern Railway as has been directed by this Hon'ble Court in various petitions filed by the colleagues of the petitioners and a further direction

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may be given to abolish contract system in parcel handing work at different Railway Stations in Northern Railway and all the Parcel Porters working at different Railway Stations of Northern Railway may be treated as regular employees of the Railways.

- (b) Issue an appropriate writ, direction or order commanding the respondents to treat the petitioners as employees of Northern Railway and give them the same benefits which have been given to other parcel porters working at different Railway Stations of Northern Railway as regular employees of Northern Railway;
- (c) Issue an appropriate writ, direction or order commanding the respondents to stop treating the petitioners as contract labour at Railway Stations of Northern Railway for loading and unloading of parcels as this work done by the petitioners is of permanent and perennial nature."

3. Similar prayers have been asked for by the petitioners union in other writ petitions. Civil Appeal no. 57 of 2001 was filed by the Union of India and Others questioning the correctness of the final judgment and order dated 07 07 2000 passed by the High Court of Delhi in Writ petition No. 5595 of 1998. In the said case, the Central Administrative Tribunal allowed the claim of the respondents therein by following the judgement of the court in National Federation of Railway Porters, Vendors and bearers vs. Union of India and Others reported in 1995 Supp (3) SCC 152. Since the issue raised in the said writ petition before the Delhi High Court is pending consideration of this Court is Writ Petition No. 433 of 1998 wherein this Court on 08.09.2000, passed the following interim order

"Pending disposal of these petitions, there shall be no regularization of parcel porters working at different railway stations notwithstanding any order of any Court, Tribunal or other authorities. Call after six weeks"

4. Since the High Court dismissed the writ petition filed by the Union of India holding that there is no legal infirmity in the order of the Tribunal, the Union of India has preferred the above civil appeal

5. Appeal @ Special Leave Petition No. 6560 of 2001 was filed by one Rodney Shyam and Others against the Union of India and Others questioning the correctness of the judgment and order dated 10 11 2000 passed by the High Court of Judicature at Allahabad in Writ Petition No. 1760 of 2000 dismissing the writ petition and affirming the order passed by the Central Administrative Tribunal

6. For the sake of convenience, we will first deal with the facts in Writ petition no. 433 of 1998 and the questions of law as they arise therefrom. The petitioners in this writ petition is the Union. The writ petition was filed seeking the same relief which has been granted by this Court to the colleagues of the petitioners similarly situated and working as Parcel Porters in Northern Railways at different railway stations for the last 10-30 years onwards continuously. However, they have not been treated as the permanent employees of the Railway so far, though they are discharging the duties of permanent and perennial nature. A list containing the names of Parcel Porters who have been engaged by the Northern Railways as contract labour at different railway stations along with their service details was also filed and marked as Annexure-A.

2004(1) A.I. Railway Parcel & Goods Porters Union v. Union of India 153

7. Mr. Dinesh Kumar Garg, learned counsel appearing for the writ petitioners, submitted that this Court in the case of *National Federation of Railway Porters, Vendors and Bearers* (supra) (vide its judgment and order dated 09.05.1985) gave directions to absorb all Parcel Porters as permanent employees of the Railway. He also invited our attention to the judgment and order dated 15.04.1991 in Writ Petition No. 277 of 1988 in which this Court while directing to abolish the Contract Labour system in Parcel work on different Railways, directed the Government of India to treat 168 Parcel porters working at Charbagh Railway Station at Lucknow of Northern Railway to treat them as permanent employees of Northern Railway (Annexure-B). It is further submitted that subsequently this Court in Writ Petition Nos. 568 and 711 of 1995 vide judgment and order dated 08.07.1996 again directed the Railways to absorb parcel porters as permanent employees of the railway according to their seniority (Annexure-D). Learned counsel has also invited our attention to the order dated 19.09.1997 passed by this Court in Writ Petition No. 90 of 1997 directing the Assistant Commissioner (Labour), Central Government to conduct an enquiry as to whether the Parcel Porters in the aforesaid writ petition had been discharging the work of permanent and perennial nature and if so the period for which they have been engaged. The learned counsel also drew our attention to various similar orders passed by this Court directing the Labour Commissioner to conduct an enquiry regarding the working of the Parcel Porters.

