

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

...

Original Application No. 1030 of 1999

this the 23rd day of July'2001.

HON'BLE MR. S. DAYAL, MEMBER (A)  
HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Ghanshyam Prasad Misra, S/o Sri Shambhu Nath Misra, R/o  
Village & Post Chaf, Tehsil Tamkuhi Raj, District Kushi Nagar.

Applicant.

By Advocate : Sri R. Nath.

Versus.

1. Divisional Supdt. (Commercial), North Eastern  
Railway, Varanasi.
2. Union of India through Secretary, Ministry  
of Railways, New Delhi.

Respondents.

By Advocate : Sri S.K. Misra for Sri V.K. Goel.

- With

Original Application No. 1031 of 1999

Jawahar Prasad Gupta, S/o Sri Radha Prasad, R/o Village &  
Post Tarainya Sujan, District Kushi Nagar.

Applicant.

By Advocate : Sri R. Nath.

Versus.

1. Divisional Supdt. (Commercial), North Eastern  
Railway, Varanasi.
2. Union of India through General Manager, N.E.R.  
Gorakhpur.
3. General Manager, N.E.R., Gorakhpur.

Respondents

By Advocate : Sri S.K. Misra for Sri V.K. Goel.

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O R D E R (ORAL)

S. DAYAL, MEMBER (A)

These two O.As have been heard together because the facts and nature of relief sought are similar and issues of facts and law are identical, hence they are being disposed of by a common and consolidated order.

2. The applicants in the O.As have come to us for absorption in the service of North Eastern Railway on suitable post according to the nature and duties performed by the applicants and for their regularisation in service. A prayer has also been made for releasing the regular salary according to the post on which the applicants are treated to be absorbed. A further prayer has been made for refunding the withheld amount of commission being the remuneration of the applicants illegally and retrospectively reduced from 11% to 8% vide communication dated 13.4.1998.

3. The applicants are agent appointed for the purposes of selling tickets to the passengers and for checking and collecting tickets and maintaining the cash, cash book by the North Eastern Railway in halt stations namely Tinpharia and Chaf.. It is claimed that the applicant in O.A. no. 1031/99 was appointed by office order dated 20.9.1975 and the applicant in O.A. no. 1030/99 on 14.3.77. It is further claimed that the Divisional Supdt. (Commercial), N.E.R. did not prescribe the conditions of employment in any of the office order, but forced the applicants to sign an agreement for the aforesaid Halt stations. It is also claimed that the applicants are performing the duties as a railway employee, but are being paid the percentage of commission on collected amount on the fare of sale of tickets. It is further claimed that the condition of service imposed their, are all of a Booking Clerks and Ticket Collectors and to some extent

that of Station Incharge. It is claimed that the applicants have been working at Halt stations for more than 20 years in each case.

4. We have heard Sri R. Nath, learned counsel for the applicants and Sri S.K. Misra proxy counsel for Sri V.K. Goel, learned counsel for the respondents.

5. The learned counsel for the applicants has shown by means of Annexure-2 to the O.A. no. 1031/99 that Sri Jawahar Prasad Gupta was appointed as Agent under an agreement between the President of the Union of India as the owner and Administrator of the North Eastern Railway acting through the Divisional Supdt., N.E.R. for the purposes of selling railway tickets to passengers at Tinpharia Halt station and for checking and collecting the railway tickets. Annexure-2 further states that the applicants were receiving commission at the rate of 10% on the value of the tickets sold, which were to be revised time to time. In such a manner, yield about Rs.150/- per month as remuneration for the services rendered by him under this agreement, was being received. It is stated that the administration was to be supplied the necessary stock of railway tickets for sale to passengers and necessary books and forms for keeping and accounts thereof. The agent was to be supplied with a daily trains Cash Book in which he was to be recorded the sale of all tickets and this book was to be posted after the departure of each trains and was to be available for inspection alongwith unsold tickets by any inspecting Railway officials. It is also stated that the agent was to be responsible to prepare and submit returns etc. correctly and timely to the offices, where they were due. The agent was required to be present at the Halt station atleast 30 minutes before the scheduled time on each train for the purposes of selling tickets and was required to be

present till the departure of the train. The books of accounts maintained by the agent were opened for inspection and internal checking of the NER accounts establishment in the same manner as was customary in the case of accounts maintained at railway stations of the NER. The administration was to be supplied a dating machine to the agent with which all tickets issued by the Agent must be clearly and correctly dated. The agent was required to be deposited a sum of Rs. 250/- as security deposit for the due and faithful performance of his duties under the agreement, which amount is refundable only after termination of the agreement and return of all unsold tickets etc. The agreement was to inforce for a period of one year. It is claimed by the learned counsel for the applicants that the agreements were not renewed, but the applicants have been performing their duties for years together without any renewal.

6. The learned counsel for the applicants has also drawn attention to the judgment of Hon'ble Supreme Court in Writ Petition Nos. 507, 408, 415 of 1992, 82/93 and 838/92. The learned counsel for the applicants has stated that the apex court issued directions to the railway administration to absorb permanently as regular Railway Parcel Porter doing the work as contract labour. It was further directed that they were to be entitled to get minimum scale of pay of wages and other service benefits. These directions were made subject to the certain conditions regarding age, medical fitness etc.

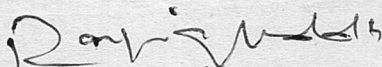
7. The learned counsel for the respondents has, on the other hand, referred to the circular letter dated 17.5.1999 which gives the guidelines to be followed by the Zonal Railways in connection with opening of halt stations. Para IV thereof relates appointment of halt contractor. It shows that the halt contractors were to be a permanent

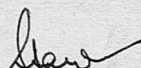
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resident of the place where the halt station was opened, and halt contractors were to be atleast 8th standard pass and could have working knowledge of simple english so as to read the names of the stations and value of tickets. They were to be interviewed and their antecedents verified and subjected medical fitness test. It was also laid down that the halt agent was appointed after the railway enters into a contract and their appointments were purely contractual in nature and no facilities viz. absorption in railway service, regularisation of service, bonus, railway pass facilities etc. were accrued to the halt contractors.

8. We find that the applicants' claim that they have been working with the railways for more than 20 years, but have to chosen to file their applications now. The cause of action having arisen long back, their applications become grossly barred by limitation. The applicants have filed these applications after the judgment of the apex court, referred to above, known to them. However, a subsequent judgment cannot extend the cause of action to a later date after the judgment was pronounced.

9. We find that the judgment of the apex court was regarding the railway Parcel Porter working in railway station on contract basis. Such railway porters clearly came within the purview of Contract Labour (Regulation & Abolition) Act ( in short Act ) were entitled to protection under the provisions of that Act. There was enquiry by the Labour Commissioner, U.P. regarding duration and nature of the work of the Agent at halt station, are clearly distinguishable from such contract workers and <sup>the applicants</sup> cannot claim parity with them. We, therefore, find that the claim of the applicants for absorption and regularisation to be invalid and dismiss both the O.As as lacking in merits. No costs.

  
MEMBER (J)

  
MEMBER (A)

GIRISH/-