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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS.249/95,778/94 & 447/95
Cuttack, this the 4th day of May, 1998

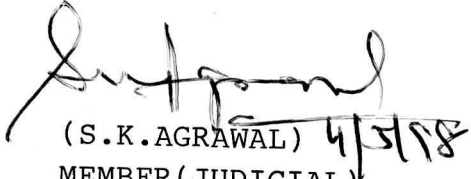
Ghasi Suna and others, etc. Applicants

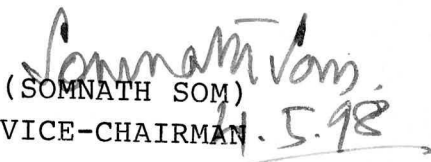
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No


(S.K.AGRawal) 4/5/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 4.5.98

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS.249/95, 778/94 & 447/95
Cuttack, this the 4th day of May, 1998

O.A.No.249/95

1. Ghasi Suna, s/o Mungi Suna
2. Japo Sikha, s/o Kala Kutto Sikha
3. Neelamani Tandi, s/o Dhaneswar Tandi
4. Niranjan Suna, s/o Dharma Suna
5. Ganesh Suna s/o Arikhita Suna
6. Alekha Mungri s/o Bisseswar Mangari
7. Paleswar Bhatra s/o Durga Bhatra
8. Gajamohan Suna s/o Sagar Suna
9. Lamodhar Chhura s/o Raghunath Chhura
10. Narahari Hinyal s/o Alekha Hinyal
11. Bada Besra s/o Racheke Besra
12. Gouranga Sikha s/o Kalakutta Sikha
13. Pita Mahanand s/o Govinda Mahananda
14. Raghu Bag s/o Sahadev Bag
15. Mannu Chhura s/o Sambaru Chhura
16. Salegram Chhura s/o Dukura Chhura
17. Bhima Barik s/o Sitaram Barik
18. Santanu Suna s/o Sripati Suna
19. Jugraj Suna s/o Gajmohan Suna
20. Ramkumar Chhura s/o Jagmohan Chhura
21. Biseswar Mungri s/o Dhanapati Mungari
22. Pavitra Suna s/o Sundadhar Jena
23. Rajen Barik s/o Bada Barik
24. Metna Suna s/o Patna Suna
25. Purushottam Bag s/o Goalu Bag
26. Fakira Suna s/o Barma Suna
27. Jugeswar Bhatra s/o late Kanda Bhatra

28. Devahari Nag s/o Dhamat Nag
29. Keertan Bag s/o Goalu Bag
30. Ghasi Suna s/o Mungi Suna
31. Rohito Sikha s/o Jappa Sikha
32. Gopinath Mohanand s/o Bhakta Mahanand
33. Raju Suna s/o late Gundra Suna
34. Hiramohan Suna s/o late Nanda Suna
35. Bhubaneswar Chhura s/o Mikchand Chhura
36. Sadanand Barik s/o Bika Barik
37. Sanapilla Suna s/o Altia Sunna
38. Thabiro Tandi d/o Sukla Tandi
39. Bholi Suna s/o Sripati Suna
40. Fagnu Suna s/o Trinath Suna
41. Umakant Suna s/o Dhaneswar Suna
42. Kapurchand Bisra s/o Barja Bisra
43. Nilakantha Mahanand s/o Bhagirathi Mahanand
44. Obel Chhura s/o Mannu Chhura
45. Purna Tandi s/o Sugari Tandi
46. Rajesh Suna s/o late Ratho Suna
47. Nirakar Chhura s/o Gopal Chhura
48. Kyabono Mahammad s/o Dyoval Mahanand
All are licensed Brake Van Porters, Titlagarh
Station, S.E.Railway, TitlagarhApplicants

Vrs.

1. Union of India, represented by the
Chairman, Railway Board, New Delhi.
2. General Manager, South Eastern Railway,
Calcutta
3. Divisional Railway Manager, South Eastern Railway,
Visakhapatnam, Andhra Pradesh
4. Senior Divisional Commercial Manager,
South Eastern Railway, Waltair
5. Chief Commercial Manager,
14, Strand Road (9th Floor),

South Eastern Railway,
Calcutta-1.