8. Pursuant to the directions given by this Court in the instant case on 30.11.1992, the Assistant Labour Commission (Central) Lucknow conducted an elaborate enquiry and submitted a detailed report in which he had recorded the findings that the work of parcel handling, Northern Railway is permanent and perennial in nature and sufficient to keep all the Parcel Porters engaged continuously, and the requirements of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 has been satisfied and the petitioner parcel porters were working continuously for long years with out any break in service.

9. According to the learned counsel, in spite of the directions given by this Court for the abolition of the Contract System in parcel handling work and in spite of various orders passed by this Court and of the commitment made by the Northern Railway, the contract system in parcel handling work is neither been abolished nor the parcel porters working in different railway stations have been treated as permanent employees of the railway, though these parcel porters had been working for the last 10-30 years continuously. He would further submit that though the contractors are changed from time to time, the petitioners have been working continuously as Parcel Porters under the direct control of Railways which is the Principal employer, therefore, he submitted that the petitioners should be given the relief which has been granted by this Court to their colleagues by absorbing them as permanent employees and also to issue a further direction to abolish contract system in parcel handling work at different railway stations in Northern Railway. The learned counsel has also invited our attention to para 12 of the writ petition as to how the petitioners are discharging the work of permanent and perennial nature and as to how it is very essential for the railways to continue its activities as narrated in para 12-(a)-(k). It is also submitted that the conduct and duties of the petitioners are being controlled by the Railway Authorities and if the Authorities are displeased with any of the Parcel Porters, they are empowered to

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2004(1)

S.C. SERVICES LAW JUDGMENTS

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punish such parcel porters and turn them out of the railway station and do not issue entrance pass as well as badges to such parcel porters. It is also contended that since the petitioners have to discharge their loading and unloading and shunting duties under the strict supervision of the Railway Authorities, they cannot be treated as contract labourers.

10. Counter affidavit was filed on behalf of respondent Nos. 1-7 contending that this Court has ordered for regularization of the required number of persons to the extent of perennial number of posts ascertained after conducting work study and not all the petitioners as stated in the annexures. It is further submitted that most of the petitioners of the petitions mentioned have already been regularised against the perennial posts and on the basis of work study report in case any additional post is found as perennial and permanent in nature, the senior-most person(s) will be regularized after completing all other formalities as per the Railway rules. It is also stated in the counter that it is not possible to stop the contract labour system of handling work and that the nature of job which is not perennial and permanent will have to be completed by engaging contract labourers and for the work which has been casual in nature are not permanent in nature it is not possible to engage permanent parcel porters. It is further stated that parcel handling works are awarded to the labour cooperative societies which supply the labour as per the requirement of the Railways on a day to day basis depending upon the volume of the work to be handled on a particular day, and the payment is made to the cooperative societies and not to the individual labourers on the basis of the total weight handled.

11. Another counter affidavit was filed on behalf of respondent nos. 3 and 8 stating that the muster rolls of the cooperative societies have no sanctity and cannot be taken to show the names of the labour who have been genuinely working and the length of time for which they have been continuously working.

12. An additional affidavit was filed by respondent Nos. 1-7 through their Deputy Chief Marketing Manager, Northern Railway stating that the Railways do not have the records of the porters who have been working with the contractors, and in the absence of any documentary proof, they were not in a position to either accept or deny the claims of the petitioners. A rejoinder affidavit was filed by the petitioners union denying the averments contained in the counter affidavit.

13. The Eastern Railway Administration filed an additional affidavit on its behalf.

14. Mr. Raju Ramachandra, learned Additional Solicitor General, took us through the statements and averments contained in various affidavits filed by the Railways and submitted that the Railways is not just a commercial concern, but also a public utility concern which carries several essential commodities at a very concessional freights and also gives a lot of concessions in passenger traffic to innumerable categories of persons. This being so, if such economically non-viable acts like regularization of the petitioners is forced upon the railways, public utility and passenger amenity items are bound to suffer. He would further submit that the work performed by the contract labour is of fluctuating nature and the amount of work depends upon the parcels received in a particular day and that no labour is required as the loading and unloading is done by the party itself and in view of the fluctuations and irregular and seasonal type of work, keeping permanent cadre for doing this parcel handling work is not possible. He would further urge that the Railways are facing a financial crisis due to decreasing budgetary support and

