

23

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 365 OF 2004

New Delhi, this the 23rd day of December, 2004

Hon'ble Shri Shunker Raju, Member (J)

1. Subhash s/o Shri Jagdish
2. Megh Singh s/o Sh. Rawat Singh
3. Ram Singh s/o Sh. Adu Singh
4. Permanand s/o Shri Ram Chander
5. Kishori Singh s/o Shri Rawat Singh
6. Madan Lal s/o Sh. Suraj Bhan
All the applicants had worked as parcel porter at
N.Rly. Station, Hissar.
7. Balbir Singh s/o Sh. Midhu
8. Sawi Singh s/o Sh. Shunker Singh
Both the applicants had worked as parcel porter at
N.Rly. Station, Bhattu.
9. Hari Singh s/o Sh. Ghisa Ram
10. Raj Kumar s/o Sh. Net Ram
Both the applicants had worked as parcel porter
At N.Rly., Sirsa.
11. Raj Kumar s/o Sh. Kripa Ram
12. Budh Ram s/o Laxman Ram,
13. Bhanwar Lal s/o Sh. Mai Dhan Ram
14. Gokal s/o Sh. Banwari
All the applicants had worked as parcel porters
At N. Rly. Station, Sadalpur.
15. Vinod Kumar s/o Sh. Shantu Ram
Applicant has worked as parcel porter
At N. Rly. Station, Churu.

16. Panche Ram s/o Sh.Birma Ram
Applicant has worked as parcel porter
At N.Rly Station, Hanumangarh Town.

17. Suresh Kumar s/o Sh. Sultan Singh

18. Naresh Kumar s/o Sh. Harphool Ram
Both the applicants had worked as parcel porter
At N. Rly Station, Kanawali.

19. Hari Kishan s/o Sh. Chandgi Ram

20. Midhu Ram s/o Sh. Gugan Ram,
Both applicants had worked as parcel porters
At N. Rly. Station, Rama.

....Applicants

(By Advocate: Shri Yogesh Sharma)

-versus-

1. Union of India through the Secretary,
Railway Board, Rail Bhawan, New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

3. The General Manager,
North-Western Railway,
Jaipur.

4. The Divisional Railway Manager,
North-Western Railway,
Bikaner.

....Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

Through this O.A. applicants, who are erstwhile Contract Parcel Porters, have sought a direction to the respondents to frame a Scheme for their regularization against vacant Group -D posts and declaring

illegal action of the respondents whereby applications have been invited from open market through Railway Recruitment Board for filling up Group-D posts.

2. Applicants were engaged as Parcel Porters through Railway Contractors at various railway stations of Northern Railway Bikaner Division during the period from 1985 to 1995. Bikaner Division has been transferred to North-Western Railway w.e.f. 1.4.2003.

3. Vide Notification issued on 31.3.2000, contract system in Bikaner Division regarding Parcel Porters was abolished. Several Parcel Porters filed petitions before this Tribunal and accordingly a seniority list of 285 Parcel Porters was prepared on 12.1.2000 wherein the names of the applicants were included and they were screened.

4. Railway Board sanctioned only 60 posts of Parcel Porters for Bikaner Division and as such 60 persons were regularized w.e.f. 1.4.2000 and remaining 225 persons are waiting for their turn for want of vacancies.

5. Learned counsel Shri Yogesh Sharma, appearing on behalf of the applicants, relying upon the decision of the Apex Court in Steel Authority of India vs. National Union Water Front Workers, 2001(2) SC SLJ 281, contended that once the contract is found genuine and a prohibition notification under section 10 (1) of the CLRA Act has been issued by the appropriate Government, the principal employer should give preference to the erstwhile contract labour. Learned counsel further stated that in the light of latest decision of the Apex Court in A.I.

Railway Parcel & Goods Porters Union vs. UOI & Ors., 2003(6)

SCALE 774, after verification from Assistant Labour Commissioner, it has been directed that the eligible Parcel Porters would be regularized on permanent basis but this would not disable the railway administration for utilizing their services for any other manual work and while absorbing them, their inter-se seniority would be determined department/job-wise on the basis of their continuous employment.

6. In the above backdrop, it is stated that in the light of the directions of this Tribunal in the case of **Mohan Lal & Ors. vs. UOI & Ors.**, (OA No. 2685/91 decided on 16.7.1992), the respondents framed a Scheme vide their order dated 31.8.1992 regarding treatment of piece rated contract labour as casual labour. It is further stated that for Hot Weather Watermen, a Scheme was prepared in compliance with the directions of this Tribunal in OA no. 1944/1990 with connected matters (**Shri Bishambar & Ors. Vs. Union of India & Ors.**) decided on 12.2.1992.

7. Shri Yogesh Sharma contended that the jurisdictional aspect has been negated by the Tribunal while deciding OA No. 2901/97 (**Ram Narain & Ors. vs. Union of India & Ors.**) decided on 17.2.1999 and also the case of **Shahabuddeen Sindhi & Ors. vs. UOI & Ors** decided on 31.10.2000 (OA No. 2249/98).

8. Learned counsel states that though the applicants have closed down work at 40 stations yet the respondents are obligated to consider the claim of the applicants for engagement and for utilizing their services

for other manual work and further considering their regularization as per Scheme to be framed.