6. Divisional Traffic Manager,
South Eastern Railway,
Sambalpur
7. Station Manager, South Eastern Railway,
Titilagarh Respondents

In OA 778/94

1. Chaitan Guna s/o Laxmidhar Guna
2. Trinath Harijan s/o Musa Harijan
3. Benu S/o Subasho
4. Jituram Bag s/o Purandar Bag
5. Jagdsh s/o Dhaneswar
6. Senapati Nial s/o Sivaratu
7. Rusia Bag s/o Krishna Bag
8. Barme s/o Jhumku
9. Kuldhar Naik s/o Lado Naik
10. Jaldhar Naik s/o Lado Naik
11. Pati Tandi s/o Gadadhar Tandi
12. Khema s/o Indra Tandi
13. Khagwana Naik s/o Gunchan Naik
14. Juga s/o Halim Harijan
15. Lakhidhar s/o Surmali
16. Kirtan Guna s/o Laxmidhar Guna
17. Jadu Harijan s/o Janka Harijan
18. Judhistir s/o Laxmidhar
19. Bishnu Harijan s/o Lakhi Harijan
20. Ravi Deep s/o Jaladhar Deep
21. Ghasiram s/o Gunchan
22. Nilo Sunani s/o D.K.Sunani
23. Narel s/o Dhankera
24. Bharto s/o Halim Harijan

All are licensed Porters, Kesinga, South Eastern Railway,
Kesinga ..Applicants

1. Union of India, represented by the Chairman,
Railway Board, New Delhi.
2. General Manager, South Eastern Railway,
Calcutta.
3. Divisional Railway Manager,
South Eastern Railway,
Visakhapatnam
Andhra Pradesh
4. Senior Divisional Commercial Manager,
South Eastern Railway, Waltair.
5. Chief Commercial Manager,
14, Strand Road(9th Floor), South Eastern Railway,
Calcutta-1.
6. Divisional Traffic Manager,
South Eastern Railway,
Sambalpur.
7. Station Manager,
South Eastern Railway,
Kesinga

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Respondents

In OA 447/95

1. Gouri Mahanand s/o Narasingh Mahanand
2. Hanu Mahanand s/o Bharat Mahanand
3. Malikhan Deep s/o Manu Deep
4. Ratna Mahanand s/o Bharat Mahanand
5. Kuru Deep s/o Jogeswar Deep
6. Santi Mahanand s/o Jugo Mahanand
7. Raghu Tandi s/o Panchu Tandi
8. Paddu Deep s/o Sanatan Deep
9. Jana Chhatria s/o Dasarath Chhatria
1. Anchal Jal s/o Datra Jal
11. Guhalu Suna s/o Lamuda Suna
12. Balaram Kumbhara s/o Not known

13. Arun Mahanand s/o Dhansingh Mahand
14. Gandaram Suna s/o Balu Suna
15. Bhalu Tandi s/o not known
16. Linga Kumbhira s/o Gobardhan Kumbhara

all are Licensed Brake Van Porters,
Kantabanji, S.E.Railway, KantabanjiApplicants
Vrs.

1. Union of India, represented by the Chairman,
Railway Board, New Delhi.
2. General Manager,
South Eastern Railway,
Calcuta.
3. Divisional Railway Manager,
South Eastern Railway,
Visakhapatnam,
Andhra Pradesh.
4. Senior Diviisional Commercial Manager,
South Eastern Railway, Waltair.
5. Chief Commercial Manager,
14, Strand Road (9th Floor,
South Eastern Railway, Calcutta-1.
6. Divisional Traffic Manager,
South Eastern Railway,
Sambalpur.
7. Station Manager,
South Eastern Railway,

Kantabanjhi

Respondents

Advocates for applicants -

M/s S.P.Misra

S.K.Misra &

A.K.Misra.

Advocates for respondents -

M/s B.Pal & O.N.Ghosh

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SOMNATH SOM, VICE-CHAIRMAN

These three cases have been heard together. Facts of these three cases are exactly similar and the same prayer has been made. For the purpose of deciding the points raised, it will be adequate to refer to the facts of OA No.249/95. Before doing that, it has to be mentioned that in OA No.249/95, there are forty-eight applicants who are Licensed Porters of Titilagarh Railway Station. In OA No.778/94, there are twenty-four applicants and they are Licensed Porters of Kesinga Railway Station. In OA 447/95 there are sixteen applicants and they are Licensed Porters of Kantabanji Railway Station.