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increasing cost of production and purchase of various items and the Railway Administration is itself contemplating measures for downsizing its staff cadre, minimizing the staff cost and operating ratio. This being the case, it will not be feasible for the railway administration to absorb the petitioners in regular service. Moreover, if the present petitioners unreasonable prayers are acceded to by this Court, it would lead to several such requests for regularization from many quarters even though the applicants may be working elsewhere and may not have undergone the well laid down procedures for recruitment and may not be fulfilling the eligibility criteria for appointment for the posts or may not be adequately trained. It is thus submitted that in view of the huge number of petitioners, lack of any documentary proof of their having worked continuously, and the meagre parcel handling earnings, their regularization by the Railways is financially not viable. It is further submitted that due to the government policy of downsizing the staff cadre, the Railways is coming up with many schemes of awarding contracts to private parties by leasing of SLRs and BOLT schemes etc. to implement the Fifth Pay Commission recommendations. Thus, the absorption of such a huge work force of Class IV employees without adequate amount of work will result in a financial crunch. The learned Additional Solicitor General drew our attention to the additional affidavit of Respondent Nos. 1-7 and the statements made thereunder, to the effect that as a result of the present loading/unloading operations being totally uneconomical, a loss of approximately 900 crores is being incurred by the Railways and, therefore, there is no option but to rationalize the entire operation with regard to the parcel handling business. The learned Additional Solicitor General would further contend that in order to improve services, the Railways introduced the concept of leasing the space in the luggage compartment of the front luggage coach of some of the passengers carrying trains in November, 1991. However, a comprehensive policy was introduced in the year 1999 in order to attract parcel traffic through the leasing route and as per the master circular issued on 16.11.1999, SLR space in the front SLR was permitted for leasing for all types of trains and SLR space in over 200 trains is being leased out to provide operators, where the loading and unloading is also done by them. The process of leasing was taken one step further with the launch of the Parcel Express trains known as "Millennium Parcel Express" trains in March, 2001, which envisages running of high speed "time-tabled" parcel trains leased to cargo consolidators on the basis of open tenders and two such weekly trains are already being operated and more likely to be introduced in future. It is further submitted that the steps taken by the Indian Railways to encourage handling of parcel by private parties through leasing of the space in SLRs, VPs and parcel trains has helped in increasing the railway earning and as a result thereof, the earning from parcel traffic has increased from 294.24 crores in 1998 to Rs. 433.48 crores in 2001-02 which according to the learned Additional Solicitor General is proof of the fact that the senders and receivers of parcel prefer handling through their own agency.

15. With a view to make the parcel services vibrant business along with better service to its customers, the Government has accepted the recommendation of the Parliamentary Standing Committee on Railways as contained in their 9th Report (2001) presented in Lok Sabha in April, 2001 to segregate parcel services from passenger services. He would further state that the Government of India's plan of

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THE ORIGINAL DOCUMENT
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"rightsizing" the workforce has been added upon by the Railways. Rightsizing automatically involves rationalizing the operations, coming down to redundant areas and outsourcing of "non-core" areas. As loading/unloading of parcels is a non-core activity, the parcel leasing schemes vest the leaseholder with the responsibility of handling the parcel traffic.

16. Learned Additional Solicitor General further submitted that apart from the losses in parcel business that the Railways are sustaining, they have also to face the mounting wage bill of the employees. The average annual wage bill of a railway employee during 2000-01 was Rs. 1,21,281/-. As against this over-all average for all staff, the annual wage bill of a group D employee was as high as Rs. 84,576/-. The wage bill has been increasing over the years and the average wage bill of group D employee has increased from Rs. 37,344/- in 1994-95 to Rs. 84,576/- in 2000-01. The current wage bill can be estimated to be nearly around Rs. 1 Lakh per group D staff. Thus, with a workforce of over 9000 departmental parcel porters, the annual wage bill on this account is over Rs. 90 crore. Thus, though the average number of group D staff has reduced from Rs. 5.06 lakh in 1994-95 to Rs. 4.62 lakh in 2000-01, there is a continuous and heavy increase in the wage bill of the Indian Railways, which is difficult to bear.

17. It is also submitted in the instant batch of cases, the number of petitioners are again more than 1500. If the judgment of this Court is in favour of the petitioners, there will be spate of litigation with many more parcel porters and other similarly placed workers approaching this Court for similar relief. The financial implication for the Indian Railways in regularization of the petitioners would be Rs. 1 crore for every 100 such private parcel porters.

