

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 31st day of January 2001.

Hon'ble Mr..S. Dayal, Administrative Member

Hon'ble Mr. Rafiq Uddin, Judicial Member

Original Application no. 53 of 1998.

1. Niraj Yadav, S/o Nikku Yadav,
R/o Village Maupara Post Office,
Kareti, Distt. Pratapgarh.
2. Amar Bahadur, S/o Ram Kishore,
R/o 1968/3C/A, Naya Purwa, Kareli,
Allahabad.
3. Lalta Prasad, S/o Dasai Prasad,
R/o Vill. Maupara, P.O. Kareti,
Distt. Pratapgarh.
4. Madan Mohan, S/o Sant Lal,
R/o 62/67, Harvanah Mohal,
Kanpur.
5. Hit Karan Singh, S/o Chhtra Pal,
R/o vill Bulakipur, P.O. Karati,
Distt. Pratapgarh.
6. Mahendra Kumar, S/o Jagdish Prasad,
R/o Pure Kuti Chansa, P.O. Rahwai,
Distt. Pratapgarh.
7. Shish Bhal, S/o Ram Sukh,
R/o Village Baharia,
P.O. Rahwai, Distt. Pratapgarh.
8. Ram Naresh, S/o Ram Bhajan,
R/o Kusahil Bajar, P.O. Gotni,
Distt. Pratapgarh.
9. Ravi Shanker Mishra, S/o Manodutt Mishra,
R/o village Kushil Deeh. P.O. Gotni, Pratapgarh

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10. Ram Chandra, S/o Dasha Ram,
R/o Village Maupara, P.O. Kareti,
Distt. Pratapgarh.
11. Deo Narain, S/o Nand lal,
R/o village Pure Bujju Ka Purwa,
P.O. Gotni, Distt. Pratapgarh.
12. Chhedi lal, S/o Ram Swarup,
R/o village Bulakipur, P.O. Kareti,
Pratapgarh.
13. Nagendra Prasad, S/o Lalta Prasad,
R/o Rambagh Kunda, Pratapgarh.
14. Makkhan lal, S/o Ram Kumar | both r/o Maupara,
15. Ram Chandra, S/o Ram Kumar | P.O. Kareti,
Pratapgarh
16. Sunder lal, S/o Raghubir Prasad,
R/o Vill. Kusahil Bajar, P.O. Gotni,
Pratapgarh.
17. Mohd. Nalia, S/o Mohd Usman,
R/o vill. Maupara, P.O. Gotni,
Distt. Pratapgarh.
18. Kunwar Singh, S/o Raghubir Singh,
R/o village Bulakipur, P.O. Kareti,
Pratapgarh.
19. Ram Sukh, S/o Randeo | all r/o village Maupara,
20. Chhota lal, S/o Vishram | P.O. Gotni, Pratapgarh.
21. Ram Raj, S/o Bindeshwari
Prasad
22. Sant lal, S/o Jagat Narain,
R/o vill Paschim Sarira, Kausambi.
23. Rizwan Ahmad S/o Iliyas Ahmad,
R/o 378, Atala, Allahabad.
24. Rakesh Kumar, S/o Nanha, R/o Maupara, P.O.
Gotni, Pratapgarh.

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25. Om Prakash, S/o Kalika Prasad,
R/o 155 Dr. Ambedkar Nagar, Naini,
Allahabad.
26. Ram Pyare, S/o Kedar,
R/o Village Bulakipur, P.O. Kareti,
Pratapgarh.
27. Manjoor Ali, S/o Moharram Ali,
R/o 185 Faithfulganj Kanpur.
28. Ajaib Ahmad, S/o Intijar Ahmad,
R/o 384 C/6, Sultanpur Bhawa,
Allahaba.
29. Musarram Ali, S/o Milamat Ali,
R/o 271, Shahganj, Allahabad.
30. Manoj Kumar, S/o Ramanand,
R/o Illapur Kotwa Manauri,
Allahabad.
31. Vijay Bhan, S/o Bhaiya Ram,
R/o Ahmad Pur Pawan Manauri,
Allahabad.

