

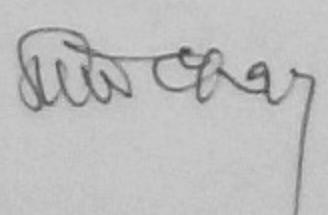
Reserved on 25th January, 2012
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 190 of 2006

Allahabad this the 4th day of February, 2012

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Mr. D.C. Lakha, Member (A)**

1. Lakhan Singh son of Shri Munshi Lal, R/o Village Sakatpur, Post Sahaie, District Agra.
2. Satya Prakash son of Shri Jyoti Prasad R/o Village Sakatpur, Post Sahaie, District Agra.
3. Rajju Khan son of Shri Mahboob Ali R/o Village and post Medhakur, District Agra.
4. Jagdish son of Shri Maghna Ram @ Mahabir Singh R/o Village Sakatpur, Post Sahaie District Agra.
5. Sobran Singh son of Shri Gangadhar Singh R/o Village Sakatpur, Post Sahaie, District Agra.
6. Gulab Singh son of Shri Mangal Singh
7. Bachchu Singh (@ Sachchu Singh) son of Shiv Rani Singh Ali R/o Village Sakatpur, Post Sahaie, District Agra.
8. Puran Singh son of Shri Padam Singh R/o Village Milti, Post Roobbas District Bharatpur (Rajasthan).
9. Pappu son of Shri Preetam Singh
10. Shiv Singh son of Shri Preetam Singh.
11. Hannu son of Manohar Singh.
12. Kailash son of Shri Jyoti Prasad.
13. Rambabu son of Shibban Singh R/o Village and Post Medhakpur District Agra.
14. Phool Singh son of Shri Mool Chand R/o Village and Post Sakatpur District Agra.
15. Shanlai son of Shri Ninua Khan (@ Ninua Khan) R/o Village and Post Medhakpur District Agra.



16. Hori Lal son of Shri Jhamman Lal R/o Village and Post Medhakpur District Agra.
17. Naniga Ram son of Shri Ganga Ram R/o Village and Post Medhakpur District Agra.
18. Geetam Singh son of Sri Ganga Ram R/o Village and Post Medhakpur District Agra.
19. Hari Singh son of Shri Ganga Ram R/o Village and Post Medhakpur District Agra.
20. Bachchu Singh son of Shri Kishan Singh R/o Village Garinarayan Singh Post Medhakpur District Agra.
21. Har Bilas son of Shri Ganeshi Lal R/o 4/575 Prithvi Nath Phatak Shahganj District Agra.
22. Baney Singh son of Shri Ratan Singh R/o Village and post District Kakua Agra.
23. Kartar Singh Son of Shri Manohar Lal R/o Village and post Sakatpur Post Sahaie District Agra.
24. Jogendra Singh Son of Shri Budha Ram R/o Village and post Sakatpur Post Sahaie District Agra.
25. Doji Ram Son of Shri Chibban R/o Village and post Medhakur Dostroct Agra.
26. Rafiq Son of Shri Washir Khan R/o Village and post Medhakur District Agra.
27. Daroga Son of Shri Gangaram R/o Village Sakatpur and post Sahaie District Agra.
28. K.S. Chauhan Son of Shri B. S. Chauhan R/o 25/162 Patel Nagar Jivani Mandi Agra.
29. Dhundi Ram Son of Shri Gopi Ram R/o Village Sakatpur and Post Sahaie District Agra.
30. Siya Ram Son of Shri Prem Singh R/o Village and post Medhakur District Agra.
31. Bhopendra Singh Son of Shri Dhundi Ram R/o Village Sakatpur and post Sahaie District Agra.
32. Ved Prakash Son of Shri Karuwa Ram R/o Village Sakatpur and post Sahaie District Agra.