2. In OA No.249/95, the forty-eight applicants who have been permitted to file this application jointly, have prayed for quashing the order dated 6.5.1995 (Annexure-4) reducing their working hours from 8 hours per day to 4 hours per day and also for quashing the Railway Board's circular dated 26.9.1970 (Annexure-6) and for a direction to the respondents to restore the daily working hours of the applicants from 4 hours to 8 hours per day. There is also a further prayer for a direction to the respondents to pay them the minimum wages according to law and for regularising their services. Facts of this case, according to the applicants,

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are that they are Licensed Porters of Titilagarh Railway Station. At Annexure-1 is a document giving their Bila Numbers and the dates of their initial engagement. The applicants state that they were working for eight hours per day and were receiving Rs.744/- per month at the rate of Rs.3.10 paise per hour. At Annexure-2 they have enclosed Wage Bills for the months of November 1990 and April 1991 showing that they have been working during those months for eight hours and were getting wages at the rate of Rs.3.10 paise per hour. The Senior Divisional Commercial Manager in his letter dated 18.2.1994 at Annexure-3 desired that the policy of the Railway Board for reducing the working hours of the Licensed Porters from 8 hours to 4 hours should be implemented. Accordingly, in order dated 6.5.1995 Station Managers of Titilagarh, Kesinga and Kantabanji Railway Stations were directed to reduce the working hours from 8 hours to 4 hours as per the schedule enclosed to the letter. From this schedule it appears that 24-25 Licensed Porters per day for 4 hours each have been allocated to Titilagarh Railway Station. In their prayer, the petitioners have sought for quashing this order at Annexure-4. The letter dated 26.9.1970 of the Railway Board is at Annexure-6. In this letter, a reference has been made to an earlier order 2.5.1974 in which it was laid down that payments are to be

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made at reasonable rate for railway handling work undertaken by Licensed Porters and care should be taken to see that the number of hours of daily work which the Licensed Porters are required to give is limited and there is strict rotation amongst them so that the earnings of individual porters from the handling of passengers' luggage are not adversely affected. In this letter, the Railway Board directed that Licensed Porters should be utilised for railway handling work which is not of a regular nature justifying employment of full time persons. Normally such work should not necessitate the employment of an individual Licensed Porter for two to three hours on a day because loading and unloading of parcels and luggage from mail, express passenger trains, do not take much time because duration of stoppage of such trains is limited to a few minutes at a time. It was also desired that if necessary different batches of Licensed Porters could be employed on such work at suitable interval unless the work is of a continuous nature in which case the proper course of action is to engage a regular employee instead of employing Porters. Lastly, the Railway Board desired that the Licensed Porters should not be engaged for 8 hours daily as is being done in S.E.Railway. In this letter, the Railway Board explained that in view of the above direction, the question of granting any weekly paid rest day to licensed porters will

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not arise. This letter was addressed to General Manager, South Eastern Railway, Calcutta (respondent no.2). At Annexure-7 is a representation from the licensed porters of Titilagarh Railway Station addressed to Station Manager, Titilagarh, stating that they have been working for eight hours daily for many years and in certain other Railway Stations like Waltair, Visakhapatnam, Rayagada and Bilashpur Railway Stations, Licensed Porters are working for eight hours per day and on that ground they prayed that they should be allowed to work for eight hours per day as the licensed porters in other Stations are working. They also stated that if 4 hours duty is implemented in other Stations, then they will also accept the same. They further stated that if their prayer is not accepted, they will stop work. The applicants further state that the employment in loading and unloading in Railways, which is the work of the applicants, has been added to Part-I of the Schedule to the Minimum Wages Act, 1948 and therefore, the petitioners are governed by the Minimum Wages Act, 1948. This has also been communicated by the Chief Personnel Officer to all concerned enclosing a copy of the letter dated 2.5.1983 of Railway Board, which mentions that addition of employment of loading and unloading and ashpit cleaning in Railways has been added to the Schedule to the Minimum Wages Act, 1948. The Railway Board's letter further

