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**Central Administrative Tribunal
Principal Bench, New Delhi**

C.P.No.942/2010 in O.A.No.1251/2004

And

C.P.No.945/2010 in O.A.No.428/2005

This the 29th day of February 2011

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

CP 942/2010

1. Parcel Porters Association & others
through its Secretary Kamla Singh
s/o late Shri Bhola Singh
having its office at:
17, VP House, Rafi Marg
New Delhi-1
2. Suresh Prasad
s/o Shri Sadhu Sharan Roy
working as parcel porters at
Railway Station, Muzaffarpur
(East-Central) Bihar

..Applicants

(By Advocate: Ms. Sriparna Chatterjee)

Versus

1. Mr. Vivek Sahay
Chairman, Railway Board
Rail Bhawan, New Delhi-1
2. Mr. K K Srivastava
General Manager (Commercial)
East-Central Railway Hazipur
District Hazipur, Bihar

..Respondents

(By Advocate: Shri R L Dhawan)

CP 945/2010

1. Parcel Porters Association & others
through its Secretary Kamla Singh
Having its office at:
17, VP House, Rafi Marg, New Delhi-1

2. Vijay Kumar Singh s/o Shri Bhagwan Singh
3. Raj Kishore Pandey s/o Shri Naval Kishore Pandey
4. Dharam Raj Singh s/o Shri Chandrama Singh
5. Purushotam Singh s/o Shri Ramjas Singh
6. Virendra Singh s/o late Kamla Singh
7. Ashok Singh s/o Shri Shivaji Singh
8. Sanjiv Kumar Singh s/o late Kisni Singh
9. Jyoti Kumar s/o Shri Harendra Prasad Singh
10. Ajay Kumar Singh s/o Shri Parmanand Singh
11. Sanjay Singh s/o Shri Dhirender Singh
12. Dharmender Kumar Tiwari s/o Shri Baijnath Tiwari
13. Rajesh Singh s/o Shri Ganga Sagar Singh
14. Prem Kumar Singh s/o late Mandeshwar Singh
15. Vijay Kumar Singh s/o Shri Rajeshwari Prasad Singh
16. Jitendra Mishra s/o Shri Shiv Kumar Mishra
17. Desh Muni Kunal Singh s/o Shri Kameshwar Prasad Singh
18. Santosh Kumar Singh s/o Shri Kamla Singh
19. Amarjit Singh s/o Shri Kamla Singh
20. Basand Kumar Singh s/o Shri Ram Badan Singh
21. Sanjay Kumar Singh s/o Shri Harpal Singh
22. Dhananjay Kumar Singh s/o Shri Dashrath Singh
23. Niranjan Kumar Rai s/o Shri Shivrath Rai
24. Ritesh Kumar Rai s/o Shri Kalika Rai
25. Niraj Choudhary s/o Shri Shailesh Choudhary

26. Basant Kumar s/o Shri Brij Nandan Singh
27. Arun Kumar Singh s/o Shri Vishwanath Singh
28. Vijay Kumar Singh s/o late Vishwanath Singh
29. Munna Kumar s/o Shri Sant Bihari Rai
30. Ramendra Kumar Rai s/o Shri Sant Bihari Rai
31. Santosh Kumar Singh s/o Shri Sharat Kumar Singh
32. Anirudh Kumar Verma s/o Shri Sharat Kumar Singh
33. Akshay Kumar Singh s/o Shri Parshuram Singh
34. Mukesh Kumar Choudhary
s/o late Ram Udgar Choudhary
35. Ram Lal s/o Shri Hari Lal
36. Pradeep Kumar Dubey s/o Shri Ram Naryan Dubey
37. Ramji Prasad s/o late Bihari Lal Seth

(Applicants No.2 to 38 are c/o Parcel Porters Association, Parcel Porters Association, having its office at 17, VP House, Rafi Marg, New Delhi-1)

..Applicants

(By Advocate: Ms. Sriparna Chatterjee)

Versus

1. Mr. Vivek Sahay
The Chairman, Railway Board
Rail Bhawan, New Delhi-1
2. Mr. K K Srivastava
General Manager (Commercial)
East-Central Railway Hazipur
District Hazipur, Bihar

..Respondents

(By Advocate: Shri R L Dhawan)



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ORDER (ORAL)**Dr. K.B.S. Rajan:**

O.A.No.428/2005 was filed by the applicants herein praying for regularization in the light of the judgment of the Apex Court in WP (Civil) No.433/98 (**A.I. Railway Parcel & Goods Porters Union v. Union of India & others**), which was decided on 22.8.2003. The said OA was disposed of with a direction to the respondents to decide the representation pending with them duly supplemented by the aforesaid O.A.No.428/2005. Time calendar for deciding the representation was stipulated as three months. Liberty was also given to the applicants to revive the OA in case they were aggrieved by the same.