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33. Dinesh Son of Shri Naniga Ram R/o Village and post Medhakur District Agra.
34. Naval Khan Son of Shri Buddhu Khan R/o 18/384 Mantola Nala Agra.
35. Balvir Singh Son of Shri Mangey Lal R/o Village Sakatpur and post Sahaie District Agra.
36. Mehtab Son of Shri Hoti Lal R/o Village Sakatpur and post Sahaie District Agra.
37. Maharam Singh Son of Mangey Lal R/o Village Sakatpur and post Sahaie District Agra.
38. Murai Lal Son of Deoki Prasad R/o Village Sakatpur and post Sahaie District Agra.
39. Member Singh Son of Gangadhar R/o Village Sakatpur and Post Sahaie District Agra.
40. Sujaan Singh Son of Shri Mangey Lal R/o Villalge Sakatpur and post Sahaie District Agra.
41. Lal Singh Son of Bahadur Singh R/o Village Sakatpur and post Sahaie District Agra.
42. Puran Singh Son of Shri Hublal R/o Village Sakatpur and post Sahaie District Agra.
43. Ratan Lal son of Shri Santosh Kumar R/o Village Medhakur and post Medhakur District Agra.
44. Salim Khan Son of Azeem Khan R/o Village Sakatpur and post Sahaie District Agra.
45. Barkat Ali Son of Nawab Khan R/o Village Medhakur and post Medhakur District Agra.
46. Rahman Ali Son of Mahboob Ali R/o Village Medhakur and Post Medhakur District Agra.
47. Durabh Singh Son of Shri Soran Singh R/o Village Medhakur and post Medhakur District Agra.

Applicants

By Advocates: Dr. H.N. Tripathi

Mr. Sanjay Kumar Singh

Mr. Shyam Krishna Mishra

SANJAY KUMAR SINGH

Vs.

1. Union of India through the G.M. N.C.R. Nawab Yusuf Road Allahabad.
2. Divisional Railway Manager (Commercial), North Central Railway Agra.

Respondents

By Advocate: Sri Prashant Mathur

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD

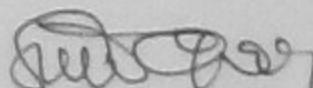
Instant O.A. has been instituted on behalf of 47 applicants for the following relief (s): -

- “i. to issue an appropriate order and set aside the impugned order dated 7.1.2006 passed by respondent no. 2 and to issue appropriate order or direction to the respondents to consider the claim of petitioners for regularization/absorption on the post of Railway Parcel Porters at Agra on the basis of report submitted by Regional Labour Commissioner (Central) Lucknow dated 24.6.2005 within a specify period as per direction of this Hon'ble Tribunal dated 6.8.2004.
- ii. to issue any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.
- iii. To award the cost to the applicants.
- iv. To delete para-5, 6 and 7 of Circular/G.O. dt. 24-5-2005 as ultra vires.

2. The pleadings of the applicants, in brief, are as under

Shri Chauhan

It has been alleged by the applicants that earlier O.A. No. 176 of 1998 was filed by as many as '56' applicants and O.A. No. 1361 of 1995 was also filed on behalf of certain applicants for the similar relief and both were decided by a common Order by the Tribunal on 06.08.2004, annexure A-48 is copy of the Order. Certain directions were given by the Tribunal in the earlier O.A. as the applicants had not given the details, viz.; the contractor with whom they had worked, the station of working and the period of their work, and under these circumstances, it was not possible for the railway administration to verify the working days of the applicant. It was required by the Tribunal that the applicant shall clarify from the Contractor under whom they had worked with the clear name and stand of the contractor verifying the particulars by each person to the Railway and to put their claim before the Assistant Labour Commissioner, Lucknow within a period of 30 days. Thereafter, respondents would have four months to verify from the respective contractors about the actual working of each individual to cross verify from their own records. The Assistant Labour Commissioner was required to decide the matter after completing all the formalities and record a finding, and sent to the railways authorities with regard to each individual, and the matter was to be decided by the



Labour Commissioner in view of directions of the Hon'ble Supreme Court in the case of National Federation of Railway Porters, Vendors Vs. Union of India. All the particulars were supplied with the contractor concerned and details, and the Regional Labour Commissioner submitted a report to the Chairman, Railway Board, D.R.M., N.C. Railway, Agra and to the D.R.M., Western Railway, Kota, annexure-49 is the copy of report. The representations were submitted by the applicant to respondent No. 1 with the request to take a decision in order to consider the applicants for regularization on the post of Railway Parcel Porters, Agra on the basis of report of the Regional Labour Commissioner. A report was submitted by the Regional Labour Commissioner to the effect that out of 56, applicants mentioned in O.A. No. 76 of 1998, only 49 applicants reported and that these are to be regularized on the post of Railway Parcel Porter, and in this way applicants are entitled to be regularized. The applicants approached the respondents in order to take decision and to consider the applicants for regularization and for payment of salary, which is being paid to the regular Class IV employee working in the Railway but they have not taken any decision, as time has not been provided. The applicants actually worked w.e.f. 1982 to 1994 but the Society M/s Railway Shram and Nirman