9. Learned counsel for the respondents Shri R.L. Dhawan vehemently opposed the contentions and stated that this O.A. is barred by jurisdiction in the light of decision in Vishwa Nath Sahai & Ors. vs. UOI & Ors. (CA No. 1356/86 decided on 3.4.1997 by the Apex Court and he further relies upon the decision by the Principal Bench of this Tribunal in the case of Ram Vir & Ors. vs. Union of India & Ors. (OA No. 807/98 decided on 15.2.999) to contend that as the applicants do not come within the purview of casual worker, they are not being paid from public exchequer and the decision of the Steel Authority of India (supra) was resorted to contend that this Tribunal has no jurisdiction.

10. Learned counsel, relying upon the decision of the Apex Court in Dr. M.A. Haque & Ors. vs UOI & Ors. 1993(2) SCC 213, further contends that one has no right of appointment through back door entry and a policy decision of the Govt. cannot be interfered as held in Balco Employees' Union (Regd.) vs. UOI & Ors., 2002(2) SCC 333. Reliance has been placed on the decision of the Apex Court in Suraj Prakash Gupta & Ors. Vs. State of J& K & Ors. 2000(4) SLR SC 486 to contend that recruitment rules cannot be relaxed and contract labourers have no preference for regularization.

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

12

12. In so far as jurisdictional aspect is concerned, the decision in Vishwa Nath Sahai's case (supra) has been considered by a Bench of this Tribunal in Sahabuddin Sindhi's case (supra), where the decision in the matter A.I. Rly. Parcel & Goods Porters Union vs. Union of India & Ors. was also discussed and the jurisdiction was upheld. Moreover, in the light of the decision of the Apex Court in Union of India & Ors. vs. S. Mukherjee & Ors., 1998(2) SC SLJ 17, the objection as to jurisdiction was negated. Accordingly, I overrule the objection of respondents regarding jurisdiction.

13. As regards Railway Parcel Porters, in the light of the latest decision of the Apex Court in A.I. Railway Parcel & Goods Porters Union (supra), the following directions have been issued:-

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

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

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

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

5. The absorption of the eligible petitioners in the writ petitioners 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 contract in respect of the contract labourers.

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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."

14. If one has regard to the above, though there were only 60 vacancies available and the respondents had closed down 40 other units vide their letter dated 22.3.2000, yet nothing precludes them from considering the case of the applicants and utilizing their services for any other manual work of the railways depending upon its needs. Moreover, in ***Steel Authority of India's*** case (supra), the following observations have been made:

"(6) If the contract is found to be genuine and prohibition notification under Section 10 (1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment the principal employer intends to employ regular workmen shall given preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

15. If one has regard to the above, a preference has to be given in case the contract is found genuine and there is notification to abolish contract labour as done in the present case while abolishing the contract scheme for parcel porters engaged through contractors.

16. As regards framing of scheme, in Mohan Lal's case (supra), the incumbents were Coalmen employed through contractors. In this view of the matter, the respondents, after the directions of the Tribunal, framed a Scheme for their regularization.

17. I also find that as one time measure, the genuineness of working of the Parcel Porters has to be assessed by the Assistant Labour Commissioner and thereafter their absorption is to be considered. However, this is on the basis of perennial work and subject to the vacancies. As there were only 60 vacancies at Bikaner Division, the respondents have regularized 60 Parcel Porters out of 285 figuring in the list whereas the services of the applicants, figured in the said list, had been dispensed with.

18. Having regard to the decision in ***A.I. Rly. Parcel & Goods Porters Union*** (Supra), it is incumbent upon the respondents, who are not disabled to utilize the services of the applicants and others who were previously working as Parcel Porters on any other manual work of railways, there would not be any chaotic situation and financial constraints should not have come in the way. This would also not be a precedent for other causal workers because I am dealing with parcel porters only.

19. I am conscious of the plight of the applicants who had worked for more than 10-15 years and have become overaged. Recruitment through Railway Recruitment Board would not be of any avail to them as they would not be eligible to apply for the same. Framing of a Scheme is an



innocuous direction and a policy decision, which acts to the detriment of the employees and is violative of Articles 14 & 16 of the Constitution of India and always be a subject matter of review before the Tribunal. The Apex Court in **Daily Rated Casual Labour vs. UOI**, AIR 1982 SC 2342, directed the respondents to prepare a Scheme for those who are continuously working for even one year. A similar scheme was directed to be framed in **General Secretary Bihar Road Transport Corporation vs. Presiding Officer**, 1981 (1)ATJ SC 408.

20. Respondents' counsel referred to the following decisions to contend that while enforcing regularization of a contract labour, this court has no jurisdiction.

- i) ***Sarva Shramik Sangh vs. M/s. Indian Smelting & Peninery Co. Ltd.***, 2004 (2) SLJ (SC) 64.
- ii) ***R.K. Panda Vs. Steel Authority of India***, JT 2000(10) SC 438.
- iii) ***Steel Authority of India vs. National Union Water Front Workers Union***, JT 2001 (7) SC 268.

21. I have carefully considered the above aspect. I am not entertaining the grievance of regularization of contract labour but acting in consonance with the directions formulated in ***Parcel Porters***' case of which engagement on other manual work and regularization was ordered.

22. In the result, for the foregoing reasons, O.A. is disposed of with directions to the respondents to frame a Scheme in the light of decision in ***Steel Authority of India's*** case (supra) as well as ***A.I. Rly. Parcel &***

27

Goods Porters Union's case by treating the applicants as a separate category having regard to the observations made above, and consider the applicants for engagement on other available manual work in the railways, in accordance with rules and instructions within six months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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