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states that the Railways should take necessary steps to ensure payment of minimum wage rates to casual labour employed by them directly as also to the labourers engaged by contractors in these employments on Railways after the minimum rates of wages are notified by the Ministry of Labour under the Minimum Wages Act, 1948. It was stated that the notification, as and when received from that Ministry, will be circulated to the Railways. It is further stated that even though the authorities assured the petitioners to look into their grievances, but no action was taken. The petitioners have never agreed to the reduction of the working hours. The licensed porters of Visakhapatnam and Srikakulam Railway Stations had moved the Central Administrative Tribunal, Hyderabad Bench, for a direction to absorb them in the category of permanent employees and to pay them normal salary at the rate prescribed for Luggage Porters with whom they claimed parity. Though the Tribunal rejected the prayer for regular absorption, yet it was held by the Tribunal that whenever a licensed porter is engaged by the Railways for a minimum of eight hours a day for the work of loading and unloading of goods from the Brake Wagons, he would be entitled to be paid at the rate of 1/30th of the minimum of the scale of pay of luggage porter. This order dated 27.7.1993 of the Hyderabad Bench of the Tribunal passed in T.A.No.3/92 is at Annexure-9. The applicants state that in

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order to avoid paying them minimum wages, the Railways reduced the working hours from 8 hours to 4 hours and there is no justification for the same as the number of trains stopping at Titilagarh Railway Station and the volume of goods handled at the Railway Station have been increasing. They have given Annexures 10 and 11 indicating the details of trains passing through Titilagarh and the details of loading and unloading at the Titilagarh Railway Station in the months of February, March and April 1994. In the context of the above facts, the petitioners have come up with the aforesaid prayer.

3. As earlier noted, the applicants in OA No.778/94 are licensed porters of Kesinga Railway Station and the applicants in OA 447/95 are licensed porters of Kantabanji Railway Station. Their submissions in those two O.As. are exactly the same. It is only necessary to note that in OA No.778/94 dealing with licensed porters of Kesinga Railway Station, in the schedule to the impugned order reducing their hours of work, for Kesinga Railway Station 12 licensed porters per day with 4 hours of work were allowed and in OA No.447/95, for Kantabanji Railway Station, in the same schedule, which is also at Annexure-4 of OA No.447/95, 8 licensed porters per day for 4 hours of work were allocated.

4. The respondents have filed separate counters in all the three O.As., but the stand taken and the averments are the same and as we have dealt with facts of OA No.249/95, the counter filed in that case is being referred to. Their stand is that the licensed porters are primarily engaged to carry passengers' luggage and they are utilised for parcel work to supplement their income and as the Railway Board in their letter of September 1970 had indicated that the licensed porters should not be engaged for eight hours and the work done by them would not normally take two to three hours per day, the working hours have been reduced for licensed porters at Titilagarh Railway Station from 8 hours to 4 hours per day in keeping with the policy of the Railway Board. The respondents have further stated that the licensed porters of Titilagarh Railway Station in their representation at Annexure-7 prayed for reduction of working hours from 8 hours to 4 hours. Discussion was held in the chamber of Chief Commercial Manager, S.E.Railway, Calcutta on 15.7.1994 with members of the Union, i.e., S.E.Railway Men's Union and the Union agreed for such reduction of working hours. The minutes of the meeting with the union are at Annexure-R/2. It is thus stated that this reduction of duty hours was done on the understanding with the Union and was agreed to by the

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Union for benefit of the workers and therefore, this should not be changed. On the question of application of Minimum Wages Act, 1948, it has been stated that the relevant entry in Part-I of the schedule to the Minimum Wages Act, 1948 speaks of loading and unloading in Railways goods sheds, docks and ports and as the licensed porters' job is loading and unloading of passengers' luggage, they are not governed by that entry in Part-I of the Schedule to the Minimum Wages Act. It is further stated that according to the Railway Board's letter dated 20.5.1983, even though loading and unloading and ashpit cleaning in Railways have been added to Part-I of the Schedule in the letter dated 2.5.1983, it has been mentioned that no minimum wage has been fixed and notified by the Ministry of Labour. On that ground also, it has been stated that the question of application of Minimum Wages Act, 1948 to the petitioners does not arise. It is further stated that loading and unloading of goods in goods sheds of Railways are substantially and in all respects different from parcel handling work done by licensed porters and therefore, the prayer of the applicants for getting minimum wages has been contested. As regards the order dated 27.7.1993 passed by the Hyderabad Bench of the Tribunal in TA No.3/92 the respondents have stated that the decision