18. Concluding his argument, the learned Additional Solicitor General submitted even for the parcel traffic handled departmentally by the Railways by Mail/Express and Passenger trains, the loading/unloading work is of a sporadic and intermittent nature. Even this work is confined only to the time when the various trains originate/terminate/stop at the stations for short duration. Thus, whichever worker is engaged by the contractor, will generally be available on the Railway premises for the purpose of loading/unloading only on the day at the time of arrival/departure of various trains and that the work of loading/unloading is neither regular nor continuous in nature and, therefore, does not require engagement of regular workers. Concluding his argument, the learned Additional Solicitor General submitted that as the railways are sustaining an annual loss of Rs. 900 crores and also have to face the mounting wage bill, they have no option but to rationalize the parcel business by leasing out to private cargo operators and will not be in a position to absorb the contract labourers engaged in parcel handling. Our attention was also drawn to the various circulars issued by the Government of India, Ministry of Railways marked as Exhibit-R1, R2 and R3.

19. The petitioner have not filed any reply or rejoinder to the additional affidavit of respondent Nos. 1-7 filed on 16.01.03.

20. Learned counsel for the other writ petitioners have adopted the arguments advanced by learned counsel for the writ petitioner Mr. Dinesh Kumar Garg.

21. Learned counsel for the writ petitioners drew our attention to the order passed by this Court on 14.07.1999 in Writ Petition No. 433 of 1998 which reads thus:

"The Assistant Labour Commissioner (Central), Lucknow to whom copies

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of all the previous orders passed in the case, shall be sent, shall conduct an inquiry as to whether the petitioners were working continuously and whether the job which they perform is of a perennial nature. The inquiry may be completed within three months from the date of receipt of this order and a report submitted to this Court.

22. He also invited our attention to the report of the Assistant Labour Commissioner (Central) Lucknow dated 18.01.2000 containing 85 pages. We have perused the same. The Assistant Labour Commissioner framed two issues for enquiry which are as follows:-

1. Whether the petitioners were working continuously and
2. Whether the job which they perform is of a perennial nature.

According to the Labour Commissioner, the railways have not produced any records pertaining to the period of working of the parcel porters as no records of the petitioners are maintained at the stations or any other railway office. Railways have also contended that they have no knowledge as to which of the petitioners were engaged by the contractors and from what date. It is further stated in the report that only six contractors appeared and dozens of them did not even respond to his notice he had sent to them on their addresses which were supplied to him by the petitioners and the railways. A number of registered letters were returned undelivered with the postal department's remarks that either the contractors refused to accept the letters or they were not available at those addresses. The contractors who appeared before the Labour Commissioner did not also produce any records. Under such circumstances, he heard the individual petitioners who appeared before him and recorded their statements. The Labour Commissioner has stated that in fact the contractor is suppressing the records to conceal the fact of the petitioners working and, therefore, he accepted the employment cards/service certificates submitted by the petitioners as proof of their working for the period claimed by them. The findings on issue Nos. 1 and 2 rendered by the Labour Commissioner runs thus :-

"Issue No 1 :

The Railways and the contractors have verified the period of working of the petitioner parcel porters in some case. The period of such verification is very short in many cases, the reason being that the contractors have changed very frequently and the records that might be in possession of earlier contractors could not be obtained. The Railway and the contractors have not produced the records of working of the parcel porters who have claimed to have worked prior to the period as verified by the contractors and the Railway. It appears unjust that the petitioners' interests should be harmed due to non-production of records.

Despite several notices having been issued to the concerned respondent Railways and the contractors that in the event of failure on their part to produce records the claim of the petitioners would be accepted, till 14.1.2000 on which date I finalised this report none of them produced records for the past period to admit or deny the claim of petitioners. I am left with no other option than to conclude that they have worked.

- (a) The list of petitioners whose period of working has been verified is enclosed as Annexure "A" to this report.

- (b) The list of petitioners who have claimed to have worked but whose working period could not be verified due to non-production of records by the Railway and the contractors is enclosed as Annexure "B" to this report.

Issue No. 2 :

I have reached to the conclusion that the work of parcel handling/loading/un-loading is an activity that is not separate and detached from the complex parcel handling job being done by Railways. Parcel handling is an integral part of the whole system and it has been going on for ages round the clock during day and night for all the 365 days in a year without the break of a single day. In fact the job of parcel handling which is being performed by the petitioners is the foundation on which the gigantic structure of parcel department stands. If the parcel handling work is stopped then the whole work of parcel transportation will come to stand still and all the regular staff and officers whose number is very large will become idle.