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Sahkari Samiti Ltd., Western Railway, Agra Fort with which they had worked did not cooperate in the inquiry and did not verify the working period from 1993-94 and hence the period has not been mentioned in the report of the Regional Labour Commissioner. The applicants had been restrained from working since 1994 as they had raised their demand for regularisation on the post of Railway Parcel Porters at Agra, whereas they had worked for more than 12 years against the permanent posts and hence they were entitled for minimum pay scale and wages. The respondent No. 2 illegally stated that Sri Indrapal Singh, Manager of M/s Shram Evam Nirman Samiti Ltd. submitted the affidavit before the Regional Labour Commissioner on 08.05.2005 denying the claim of applicant. No such affidavit is on record, and the affidavit filed by Sri Indrapal Singh before the Regional Labour Commissioner is perverse. The Order passed by the respondents is not a speaking order. It has not disclosed the reasons, rejecting the claim of the applicant. It has been established that the applicants were found valid employee and worked for sufficient period as Railway Porters in view of the Judgment of Hon'ble Supreme Court. There was no occasion for the respondents to deny the claim of applicants. Hence, the O.A.

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3. The respondents contested the case, filed the Counter Reply, and denied from the allegations made in the O.A. It has been alleged that the Order passed by the respondents on 07.01.2006 is based on relevant documents on record before the ^{Regional} Labour Commissioner and guidelines issued by the Railway Board dated 25.04.2005 issued in compliance of the directions of Hon'ble Supreme Court. The claim of applicant is not at all covered as per guidelines of the Hon'ble Supreme Court and it was rightly rejected. The claims of applicants were rejected in O.A. 1136/2005. The system prevalent with the Railway administration regarding handling of the parcels, loading and unloading in trains is managed through an open tender under the agreement between the Railway administration and the Contractor. There is no direct relationship of Master and servant between the railway administration and the workmen (applicants) and the labours are to be employed by the contractor, and the payment is to be made to the contractor. The contractor engaged workers according to recruitment from time to time, and the Railway has no concern and connection, and hence they cannot be regularised. The respondents are not liable to make payment of minimum labour wages to the contract labourers working under the contractors. Moreover, it is not of perennial nature but depends on

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seasonal fluctuations. At some stations, parcel handling work is negligible class IV employee, and only class IV employee posted at the station handled this work along with the other work. No record is being maintained ^{by} ² such labours by the respondents rather such record is being maintained by the contractor, who engaged them. The Tribunal in the earlier case considered the submission of the respondents and recorded ^a ² a definite finding. Accordingly, the O.A. was dismissed. No detail was furnished by the applicants of the case and hence in the absence of details it could not be verified. Certain directions were given in the earlier O.A. by the Tribunal but the applicants had not furnished the details, as required either to the railway administration or to the Deputy Labour Commissioner (Central). Before the Deputy Labour Commissioner, the respondents insisted that the necessary documents as required by the Hon'ble Tribunal are to be filed. But instead of furnishing the same, the applicants had submitted a certificate of one Sri Kisan Singh Chauhan, alleged to have been issued in 1992 certifying the work of the individuals as loading agent and the same has been issued by one Sri Ishwar Lal. There is no mention of any society which had entrusted the work of parcel handling to the labours. An affidavit was filed by M/s Shram Evam Nirman Samiti Ltd.

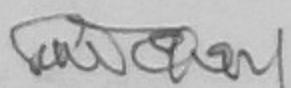
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before the Labour Commissioner and in the affidavit, the Society categorically denied the alleged working of the individuals under the society. It is claimed that as the conditions were not fulfilled by the applicants as per directions of the Tribunal, and the Hon'ble Supreme Court, hence the O.A. is liable to be dismissed.