... Applicant

C/A Shri K.K. Mishra
Shri V.P. Mishra

ORIGINAL APPLICATION NO. 674 of 1998

1. Raja Ram S/o Sri Moti Lal,
R/o Village Maudara Post Office, Karanti.
Distt. Pratapgarh.
2. Mohd. Alim, S/o Sri Mohd Maneer,
R/o Vill. Kaushil Desh,
P.O. Gotni, Pratapgarh.
3. Ram Kumar S/o Sri Baijnath,
R/o village Bulakipur Post Office,
Karenti Distt. Pratapgarh.

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4. Ashok Kumar, S/o Sri Baijnath,
R/o vill. Bulakipur P.O. Karenti
Distt. Pratapgarh.
5. Rama Kant, S/o Shri Bhagwati Prasad,
R/o vill. Bulakipur, P.O. Karunti, Pratapgarh.
6. Kailash Nath, S/o Sri Shiv Balak, R/o Village
Mirya Post Office Gotni. Distt. Pratapgarh.
7. Surendra Kumar, S/o Sri Daya Shanker,
R/o vill. Patihar, P.O. Gotni Pratapgarh.
8. Ram Sunder, S/o Sri Radhey Shyam,
R/o vill. Sulempur Mirya, P.O. Gotni,
Distt. Pratapgarh.
9. Ravendra, S/o Sri Ram Dev, R/o village Kusahil,
Bazar Post Office Gotni, Distt. Pratapgarh.
10. Roshan lal, S/o Sri Devi Dayal,
R/o Vill. Maudara Post Office, Karenti.
Distt. Pratapgarh.
11. Rakesh Kumar, S/o Sri Bhullar Yadav,
R/o village Karenti, Post Karenti,
Pratapgarh.
12. Ram Sanay, S/o , Sri Mahadev,
R/o village Amilaha Post Office,
Gotni, Distt. Pratapgarh.
13. Ram Anzor, S/o Sri Siya Ram Mourya,
R/o village Bachhrouli, P.O. Lalganj
Distt. Pratapgarh.
14. Shiv Ram. S/o Sri Ram Chander,
r/o Vill. Pingari Post Office Kanawan,
Distt. Pratapgarh.
15. Sujeet Kumar, S/o Sri Radhey Shyam,

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R/o 03/84, Type II New Defence Colony,
G.T. Road, Distt. Kanpur.

16. Lalji Maurya, S/o Sri Badri Prasad,
R/o vill. Pabnah. P.O. Atarampur Sorao
Distt. Allahabad.
17. Ram Dularey Maurya, S/o Sri Badri Prasad,
R/o Vill. Pabnah, P.O. Atarampur, Sorao
Distt. Allahabad.
18. Rakesh Kumar Singh, S/o K.P. Singh,
R/o vill. & Post Kataiya, Distt. Pratapgarh.

... Applicants

C/A Shri K.K. Mishra

ORIGINAL APPLICATION No. 1212 of 1998.

1. Mahavir alias Mahabali, S/o Sri Shivbhajan,
r/o 83/3 Malik Ki Bagiya, Shiv Katra Lal
Banglow, Kanpur U.P.
2. Jahid Hussain, S/o Amir Hussain
R/o Saiyad Sarawa, Allahabad.
3. Ajij Ahmad, S/o Abdul Hakim
R/o vill. and Post Office Saiyad Sarawa
Distt. Allahabad.
4. Ram Kumar, S/o Sri Munni Lal,
R/o 22 E Loco Colony area Club,
Kanpur U.P.
5. Sartaj Alam, S/o Sajjad Ali,
R/o 125/3 Chandari, Kanpur.

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6. Sarfaraj Ahmad, S/o Intajar Ahmad,
R/o 384-C Sultanpur Bhawa, Allahabad.
7. Arjun Kumar, S/o Moti Lal,
r/o Mohaddi Nagar,
P.O. Mohaddi Nagar, Pratapgarh.
8. Shiv Shankar Tiwari, S/o Sri Amar Nath Tiwari,
r/ovill. & Post Itahara, Tahsil Gyanpur
Distt. Bhadohi (Sant Ravi Dass Nagar).
9. Shitala Prasad Mishra, S/o Shri Ramakant Mishra,
r/o vill. Leelapur Kala, P.O. Leelapur Kala,
Distt. Allahabad.