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merely lays down that for minimum of eight hours of work the licensed porters should be entitled to be paid 1/30th of the minimum scale of pay of a luggage porter. That decision does not deal with reduction of working hours. It is further stated that against this order, there was a proposal for filing of Special Leave Petition before the Hon'ble Supreme Court and the same is under process. The respondents have further stated that the contention of the petitioners that the reduction of duty hours has been done to avoid the direction given by the Hyderabad Bench of the Tribunal in TA No.3/92 is not correct. This has been done to implement the directive of the Railway Board communicated in their letter dated 26.9.1970. On the above grounds, the respondents have opposed the prayer of the applicant.

5. We have heard the learned lawyer for the petitioners and Shri B.Pal, the learned Senior Counsel appearing on behalf of the respondents. Learned counsel for the petitioner has also filed written notes of submissions along with copies of certain judgments which have been taken note of.

6. For considering the different submissions made by the learned counsels of both sides, it would be convenient to go by the different prayers of the applicants. The applicants have made a prayer for regularisation of their

services. The respondents have stated that in the grounds of application, no reason has been given in support of the prayer for regularisation. The learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in the case of National Federation of Railway Porters, Vendors and Bearers v. Union of India and others, AIR 1995 SC 1617 and in the case of National Federation of Railway Parcel Porters Union through its Secretary and others v. Union of India and others, AIR 1996 SC 3456. In the first case, the petitioners were contract labourers working as Railway Parcel Porters working on contract labour in certain Railway Stations of Indian Railways and they had come up with a prayer for regularisation of their services. After getting an enquiry made through the Assistant Labour Commissioner (C), Ministry of Labour, the Hon'ble Supreme Court ordered for absorption of these contractors' labourers subject to eight conditions mentioned in paragraph 6 of the judgment. This decision was followed in AIR 1996 SC 3456 (supra) where casual porters, who were on the rolls of certain registered Co-operative Societies of Lucknow, Ahmedabad and Allahabad Divisions were ordered to be regularised. In those two cases, those Porters were contractors' labourers or labourers provided by the registered Co-operative Societies. In the

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instant cases the petitioners are licensed porters. The petitioners have referred to the decision of the Hon'ble High Court of Andhra Pradesh in Writ Petition No.13364 of 1994, where his Lordship of the Hon'ble Andhra Pradesh High Court has discussed the background of institution of licensed porters. It appears that in 1947 the Railway Board had introduced a Scheme of loading and unloading work of railway parcels through licensed porters and in pursuance of that Scheme, large number of persons obtained licences. These are the licensed porters. The licensed porters engaged for loading and unloading of parcels at Visakhapatnam and Srikakulam Railway Stations of S.E.Railway filed Writ Petition No.213 of 1992 before the Hon'ble Supreme Court and this was transferred to Hyderabad Bench of the Tribunal and was numbered as T.A No.3/92. The writ petitioners were licensed porters engaged for loading and unloading of parcel goods and had prayed for their regular absorption in the Railways and for payment of normal salary at the rates prescribed for luggage porters. The respondents in that case had stated that the licensed porters are engaged essentially for the purpose of carrying the baggage of embarking and disembarking rail passengers. For this purpose, a licensed porter is required to pay a licence fee and after grant of licence he is supplied a uniform and licence badge. As the