4. In response to the CA filed on behalf of the respondents, applicants filed the RA and in the RA they reiterated the facts, which have been alleged in the O.A.

5. We have heard Sri S.K. Singh, Advocate for the applicants and Sri Prashant Mathur, Advocate for the respondents, and perused the entire facts of the case.

6. It has been argued by learned counsel for the applicants that certain directions were given by the Tribunal in O.A. No. 1136 of 2005 and after furnishing the particulars regarding period of working of each individuals as Parcel Porter, the respondents were required to absorb and regularize the applicants. Moreover, directions were also given to the Assistant Labour Commissioner in the earlier O.A. for conducting inquiry about the working period of the applicants. The respondents were also required to verify the details furnished by the applicants with their own records. Annexure-2 is the copy of Order



passed by the respondents on dated 07.01.2006. It has been alleged in the impugned order that as per directions of the Tribunal in O.A. No. 1136/2005 dated 06.08.2004 all the applicants submitted their claim to Assistant Labour Commissioner, Lucknow and the Labour Commissioner submitted the finding on 24.06.2005. But the claims of the applicants were not duly verified by the concerned contractor M/s Railway Shram Avam Nirman Sahkari Samiti Ltd., Hata Anek Singh Tundla District of the ~~the~~ ^{was} Firozabad, who ~~is~~ respondent No. 4, in the O.A. No. 176/ 1995 and O.A. No. 1361/1998. Sri Indra Pal Singh, Manager of M/s Shram Avam Nirman Samiti Ltd. has submitted his affidavit before the Assistant Labour Commissioner on dated 08.05.2005 denying the claim of applicants that they have never worked with him. Hence, all the documents filed on behalf of the applicants before the ALC, Lucknow, and other relevant documents were considered by the respondents, and as per guidelines of the Railway Board dated 25.04.2005 issued in compliance of directives of Hon'ble Supreme Court dated 22.08.2003, it was decided by the respondents that the applicants do not fulfill the conditions conveyed vide letter dated 25.04.2005. As the applicants were not fulfilling the mandatory conditions for regularisation hence the claim of applicants were rejected. It has been argued by the

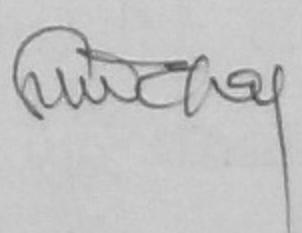
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applicants' Advocate that there was ample material, filed by the applicants before the ALC, Lucknow, and favorable report was submitted by the ALC but the respondents have illegally rejected the claim of applicants for regularisation.

7. Annexure-48 of the O.A. is the copy of Order passed by this Tribunal on 06.08.2004 in O.A. No. 176/1998 along with O.A. No. 1361/1995, and from perusal of copy of this Order, it is evident that earlier as many as 56 applicants filed O.A. before the Tribunal and one more O.A. was also filed on behalf of Rastriya Chaturth Shreni Rail Mazdoor Congress (INTUC). Both the Original Applications were decided by a common order although the Original Applications were disposed of without passing any order in favour of individual party. But from perusal of the facts, it is evident that the claim of applicants was rejected as they have not furnished the required details. As the details were not furnished by the applicants, hence it was not possible for the railway administration to verify their antecedents or their actual working days with the contractor. It was the case of respondents that the work of handling of goods is being done on contract basis through the contractor, and the contractor engaged the workers for this work. The respondents used to make

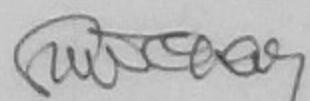
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payment to the contractors and thereafter contractors make the payment to workers individually and the respondents are not liable for salary of the applicants, and there is no relationship of master and servant exists between the applicants and the railway administration. In the Order of earlier O.A., it has also been held by the Tribunal that as the details have not been furnished by the applicants of O.A., specifically to the effect that with whom contractor; at which station; from which period they had worked. It was specifically the case of respondents that the work of handling of goods is being done through the contractor and the contractor engaged the labours. The respondents are not directly engaging the applicants for handling of goods. But in view of the Judgment of Hon'ble Supreme Court reported in (2003) 11 Supreme Court Cases 590 *A.I. Railway Parcel & Goods Porters' Union Vs. Union of India and others*, the Railway Board framed certain policies for regularisation of such porters who had worked with the contractors hence after fulfilling the formalities of verification etc., such porters are to be regularised but as the details were not furnished as per directions of the Hon'ble Supreme Court in the earlier O.A. hence no relief was granted to the applicants. It will be material to reproduce the operative portion of the Order: -