2. In pursuance of order dated 24.2.2005 of this Tribunal in the aforesaid OA, process of verification in tune with the directions of the Hon'ble Supreme Court in **A.I. Railway Parcel & Goods Porters Union's** case was initiated vide letters dated 22.6.2005 and 21.3.2006. A report was submitted by the Regional Labour Commissioner on 10.4.2007 with regard to the aforesaid verification, who has authenticated the genuineness of the labourers as per the inquiry conducted. However, as by that time the Apex Court come out with the Constitution Bench judgment in the case of **Secretary, State of Karnataka & others**

v. **Umadevi & others**, (2006) 4 SCC 1, the respondents applied the ratio of the said judgment and negated the claim of the applicant for regularization. This had forced the applicants to file M.A.No.1752/2006 in O.A.No.428/2005. The Tribunal considered the aforesaid MA along with M.A.No.1753/2006 in O.A.No.1251/2004 and passed an order dated 28.7.2009 wherein it has been held that the decision in **Umadevi's** case has no application in respect of this case and as such directed the respondents to consider the claim of the applicant in terms of the decision in **A.I. Railway Parcel & Goods Porters Union's** case.

3. In pursuance of the aforesaid order of this Tribunal, the respondents have passed an order dated 20.10.2010 and this time their rejection of the claim of applicants is on entirely different ground. Referring to paragraph 34 of the judgment dated 22.8.2003 in **A.I. Railway Parcel & Goods Porters Union's** case, the plea of the applicant was rejected. The applicants had come up against the aforesaid order in M.A.No.15/2010 in O.A.No.1251/2004 and M.A.No.17/2010 in O.A.No.428/2005. The Tribunal after considering the rival contentions of the parties held that since the respondents have come out with a stand in exercise of implementing the directions and have given a reasoning regarding regularization of Parcel Porters, which

cannot be examined in the limited jurisdiction on MAs, of which an original proceeding, being a contentious issue, is a requirement of law, the matter would not be considered in MAs and dispose of the same with liberty to the applicants to assail the order now passed by the respondents in appropriate proceedings. Order dated 12.11.2010 refers. The applicants have now moved an instant C.P.No.945/2010 stating that the decision of the respondents cannot be said to be a religious compliance of the order of the Tribunal.

4. Counsel for applicants forcefully argued that the respondents having been bent upon not to extend the benefits of the decision in **A.I. Railway Parcel & Goods Porters Union's** case to the applicant first rejected the case of the applicants referring to the decision of the Apex Court in **Umadevi's** case and the action of the respondents has been rightly held as invalid by the Tribunal in its earlier order dated 28.7.2009. This time, the respondents have referred to certain portions of **A.I. Railway Parcel & Goods Porters Union's** case to negative the benefits, to which the applicants are entitled to. Counsel for applicants submitted that if the **Porters Union's** case has to be applied in the case of the applicants herein, it has to be applied in its entirety and in the said decision, the Apex Court has held by referring to paragraph 34 (5) as under:-


"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."

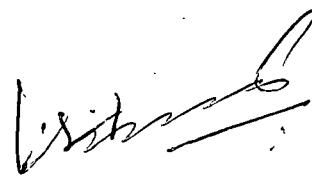
5. Counsel for applicants argued that if the respondents' contention that as per the aforesaid decision of the Apex Court the Railway Administration could absorb permanently and regularize the services to the extent of quantum of work, which may become available on a perennial basis, the same should be restricted only in respect of work available for Parcel Porters but as per the aforesaid paragraph 34 (5) of the judgment (extracted above), attempt should be made for utilizing their services for any other manual work of the Railways depending upon its need. In other words, the spirit and intent of the Apex Court's judgment is that as far as possible all the persons affected should be accommodated on regular basis though not in the same trade or post, but on different posts as well. It cannot be the case of the respondents-Railways that there is no such work whereby the applicants could be accommodated. Preference could always be given in filling up vacancies in the existing posts to the applicants herein instead of inducting persons from the open market.

6. We are not oblivious of the legal position that in a contempt jurisdiction the scope of the order cannot be expanded or varied. Since our direction was to follow the decision of the Apex Court in **A.I. Railway Parcel & Goods Porters Union's** case and since paragraph 34 (5) is one of the crucial provisions of the said order, the respondents should explore the feasibility of accommodating the applicants invoking the aforesaid provision. We are aware that this depends upon the availability of vacancies and prescription of any time limit may not be workable. Suffice it to say that the respondents may maintain roster and as and when the vacancies arise, for which the applicants are suitable, they already having been screened, such vacancies could be filled up by offering the appointment to such persons on the basis of their seniority position.

7. With the above observations/directions, both the CPs are closed. Notices are discharged. No costs.

Let a copy of this order be placed in each file.


(Dr. Veena Chhotray)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

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