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Railways also require some porters for the purpose of loading and unloading goods from the Brake Vans, as and when they arrive at the platform, some of the licensed porters are given the task of attending to such work. It may be for a few hours only or it may be for eight hours a day depending on the number of hours performed by them. They are also being paid at a specified rate which is in accordance with the Minimum Wages Act. Such work is given to the licensed porters on a rotational basis. In some of the Railway Stations, the concerned Union itself provides licensed porters on a rotational basis for being engaged for the work of loading and unloading of goods from Brake Vans. In some other stations the concerned Railway authorities themselves allot this work to the licensed porters on a rotational basis. Such a rotation may be on a daily, weekly or even monthly basis and the purpose of rotation is to see that large number of licensed porters get the benefit of being engaged by the Railways for the purpose of loading and unloading from the Brake Vans. While dealing with their prayer for regularisation in TA No.3/92, the Division Bench of the Tribunal noted that Hon'ble High Court of Andhra Pradesh in Writ Petition Nos.8933 and 8648 of 1985 in their judgment dated 23.9.1988 have rejected the contention of similar licensed porters that they should be treated as regular

workmen. The Hon'ble High Court had held in those cases that licensed porters cannot be treated as casual labourers or workmen and the writ petitions were dismissed and their prayer for regularisation was not acceded to. Following the same decision of the Hon'ble High Court of Andhra Pradesh, the Hyderabad Bench of the Tribunal in T.A.No.142/87 came to a similar conclusion. Cuttack Bench of the Tribunal in OA No.85/87 rejected the claim of the licensed porters for the same wages as these regular Class IV employees of the Railways. On the same issue of absorption of licensed porters on permanent basis, Writ Petition No.480/90 was filed in the Hon'ble Supreme Court and after hearing the counsels for the parties, the Hon'ble Supreme Court dismissed the writ petition. Taking into account all these earlier judicial pronouncements, the Hyderabad Bench of the Tribunal in TA No. 3/92 rejected the prayer of the licensed porters for regular absorption. From the above recital of facts, particularly the manner of induction of licensed porters and the nature of their work, it is clear that they are licensees under the Railways and their main job is to carry passengers' luggage and they are also incidentally engaged for loading and unloading work from the Brake Vans attached to the trains and necessarily in the Parcel Offices. Hon'ble High Court of Andhra Pradesh have held that they are not casual workers.

The two decisions of the Hon'ble Supreme Court dealt with the contractors' labourers and porters provided by the registered Co-operative Societies. Those two decisions cannot, therefore, come to the support of the contention of the petitioner for regularisation of their services. In view of the above, we hold that the prayer for regularisation of the services of the applicants under the Railways is without any merit and the same is hereby rejected.

7. The second prayer of the petitioner is for payment of minimum wages. The learned lawyer for the petitioners has pointed out that under Section 2(g) of the Minimum Wages Act, 1948 scheduled employment means an employment specified in the Schedule, or any process or branch of work forming part of such employment. It is further submitted that in Part I of the Schedule to the Minimum Wages Act, 1948, by two amendments published in the Government of India Gazette on 7.5.1983, employment in loading and unloading in Railways goods sheds, docks and ports and employment in Ashpit cleaning in Railways have been declared as scheduled employment. Section 3 of the Minimum Wages Act, 1948 lays down that appropriate Government shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under Section 27. It is also pointed out that

under clause (b) of sub-section (3) of Section 3, minimum rates of wages may be fixed by the hour, by the day, by the month, or by such other larger wage period. Thirdly, it is submitted that under Section 15 of the Minimum Wages Act, 1948, if an employee whose minimum rate of wages has been fixed under the Act by the day, works on any day for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day. If his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, he shall not be entitled to receive wages for a full normal working day. It is also provided that in such cases full wages may not be paid to him in such other cases and circumstances as may be prescribed. In this case, it has been submitted that the petitioners were being paid at the rate of Rs.3.10 paise per hour for eight hours of work and even after reduction of their duty hours to 4 hours, they are entitled to get wages for eight hours because such reduction has been made not because of any unwillingness on their part to work for full eight hours but because of the action of the Railways in reducing their duty hours. The respondents have taken the stand that the entry in Part-I of the Schedule to the Minimum Wages Act, 1948 speaks

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of loading and unloading work in Railways goods sheds, docks and ports. It is submitted by the respondents at page 5 of their counter that loading and unloading work of goods in the Railways goods sheds is substantially and in all respects different from the parcel handling work done by the licensed porters. Therefore, it is submitted that their case is not covered under the above entry in Part-I of the Schedule. Secondly, it is submitted that in Railway Board's letter dated 20.5.1983 it has been mentioned that even though loading and unloading and ashpit cleaning on Railways have been brought within the purview of the Minimum Wages Act, 1948, the minimum rates of wages had not been fixed. In that letter of Railway Board it has been mentioned that the Railways should take necessary steps to ensure that payment of minimum wage rates in these employments should be made after the minimum rates of wages are notified by the Ministry of Labour. On these grounds, the respondents have opposed the prayer of the petitioners regarding payment of minimum wages.