... Applicant.

C/A Shri K.K. Mishra

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 Divisional Railway Manager,
Northern Railway Division,
Allahabad.

... Respondents in
all the three OAs

C/Rs Shri G.P. Agarwal (in all the three OAs)

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O R D E R(Oral).

Hon'ble Mr. S. Dayal, Member-A.

These OAs have common issue of facts and law and have been heard together, at the request of learned counsel and are being decided by a common order.

2. In OA 53 of 1998 there are 31 applicants who seeks direction to the respondents to extend the same benefits to the applicants as have been given by the Hon'ble Supreme Court in Writ Petition no. 277 of 1988 vide judgment dated 15.04.1991 and Writ Petition no. 507 of 1992 vide judgment dated 09.05.1995. It is contended that the Hon'ble Supreme Court declared that the colleagues of the applicants were regular employees of the Railways. The applicants in this OA seeks direction to the respondents to treat the applicants as their employees and give^h them same benefit as given to regular parcel porters working at different railway station at Northern Railway. Another direction sought to the respondents to stop treating the applicants as contract labourers.

3. In OA 674 of 1998 there are 18 applicants with a similar prayer.

3. In OA 1212 of 1998, there are 9 applicants and again prayer is similar to that in OA 53 of 1998.

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4. The facts narrated by the applicants in O.A. 53 of 1998 are that the applicants are parcel porters working at different Northern Railway Stations in Allahabad division. They claimed that the Hon'ble Supreme Court of India in cases filed by the colleagues of the applicants who were similarly situated directed that they were entitled to be treated as employees of Indian Railways. It is claimed that the applicants are treated as contract labourers and when the contract period of the contractor expires, they are treated as Railway employees. It is claimed that in most of Railway Stations except a few Railway Stations, the contract system in parcel handling work is abolished and all the parcel porters who were earlier contract labourers are treated as employees of the railways. It is claimed that the applicants were discharging work of permanent and perennial nature which was essential for the Railways to continue its activities.

5. The Hon'ble Supreme Court in a case entitled Raghuvendra Gumastha versus Union of India & others decided on 15.04.91 and in bunch of Writ Petitions nos 507/92, 415/92, 838/92 & 82/93 entitled National Federation of Railway Porters, Vendors and Bearers versus Union of India & Others decided on 09.05.95 have given the aforesaid verdict. It is also claimed that in Writ Petitions no 588/95, 711/95, 28/96 & 78/96 filed by similarly situated persons, the Hon'ble

Supreme Court vide order dated 05.02.96 directed the respondents to make the inquiries regarding the services of the applicant/petitioners in Writ Petition and regularise the services of the applicants in the aforesaid Writ Petitions, if they are found eligible. The applicants in OA 674 of 1998 a similar facts have been stated. The applicant's in OA 1212 of 1998 have also been given similar facts.

6. We have heard Shri K.K. Mishra learned counsel for the applicant and Shri G.P. Agarwal learned counsel for the respondents in these cases.

7. The Hon'ble Supreme Court in Writ Petition no. 277 of 1998 and in the cases of Raghuvendra Gumastha versus Union of India & Others have in their judgment dated 15.04.1991 have directed railway administration to treat the applicants as regular parcel porters with effect from 15.04.91 and to grant them the same salary which was being paid to regular parcel porters. The Hon'ble Supreme Court have mentioned in the same judgment that this relief was given after referring the matter to Labour Commissioner to decide the question whether the applicants were contract labourers or they were employees of railway and whether they had worked as labours for a number of years. The Labour Commissioner held that the applicants have been working as parcel porters with the railways with effect from the dates shown in the list appended to the report of Labour Commissioner.

