

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-952/2000

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New Delhi this the 2nd day of September, 2005

Hon'ble Shri Shanker Raju, Member(J)

1. Mahabir Parshad,
S/o Sh. Jag Ram,
R/o Vill Bhadup,
Distt. Mahendergarh
(Haryana).
2. Ram Lal,
S/o Sh. Ram Chander,
R/o Railay Colony,
Kanina(Haryana).
3. Hans Raj,
S/o Sh. Deep Chand,
R/o Ward No. 87,
Bhagat Singh Gali,
Kanina(Haryana).

.... Applicants

(through Sh. Yogesh Sharma, Advocate)
Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
Bikaner Division,
Bikaner.
3. The Boria Kamalpur Co-operative Coal
Goods – Handling L & C Society Ltd.,
Loco Mandir, Rewari(Haryana).

.... Respondents

(through Sh. R.L. Dhawan, Advocate)

O R D E R

Applicants, on the strength of decision of the Apex Court in **National Federation of Railway Parcel Porters Union and Others etc. Vs. Union of India and Ors.** (SLR 1995(2)SC 709), contended that having worked as Parcel

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Porters figured in the seniority list and having represented the respondents to incorporate their names in the seniority list, non-accord of their regularization is bad in law. Applicants, who are Parcel Porters, were engaged through contractor worked in Northern Railway Station Kanina at Haryana. The others similarly circumstanced were treated as employees of the Railway as per the decision of the Apex Court. As the applicants contend that they had been performing work of perennial nature as the similarly circumstanced persons of Bikaner Division, the benefit of Supreme Court case has been extended and screening was done on 1.2.2000. As the names of the applicants were not incorporated in the seniority list, their representation was not considered, which gives rise to the present OA.

2. Shri Yogesh Sharma, learned counsel of applicants relied upon the decision of this Bench of the Tribunal in OA-199/2004 (**Ramavtar & Ors. Vs. U.O.I. & Ors.**) dated on 23.1.2003 wherein having regard to the Apex Court's decision, directions have been issued to carry out the enquiry and verification in case of the applicants therein and to take a final decision. A decision of Apex Court in **A.I. Railway, Parcel & Goods Porters Union Vs. U.O.I. & Ors.** (2003(6)Scale 774) has been relied upon to contend that the matter of Parcel Porters had been sent to the Assistant Labour Commissioner for verification where the following observations have been made:-

"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

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

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

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

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

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

3. On the other hand, respondents' counsel Shri R.L. Dhawan, at the outset, relying upon the decision of a Division Bench of the Tribunal in **A. Appala Naidu & Ors. Vs. The Chairman, Railway Board & Ors.** (2005(2)SLJ CAT 84) stated that a person who is a licensee to carry passenger luggage and also Railway parcels does not hold master & servant relationship with the Railways and applicants were not engaged through contractor for loading and unloading of parcels and Railway has no liability to engage them. It is also stated that despite directions of the Supreme Court and Tribunal, the matter was referred to Assistant Labour Commissioner for verification and a list of 285 contract labour/Parcel Porters was prepared. If the names of the applicants were not included, they ought to have approached the Assistant

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Labour Commissioner for inclusion of their names. It is in this conspectus, it is stated that a final panel of 60 persons had been declared and appointments were made.

4. Learned counsel would contend that from 10.2.2000 recruitment to Group-D has been made through Railway Recruitment Board and they have done away with the engagement of Parcel Porters.

5. I have carefully considered the rival contentions of the parties and perused the material placed on record.

6. The decision in Division Bench is distinguishable on the ground that the applicants therein were engaged to carry the luggage of the passenger etc. and in that conspectus no relationship of master & servant was established. In the present case, applicants as Parcel Porters were engaged through the Contractor and were performing the duties of loading and unloading the luggage and goods from railway vans and wagons. In the above conspectus, in the case of **A.I. Railway Parcel & Goods Porters Union's case (supra)** in 2003 in the wake of statement of Assistant Labour Commissioner holding that the working of Parcel Porters is of perennial nature, ALC was directed to again scrutinize the records and on outcome of the fresh enquiries of Units of Railway Administration may absorb the employees.

7. As regards seniority list of 285 Parcel Porters, as this has not been brought to the knowledge of the applicants, yet in the light of the fact which is not rebutted, they have requested for inclusion of their names in the Railway. I am satisfied that despite engagement through Contractor as Parcel Porters, applicants had been performing the work of perennial nature and their cases

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are squarely covered as a precedent of the Apex Court's decision in Railway Parcel Porters Union's case.

8. In this view of the matter, I direct respondents to refer the case of the applicants to the Assistant Labour Commissioner for necessary verification and then to act in accordance with the directions of the Apex Court. No costs.

S. Raju
(Shanker Raju)
Member(J)

Avv/