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8. The first point to be noted, in this connection, is that even though the entry speaks of loading and unloading in Railways goods sheds, the Railways in their counter have not given any details as to how such loading and unloading work is different from loading and unloading in

Brake Vans or in Parcel Sheds. Loading and unloading means lifting of an article and carrying and taking it from one place to another either manually or by pull carts. The nature of work is the same, whether loading and unloading work is done in goods sheds, parcel sheds or Brake Vans. Therefore, it is not possible to accept the contention that loading and unloading in Brake Vans and Parcel Sheds are not covered under the above entry. Even if it is taken for argument's sake that this entry does not cover loading and unloading in Brake Vans and Parcel Sheds, since the nature of work is the same, persons doing loading and unloading work in Brake Vans and Parcel Sheds should get the same wages as those loading and unloading in the goods shed on the basis of equal wage for equal work which in the case of loading and unloading in the Railways goods sheds is the minimum wage. It is also to be noted that the Railway Board's circular dated 2.5.1983 at Annexure-8 speaks of loading and unloading and ashpit cleaning on Railways. This does not specifically mention about loading and unloading in Railways goods sheds and distinguish that work from loading and unloading in Brake Vans and Parcel Sheds. In this letter dated 20.5.1983, Ministry of Railways desire that for such loading and unloading minimum wages have to be paid. The Railways have further contested that minimum wages have not been fixed at the time of issuing of this letter dated 20.5.1983. We note

that this letter was issued on 20.5.1983 while the entry in Part-I of the Schedule was made in notification dated 7.5.1983. It is not necessary for us to determine what the minimum wage is .. Whatever minimum wage has by now been declared should be paid to the petitioners. In any case, they were earlier being paid at the rate of Rs.3.10 paise per hour in 1994. That amount might have been increased by this time. The prayer of the petitioner is that whatever is the minimum wage that should be paid to them. The prayer is reasonable and unexceptionable and the same is hereby allowed.

9. As regards the next point that even for four hours of work, they would be entitled to wages for eight hours under Section 15 of Minimum Wages Act, 1948, this point is linked to the other prayer of the petitioners that their working hours should be restored back to eight hours per day. The petitioners have submitted at Annexure-7^{that} at Waltair, Visakhapatnam, Rayagada, and Bilashpur Railway Stations, the licensed porters are having working hours of eight hours per day and on in respect of the petitioners at these three Railway Stations, this has been reduced to four hours. The respondents in their counter have not specifically replied to this point that in other Stations apart from Titilagarh, Kesinga and Kantabanji Railway Stations, the working hours of licensed porters continue to be eight hours.

They have merely stated that this has been done in consultation with the Union and they have enclosed the minutes of discussion with the Union at Annexure-R/2. On a careful reading of the minutes of discussion, it appears that the Union submitted that the licensed porters hitherto being utilised on parcels handling in rotation for 8 hours in a day on alternate month basis. They suggested that they should be put on a revised schedule of daily 4 hours working on a monthly basis. According to them, by this method, the number of hours put in by the existing licensed porters over two months would remain unchanged and work will also get managed without any violation of the Railway Board's instructions. It is stated in the minutes that the above suggestion of the Union was accepted by the Chief Commercial Manager and it was indicated that suitable instructions would be issued to the Divisions. From this it appears that what was decided was that instead of engaging the licensed porters on eight hours daily work in alternate month, ^{all of} ~~then~~ would be engaged every day on four hours work so that in ^{two} ~~in~~ months the total hours of work would not get reduced and at the rate of Rs.3.10 paise per hour or whatever is the present rate a licensed porter would get the same amount in a period of two months what he was getting earlier during the same period.