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8. In the second case of National Federation of Railway Porters, Vernders & Bearers versus Union of India & Others and in Writ Petitions nos. 415/92, 82/93 & 838/92, the Hon'ble Supreme Court in a similar situation directed Assistant Labour Commissioner (Central), Ministry of Labour, Govt. of India to submit the report after granting the opportunity of participation to all the parties concerned and the Assistant Labour Commissioner submitted the report in which he mentioned that the applicants have been working as contract labour Railway parcel porters continuously for a number of years, that the work of parcel handling is permanent & perennial in its nature and it could keep all the petitioners continuously engaged, that in certain Railway Stations the parcel handling work is done by Railway parcel porters, regularly and permanently employed by Railway, and that the contract work for parcel handling is done by labour supplied by railway societies or private contractors. The Hon'ble Supreme Court directed the Union of India and Railway Administration Units to absorb the applicants who were doing the work of Railway parcel porters on contract basis ~~labours should be absorbed~~ permanently as regular Railway parcel porters, limiting appointment to the quantum of work which may become available on a perennial basis. Such persons who are absorbed 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 gets. Only such parcel porters were to be

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absorbed, who had not completed the age of 58 years. The railway units were also not required to absorb such contract labours who were not found medically fit for such employment. The railway administration was left free to utilise the services of the applicants in the petition for any other manual work depending upon its need. While absorbing, the applicants who have worked for longer period as contract labour were to be preferred to those who are put in similar period of work.

9. Learned counsel for the applicant mentioned that he is dropping other reliefs in the OAs, but seeks only direction to the respondents to decide the claim of the applicants on the basis of common representation to be made by all the applicants in the three OAs relating to their claim for regularisation.

10. Learned counsel for the respondents have contested the jurisdiction of the Tribunal and has relied upon 1995 ATC Vol. 30 page 426, Dakshin Railway Employees Union & Others Vs. Union of India & Others, in which it has been laid down that the Tribunal had no power of framing scheme which can be framed by legislation or delegated legislation under the provisions of constitution cannot be assumed power under article 142 of the constitution. Which is preogative of the highest constitutional Court. The respondents have denied that the applicants were engaged by them and have stated that the applicants were employees of private society

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and were not parcel porters. The respondents have also stated that the applicants have not given the date of engagement or the place of working or the date of dis-engagement. It is stated that no record is available with the respondents by referring to which the status of the applicants could be ascertained. It is stated that the applicants were not discharging any duty on behalf of Railway Administration.

11. Learned counsel for the applicant has in his rejoinder affidavit annexed the letter of Chief Parcel Supervisor dated 22.08.1990 by which Chief Parcel Supervisor has written to Senior Divisional Commercial Superintendent sending the names of the applicants for payment of difference of pay. Counsel for the applicant has also referred the counter affidavit in Civil Misc. Writ Petition no. 11567 of 1986 in which the deponent Shri Gokul Lal, Divisional Commercial Superintendent, Northern Railway, Allahabad has stated as follows in para 12 :-

"That in reply to paragraph 10 of the petition it is stated that the facts relating to Kanpur Railway Station has no relevance at all with the award of contract at Allahabad Railway Station. In the year 1985 the parcel handling contract in favour of Ms/ Railway Cycle Stand Karamchari Shram Samvidya Sukkari Samiti had been terminated in the year 1983 and the same being managed under departmental supervision. The Society, however, made representation to the Headquarters Office, New Delhi and the Headquarters Office, New Delhi directed the Divisional Officer to hold negotiation with the

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society and consider the case of the society."

Counsel for the applicant claims that the applicants were engaged under Railway Cycle Stand, Karamchari Sharam Samiti Ltd. and the counter reply shows that its employees had been engaged directly under the departmental supervision in the year 1983.

12. The respondents have contended that they do not have facts for considering the claims of the applicants. We find that the respondents are in the best position to initiate an enquiry and get full facts from the applicants regarding their employers, their period of work and whether they were intermittently engaged by the railway directly or not and, thereafter, decide whether they are entitled to any benefit under the judgment in National Federation of Railway Parcel Porters Union and others etc versus Union of India & Others.

13. In the facts and circumstances, we consider it appropriate to direct the respondents to ascertain whether the applicants worked directly as railway employees intermittently and whether the contract system in parcel handling work has been abolished in all the Railway Stations except few Railway Stations in which applicants are working and decide the claim of the applicant by reasoned and speaking order on applicants submitting a representation within a period of 15 days.

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14. The representation of the applicants, if made will be decided within a period of three months from the date of receipt of copy of representation alongwith copy of this order. The OAs stand disposed of with the above direction.

15. No order as to costs.

Rohgudde
Member-J

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Member-A

/pc/