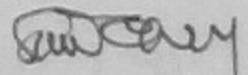
"Since none of these particulars have been given by the applicants in the O.A. I would agree with the respondents counsel that applicants should be given all these particulars duly certified from the contractor under whom each individual had worked with the clear name. Whom each individual had worked with the clear name and stand of the contractor verifying the particulars as stated by each persons to the Railways and put up their claim before the Assistant Labour Commissioner Lucknow as well within a period of 30 days from the date of receipt of copy of this judgment. Respondents would have 4 months thereafter to verify from the respective contractors about the actual working of the each individual to cross verify from their own records so that they may file their reply before the Assistant Labour Commissioner Lucknow who shall then decide the matter after completing the formalities which are required before that authority and give this findings to the Railway authorities with regard to each individual. After the findings recorded by the Assistant Labour Commissioner Lucknow are such to the Railway Department respondents shall consider the case of applicants in terms with the directions given by Hon'ble supreme Court in the case of NATIONAL FEDERATION OF RAILWAY PORTERS AND VENDORS VS. UNION OF INDIA as well as ALL INDIA RLY PARCEL & GOODS PORTERS UNION VS. U.O.I. & ORS. reported in 2003 (99) FLR 203."

From perusal of operative portion of the Order of the Tribunal, it is evident that no provision was made by the Tribunal regarding applicants' submitting the details but it was observed that as the compliance was not made as per directions of the Tribunal hence no relief can be granted to them. However, it was provided in the Order that incase the applicants might have furnished the required information in detail then, the claim of the applicants



might have been verified by the Assistant Labour Commissioner, Lucknow within 30 days and thereafter, the respondents would have considered the claim of applicants within four months so that there could be cross verification of the record.

8. As there was some provision that the details ought to have been submitted to the Labour Commissioner, Lucknow by the applicants individually along with documents, and the Labour Commissioner will verify the details and submit the report so that the respondents may verify the claim. Annexure-49 is the report of Regional Labour Commissioner (Central), Lucknow (for short RLC) dated 24.06.2005. The Regional Labour Commissioner, as per directions of the Tribunal, considered the case of the applicants on the basis of documents produced by the applicants and from perusal of report it is evident that all the applicants were appeared along with their authorized representative Sri Jajveer Singh Solanki, Divisional President INTUC, Agra but none of the contractor/ cooperative society appeared before the Regional Labour Commissioner, and only the representatives of the applicants handed over a reply. The RLC also visited the Agra Fort, Railway Station, Agra to conduct a spot inquiry and record the statement of employees. '49' applicants out



of '56' ~~were~~ appeared along with the representatives of INTUC, and the respondents also verified the details. It has been alleged by the respondents that the Railway administration insisted before the Deputy Labour Commissioner to furnish the necessary documents, as directed by the Tribunal for authentication of their claim, but instead of submitting their claim, applicants had submitted the certificate of one Sri Kisan Singh Chauhan, alleged to have been issued in 1992 certifying the work of the individuals as loading agent. In the certificate issued to Sri Kisan Singh Chauhan, issued by one Sri Ishwar Lal, there is no mention of any society, who had been entrusted to work as Parcel handling work. It is the definite case of the respondents that the work of parcel handling is being done through M/s Railway Shram Avam Nirman Sahkari Samiti Limited, Western Railway, Agra Fort, and this firm was also a party in the O.A. Before the Labour Commissioner, an affidavit was filed on behalf of the Society and in the affidavit they have categorically denied from the working of individuals under their society, and that as there was no definite evidence regarding working of the applicants, applicants were not regularised. It has also been alleged by the respondents that the parcel handling work is to be get done through the Contractor or the Society and not through the individuals. The applicants

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have also not alleged that they were engaged by the respondents directly and not through the contractor. The respondents have also not disputed this fact that the parcel handling work is being done through the contractor. As there was no sufficient evidence hence, services of the applicants were not regularised.