J.S.M.

Even though this was the decision of the Chief Commercial Manager as per the minutes of the meeting on 15.7.1994, it appears that in the impugned order dated 6.5.1995 at Annexure-4 this was not strictly followed giving rise to the present grievance. As we have noted earlier at Titilagarh Railway Stations, the applicants in OA No.249/95 are forty-eight in number, in respect of Kesinga Railway Station, the petitioners in OA No.778/94 are 24 in number, and in respect of Kantabanji Railway Station the petitioners in OA No.447/95 are 16 in number. The decision apparently was to ensure that the total number of licensed porters are engaged every day in a month for four hours and not engaged on a rotational basis. But in the schedule enclosed to the impugned order dated 6.5.1995 at Annexure-4, for Titilagarh Railway Station half the number of the licensed porters, i.e. 24-25 licensed porters were allocated per day for four hours of work and similarly at Kesinga Railway Station against 24 licensed porters, 12 licensed porters were allocated and for Kantabanji Railway Station as against 16 licensed porters, eight licensed porters were allocated. In other words, the order was that the licensed porters will work for four hours per day and on alternate month whereas the decision according to Annexure-R/2 is that all the licensed porters would be engaged every month and not in alternate month, but

for four hours of work. The respondents have not indicated any reason why the decision at Annexure-4 which was taken in consultation with the Union was changed to the disadvantage of the licensed porters in the manner indicated above. In view of this, it is not open for the respondents to take the stand that the decision has been taken in consultation with the Union and the applicants cannot challenge the same. The fair and correct way of going about in the matter is to work out the decision at Annexure-R/2 fully by engaging all the licensed porters every month and not in alternate months for a period of four hours daily, or to engage them for eight hours as before in alternate months. The net result of either of the courses would be that the earnings of the licensed porters will not go down and that is the logic of the decision at Annexure-R/2. In view of the above discussion, this prayer regarding restoring the working hours of these licensed porters from 4 hours to 8 hours is disposed of with a direction to the respondents that they should either work out the decision arrived at by the Chief Commercial Manager in discussion with the Union as recorded in Annexure-R/2 and ^{all} engage ~~the~~ licensed porters every month and not in alternate months for 4 hours work daily or go back to the earlier system of engaging them in alternate months for eight hours of work and we order accordingly. The prayer of the applicants to quash the order of September 1970 of the


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Railway Board is rejected because this decision of the Railway Board came more than twenty-five years ago and after such long passage of time, it is not open for the applicants to seek quashing of the same.

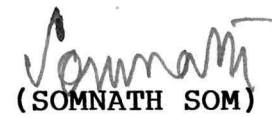
10. The one last point remains to be considered, i.e., payment of minimum wage for full day's work of eight hours even for engaging them for 4 hours. Learned lawyer for the petitioners has referred to Section 15 of the Minimum Wages Act, 1948. The Hon'ble High Court of Andhra Pradesh in Writ Petition No.13364/94 (decided on 30.7.1996) have quoted in full the letter of the Assistant Labour Commissioner, which states that since wages are fixed by Government per day as per Section 3(3)(b) of Minimum Wages Act, even if Railway administration engages these workers for less than the requisite number of hours constituting the normal working day, which is eight hours, they shall be paid full wages in the light of Section 15 of the Act. As in these cases, the licensed porters are willing to work for eight hours, if their working hours are reduced to four hours per day, the Railways would be obliged to pay them the minimum wages for eight hours in case minimum wages have been fixed by the day or by the month. In course of their submissions, the learned counsels of both sides did not throw any light on this aspect. But we have already ordered that these licensed

V.N.M.

porters would be entitled to payment of minimum wages and this prayer can be disposed of with the observation that while paying the minimum wages to them, the Railway authorities will strictly follow the provisions of Section 15 of the Minimum Wages Act, 1948. It is ordered accordingly.

11. In the result, therefore, the applications are allowed in part in terms of the observation and direction contained in paragraphs 7 to 10 above. No order as to costs.


(S.K.AGRAWAL) 4/5/98
MEMBER (JUDICIAL)


(SOMNATH SOM) Som.
VICE-CHAIRMAN 4-5-98

AN/PS