The parcel handling work being performed by the petitioners is of a perennial nature.

Submitted.

23. The Railways filed opposition to the report of the Labour Commissioner. It is stated therein that the railways came to know about the report only through the Central Agency Section on 08.05.2000 and more surprisingly, the report dated 18.01.2000 appears to have been submitted before this Court in the same week itself but neither the answering respondent nor the railways was afforded any opportunity to either lead evidence or cross-examine the witnesses appeared on behalf of the respondents. According to the railways, from a bare reading of the report it will be clear that the report is not based on any documentary evidence and that the objections raised by the Railway Authorities have either been not entertained and incorporated in the report or have been dealt in most unfair manner and that the Labour Commissioner has not taken pain to summon the contractors along with the relevant records though complete addresses of such contractors were supplied by the Railway Administration. It is, therefore, submitted that in the absence of the documents regarding the particulars of the services rendered by the Porters, the Railway Administration was obviously not in a position either to admit or deny the claim of the petitioner. It is also stated in the opposition that since the contract labour is abolished w.e.f. 30.10.1995 there is no question of any other labourers left to be regularized and, therefore, the Assistant Labour Commissioner should be directed to permit the Railway Administration to verify the contents of the documents submitted by the petitioners and ex-contractors by cross-examination; compel all the ex-contractors to be present at the hearing and submit a fresh report based on the documents actually presented before him.

24. Per contra, learned counsel for the petitioners submitted that the Labour Commissioner gave repeated adjournments to enable the Railways for finalizing objections or to cross-examine the petitioners and contractors under whom the petitioners have been discharging their duties at different railway stations. However, the officials refused to cross-examine the petitioners or the contractors and, therefore, the Labour Commissioner on the basis of the record available on the file of the Assistant Labour Commissioner as well as with the officials of the Railways

have submitted his report. Thus, it is submitted that the objection regarding the report of the Labour Commissioner had been raised for no reason or basis.

25. It is seen from the report of the labour Commissioner that the contractors have refused to produce the records and cooperate with the Labour Commissioner at the enquiry. Likewise, Railways also complained that the Labour Commissioner has not afforded them sufficient opportunity to verify the veracity of the documents as well as the period for which the petitioners have already worked as parcel porters. Therefore, the report of the Assistant labour Commissioner cannot be taken as a full and complete report as to whether the petitioners were working continuously and whether the job they perform is of perennial nature.

26. As per the established principle of law, the petitioners in order to succeed will have to substantiate their claim. Non-production of evidence in opposition will not support the claim of the petitioners even by legal fiction. The Assistant Labour Commissioner, in our opinion, has failed to appreciate this proposition of law while recommending the claim of the petitioner.

27. The burden of proving the claim of continuous working rests on the claimants for which they are required to furnish concrete proof and reliable documents. We are, therefore, of the view that an opportunity to cross-examine the petitioners and to peruse the records produced by the petitioners should be afforded to the railways. As already noticed, the contractors did not produce the original records and the railways had no opportunity to cross-examine the contractors also. The contractors are, therefore, be directed to appear before the Labour Commissioner and to produce the records for the relevant period in question and the claim of the petitioners can again be verified and regularize the services of the members of the petitioners association & employees of the railway Administration. We, therefore, direct the Labour Commissioner to again afford an opportunity to the Railway Administration and the contractors and the petitioners and verify the authenticity and genuineness of the claim made by the petitioners with reference to the records that may be produced by the Railway Administration and the contractors and submit a report to the Railways within six months from the date of receipt of this judgment which, in our opinion, would resolve the disputed claim of the petitioners and the railways and on the basis of the report submitted, the railway administration shall consider the claim of the individual petitioners subject to the terms and conditions to be stated infra in this judgment.