9. Moreover, there is also a report of the Regional Labour Commissioner (Central), Lucknow dated 15.09.2005 wherein it has been alleged that the statement was prepared in the mechanical manner and signed by one Sri Vishan Singh Chauhan, who is not the contractor under whom the so called Parcel Porters (Labour) had alleged to have worked under the contractors. It was also observed in the report that Sri Vishan Singh Chauhan has no locus standi to sign on behalf of M/s Ajay Handlers. It was one Sri Vishan Singh Chauhan who had signed on behalf of all the contractors. It is not convincing that as to how in what manner one Sri Vishan Singh Chauhan signed on behalf of three contractors in a row-M/s Chiran & Company, M/s Adam Ali & Co. and M/s Ajay Handlers. Sri Chauhan has not even filed any power of attorney on behalf of the contractors, and he is also one of the so called labour. The signatory is neither proprietor of the firm nor a partner of the firm. In this manner, as no detail

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was furnished along with the contractor hence, could not be verified.

10. The applicants in the R.A. alleged that it is baseless to say that Labour Commissioner had not taken any cognizance to the objection filed by the respondent No. 4. The Labour Commissioner considered all the aspects required for regularization of the applicants and came to conclusion that the applicants are entitled to be considered for regularization. But perusal of report of the Labour Commissioner shows that the detailed particulars were not furnished by the applicants and moreover, an affidavit was filed before the Labour Commissioner on behalf of the Society that the applicants had never worked with him. The applicants, however, stated that it is wrong to allege that the affidavit filed on behalf of Railway Shram Avam Nirman Sahkari Samiti Limited, Western Railway, Agra Fort is unauthenticated and it is manipulated affidavit. The Hon'ble Supreme Court in the case of *A.I. Railway Parcel & Goods Porters' (supra)* held that as per the established principle of law, the petitioners in order to succeed will have to substantiate their claim. Non-
Opposition production of evidence in *Opposition* will not support the claim of the petitioners even by legal fiction. The Assistant Labour Commissioner has failed to appreciate this

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proposition of law while recommending the claim of the petitioners. Burden of proving the claim of continuous working rests on the claimants for which they are required to furnish concrete proof and reliable documents. In the present case also the burden of proof lies on the applicants to prove that they have worked with the authorized contractor, and the contractor must have been provided a certificate of working period duly signed by him. But before the Labour Commissioner no such certificate was filed by the each individual and moreover the authorized contractor has not verified that these applicants had worked with him. The directions have also been given by the Hon'ble Apex Court in the case of 'National Federation of Railway Porters, Vendors & Bearers, Petitioners V. Union of India and others, Respondents reported in AIR 1995 Supreme Court 1617'. Certain guidelines have been ordered to be framed. The Hon'ble Supreme Court laid down certain conditions to be fulfilled in order to absorb permanently the applicants. In our opinion, the applicant in the present case have not fulfilled the required conditions, as provided by the Hon'ble Supreme Court and in the policy framed by the Railway Board as per the directions of the Hon'ble Supreme Court. The report of the Labour Commissioner cannot be relied as sufficient material was not placed before the Labour Commissioner

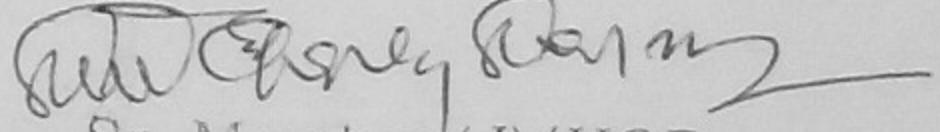
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in order to substantiate the claim of the applicant regarding working period etc.

11. For the reasons mentioned above, we are of the opinion that the sufficient convincing material was not placed before the Labour Commissioner so that the respondents may verify and cross check the facts/records of the applicants' working with the contractors. The authorized contractors have not appeared before the labour Commissioner in order to verify that these applicants had worked with him as Parcel Porter, and without fulfillment of the requirements, as laid down by the Hon'ble Supreme Court, applicants cannot be absorbed and regularised as Parcel Porter in the Railways. O.A. lacks merits and is liable to be dismissed.

12. O.A. is dismissed. No order as to costs.


Member - A


Sr. Member (J)/HOD

/M.M/