28. Along with the writ petition, number of order passed by this Court on few earlier occasions have also been filed as Annexures. Annexure-B is one such order in writ petition No. 277 of 1998 filed by one Raghavendra Gaumastha, under Article 32 of the Constitution. The petitioners claimed relief for issue of writ of mandamus directing the Railway Administration to regularize the petitioners services and to pay them the same salary which is paid to others carrying out the similar duties and functions. This Court, by order dated 04.10.1999, referred the matter to the Labour Commissioner to decide the question whether the petitioners are contract labourers or they are the employees of Railways and also the question as to whether they have been working as labourers for a number of years. This Court, after extracting the report of the Labour Commissioner, directed the railway administration to treat the petitioners, as regular parcel porters and to grant them the same salary which is being paid to regular parcel porters in view of the fact that most of the

petitioners have been working since 1972 and some of them since 1980 and few of them in 1985.

29. The order passed by this Court dated 15.04.1991 in writ petition No. 277 of 1998 was followed by this Court in the case of *National Federation of Railway Porters, Vendors and Bearers* (supra). This Court, taking into consideration the nature of the prayer in the writ petition, made an order directing the Labour Commissioner to enquire and submit a report and after perusal of the said report issued certain guidelines and directions to the Union of India and the Railway Administration in regard to the absorption of the railway parcel porters on permanent basis.

30. Again this Court by order dated 08.07.1996 in Writ Petition No. 568 and 711 of 1995 filed by National Federation of Railway Porters Union have issued directions for regularization of their services as mentioned in the order if the petitioners are found to be eligible.

31. Yet another order can also be profitably looked into in this context which has been passed by this Court in Writ Petition No. 90 of 1997 dated 19.09.1997 in which this Court directed the Assistant Labour Commissioner, Calcutta to conduct an enquiry into the allegations whether the petitioners who were working as parcel porters at various railway stations have been working continuously at the concerned railway stations and the work is of a perennial nature and requirements of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 have been satisfied. Similar direction was issued by this Court on 27.04.1998 in Writ Petition No. 176 of 1995.

32. The learned counsel for the petitioners placed strong reliance on the judgment of this Court in *National Federation of Railway Porters, Vendors and Bearers* (supra) and the directions given by this Court in absorbing the labourers under certain conditions. This Court in *R.K. Panda and Others vs. Steel Authority of India and Others* reported in JT 1994 (4) SC 151 issued directions that all labourers who had been initially engaged through contractors but have been continuously working with the respondent for the last 10 years on different jobs assigned to them in respect of the replacement and change of the contractors shall be absorbed by the respondent as regular employees subject to being found medically fit and if they are below 58 years of age being age of superannuation. The Court also gave further directions for fixing inter se seniority, absorption of wages and terms and conditions of service. The Court also directed that the respondent shall be at liberty to retrench the workmen so absorbed in accordance with law.

33. In *Gujarat Electricity Board, Thermal Power Station, Ukai vs. Hind Mazdoor Sabha and Others* AIR 1995 SC 1893, this Court held that where the contract labour system is abolished the industrial adjudicator can, depending upon the facts of the case, direct the principal employer to absorb all or any of the workmen of the ex-contractor and on such terms as he may determine. This Court after pointing out the vital lacuna in the Act, namely, no provision as to the fate of workman of ex-contractor after the abolition of contract labour system however issued guidelines for such absorption that the workman of the ex-contractor, if found suitable can be absorbed by the principal employer after the contract system is abolished. This Court has laid down guidelines for the same in the said judgment.

34. 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 in 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 15.04.1991 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 regulate their service. The persons to be so appointed being limited to the quantum of work which may become available to them on a permanent 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 station 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/unfit 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.
 35. Several I.As were filed to modify the order dated 08.09.2000 passed by this Court in Writ Petition No. 433 of 1998 and 457 of 1998. Few I.As were filed seeking certain prayers pending writ petition. Few I.As were filed to implead the proposed parties as parties to the writ petition. Some I.As were filed for intervention.
 36. In view of the disposal of the main matters, no separate direction is necessary in these I.As.
 37. In the result, the writ petitions and the civil appeal including the I.As filed in different writ petitions shall stand disposed of accordingly. However, there will be no order as to costs.
 - Matter disposed of accordingly.

SUPREME COURT OF INDIA

Civil Appeal No. 2702 of 1997

Writ

C.A. No. 6428 of 2003

(Arising out of SLP (C) No. 5674 of 1997)

Decided on 18.8.2003.

Union of India

Versus

Appellant

Kuldip Singh Perner & Ors.
For the Appellant.

Respondents

For the Respondents: Mr. Kailash Vasdev, Sr. Advocate, Mr. Hemant Sharma, Mr. Y.P. Mahajan, Mrs. Sushma Suri, Mr. P. Parneswaran, Advocates.
Mr. S.K. Dholakia, Mr. R.C. Shrivastava, Sr. Advocates, Mr. Balbir Singh Gupta, Mr. Trilok Nath Razdan, Advocates.

PRESENT

The Hon'ble Mr. Justice Brijesh Kumar
The Hon'ble Mr. Justice Arun Kumar

A/4

WRIT PETITION(C) No.640 OF 2007

... Petitioner(s)

Continued 1. on true copy

Respondent (s)

WITH
W.P(C) NO. 239 of 2008
W.P(C) NO. 405 of 2008
W.P(C) NO. 507 of 2008
W.P(C) NO. 114 of 2009

24.11.2007
Supreme Court of India

ORDER

1. Of the five writ petitions, which are listed for hearing and final disposal, Mr. Garg, learned advocate appearing for the petitioners in these five matters, submits that, he does not wish to press Writ Petition (C) Nos. 507 of 2008 and 114 of 2009. The same are, therefore, dismissed as withdrawn.

2. As far as the remaining three writ petitions are concerned, the only relief which has been sought for in these Writ Petitions is that the directions given by a three-Judge Bench of this Court in A.I. Railway Parcel & Goods Porters'

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Union Vs. Union of India and Others, 2003(11)SCC 590, in paragraph 34 of the judgment have not been implemented as far as the writ petitioners are concerned. Appearing in support of the writ petitions, Mr. Altaf Ahmad, learned senior counsel, submitted that the writ petitioners were licensed Parcel Porters working under the Railways. He drew our attention to paragraph 34 of the judgment, in which the following directions were given:

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 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, 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.



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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 found medically unfit/unsuitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by Railway Administration as Railway Parcel Porters does not disable Railway Administration from utilizing their services for any other manual work for 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 periods 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 Railway Administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

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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 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 Railway Administration for premature termination of their contracts in respect of the contract labourers.

10. 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.

3. He specifically drew our attention to the directions contained in Clauses 3 and 4 which provide that the Units of the Railway Administration may absorb on permanent basis only such Railway Parcel Porters working in the respective railway stations concerned on contract labour who have not completed the age of superannuation. The second stipulation is that the Railway Administration were not required to absorb on permanent basis such of the contract labour.

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Railway Parcel Porters, who were found to be medically unfit/unsuitable for such employment.

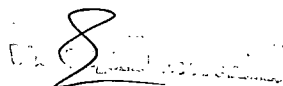
4. According to Mr. Ahmad, despite the said directions, the writ petitioners in these three writ petitions have not been absorbed in terms of the said directions. Mr. Ahmad submitted that the objection taken regarding their absorption appears to be that they had not passed the Class-8 examination and, accordingly, they were not eligible for absorption. Mr. Ahmad submitted that in none of the directions was such condition or stipulation made by this Court and the only two restrictions were the ones indicated hereinabove. He, therefore, submitted that appropriate directions be given to the respondents to abide by the terms of the directions contained in the aforesaid judgment and to absorb the petitioners in these three writ petitions forthwith, irrespective of whether they have passed class-8 or not.

5. Opposing the writ petitions, learned ASG, Mr. Malhotra submits that as a matter of policy, it had been decided by the respondents that since Parcel Porters were required to read instructions and directions given on the parcels themselves, the Government had thought it fit to make the

passing of class-8 examination as an eligibility criteria for absorption. Reference was also made by him to a two-Judge Bench decision of this Court in National Federation of Railway Parcel Porters' Union Vs. Union of India, 2003(11)SCC 604. In the said decision, a direction had been given that some of the Railway Parcel Porters could be absorbed in accordance with the rules then existing. He submitted that according to the rules, a candidate in order to be absorbed while working as Railway Parcel Porter had to pass the class-8 examination. He, accordingly, submitted that the decision taken by the respondents to insist that a candidate must have passed the class-8 examination was fully justified as far as the present writ petitioners are concerned.

6. Having heard learned counsel for the respective parties, we are unable to accept the submissions made on behalf of the respondents by the learned ASG. The judgment referred to by him had been passed on 8th July, 1996, whereas the judgment referred to by the writ petitioners was delivered on 22nd August, 2003.

7. Apart from above, the earlier judgment had been brought to the notice of the Hon'ble Judges in the later case but in spite of the same, the directions, as referred to



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above, were given in paragraph 34 of the judgment.

8. Apart from the above, it has also been pointed out to us by Mr. Ahmad that in certain cases, that is in the case of absorption of Commission Vendors/Bearers, the Ministry of Railways had completely relaxed educational qualifications and in its place, the eligibility criteria was reduced to ability to read and write only. This had been done by virtue of Circular dated 1st April, 2008, of the Ministry of Railways, regarding appointment of licensed porters to the post of Gangman, who could only "read and write".

9. We are unable to visualise or appreciate the basis of the decision taken to insist that in order to be absorbed, a Railway Parcel Porter should have passed the Class-8 examination, inasmuch as, in our view, the ability to read and write is not dependent on whether a person had passed the class-8 examination or not.

10. In that view of the matter, as far as the writ petitioners are concerned, we allow the writ petitions and direct that in terms of the directions given in the case of the A.I. Railway Parcel & Goods Porters' Union (supra), the respondents shall take immediate steps to absorb the writ petitioners but taking into consideration only those

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conditions which have been indicated in paragraph 34 of the judgment. Such exercise should be completed within three months from the date of communication of this order.

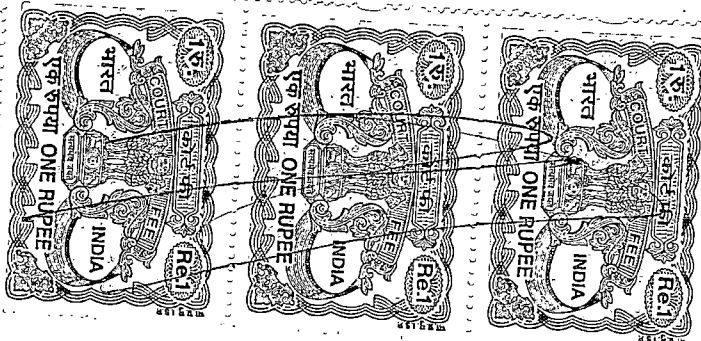
11. The writ petitions are disposed of.
12. There will be no orders as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(B.S. CHAUHAN)

New Delhi,
November 17, 2009.

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C-17. P B N Delhi

IN THE COURT OF

SUIT/APPEAL/O.A./W.P./ONO.

10

JURISDICTION

OF

Jhabbu Goss

Applicant/Plaintiff/petitioner

VERSUS

Wazir

Defendant/Accused

KNOW ALL to whom these presents shall come that I/We:

Jhabbu Goss

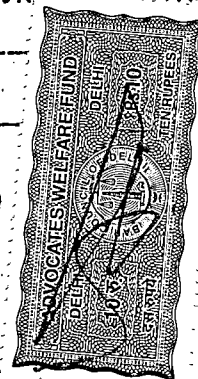
Applicant

The above-named

do

uri

YOGESH SHARMA, Advocate
728, SECTOR-5, URBAN ESTATE
GURGAON (HARYANA)
TELE: 95124-2252859(M)35887787



(hereinafter called the advocate(s) to be my/our Advocate in the above-noted case and authorise him:-

To act, appear and plead in the above noted case in this court or in any other court in which the same may be tried or heard and also in the appellate court including high court subject to payment of fees separately for each court by me/us.

To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.

To file and take back documents to admit and /or to deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any difference or dispute that may arise touching or in any manner relating to the said case.

To take execution proceedings.

To deposit, withdraw and receive money, cheques, cash and grant receipt thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other legal practitioner authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign, the power of attorney on my/our behalf.

And I/We undersigned to hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I/We or my/our duly authorised agent would appear in the court on all hearings and will inform the advocate for appearance when the case is called.

And I/We undersigned to hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the Court when the case is called up for hearing or for any negligence of the said Advocate or his substitute. The adjourned costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.

And I/We the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above court for a period of three years only. I/We hereby agree that once the fees is paid, I/We will not be entitled for the refund of the same in any case.

IN WITNESS WHERE OF I/We do hereunto set my/our hands to these presents, the contents of

which have been understood by me/us on this 15 day of July

1. Jhabbu Goss

Accepted Subject to the terms of the Fees.

Yogesh Sharma
(Yogesh Sharma)
Advocate

Client

2. Rajendra Kumar

3. Ravi