

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No.O.A.500/1997
M.A.469/2005

Date of order : 15.9.2006

Present : Hon'ble Mr. B.V. Rao, Judicial Member
Hon'ble Dr. A.R. Basu, Administrative Member

AJIT KR. BHADURI & ORS.
VS.
UNION OF INDIA & ORS.

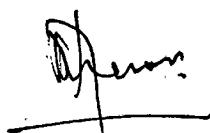
For the applicants : Mr. S.K. Dutta, counsel
For the respondents : Mr. P.K. Arora, counsel

ORDER

Per Dr. A.R. Basu,A.M.

The applicants have filed this O.A. for non-regularisation of their services in Group 'D' posts of Eastern Railway, non-extension of the benefits of the judgment dated 13.3.1997 in O.A.No.1045/1995 and for non-consideration of the representation made on 16.4.1997.

2. The facts of the case in brief is that the applicants are working as Cleaner/Safaiwala in the lavatories and urinals at Howrah Station as Contractors' Labourers. The applicants state that M/s. S.N. Roy, the respondent No.7 being appointed by the Eastern Railway authorities for maintenance of Pay & Use toilets at Howrah Station, engaged the applicants as sanitary cleaning labourers at Howrah station with effect from 31.3.1986 and they worked as contractor's labourers of the said M/s. S.N. Roy upto 31.12.1994 as would be evident from the certificate issued by the said S.N. Roy dated 27.3.1997(Annexure 'A' to the O.A.). Thereafter the said job was awarded to M/s. Sulav International who also engaged the applicants for

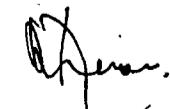


performing the same and similar duties and in fact without any interruption the applicants continued to discharge their duties at Howrah station premises. Thereafter all the applicants continued to work with M/s. Sulav International. After termination of the said work of M/s. Sulav International, the said job was awarded to three contractors viz. M/s. Kalpataru Construction M/s. Live and Let Live Society who also made correspondences with the Railway administration for authentication/corroboration of the identity cards of the applicants and also issued certificate of work under them. The applicants state that though under different contractors, all of them have been working as contractor's labourers continuously without any interruption since 1986 till date with some intermittent break during 1996. The applicants further claimed that though they had been engaged by the Contractors and were working as Contractor's Labourers, but in fact and effect they were rendering services for the Railways and the Railways were the principal employer and the duties and functions rendered by them were casual in nature, on daily wages basis. The applicants have further claimed that since they had been discharging duties for their principal employer i.e. Railways, they acquired statutory right for being regularly absorbed and/or appointed in Railway Service in Group 'D' posts. The applicants have stated that the Contract Labour(Regularisation & Abolition) Act and Rules were enacted as far back as in the year 1971 and in terms of the postulations of the said Act the Railway Administration was obliged to regularize the services of the applicants and/or to absorb them on regular basis in Group 'D' posts but

despite that the railway authorities took no steps to do the same. The applicants have mentioned that similarly circumstanced contract labourers discharging duties and functions under the Eastern Railway authorities in their Printing Press at Fairlie Place, Calcutta, moved an application bearing No.O.A.1045/1995(Subir Mukherjee & Others v. Union of India & Others) praying inter alia for regularization/absorption in Group 'D' posts. The Tribunal decided the O.A. in their favour. The operative part of the said judgment dated 13.3.1997 reads as follows:-

"The application is, therefore, disposed of with a direction upon the respondents to absorb the petitioners' as regular Group D employees or such of them who may be required to do the quantum of work which may be available on a perennial basis, if they are otherwise found fit, their pay or wages being fixed at the minimum of the appropriate scale, provided they are still working as contract labourers. This exercise shall be completed within 8 weeks from the date of communication of this order."

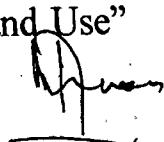
The applicants have stated that in the Newspaper 'Pratidin' dated 16.4.1997 a news item appeared to the effect that the Railway Board has issued orders to all the Railways to stop the system of performing lavatory cleaning job by contractors' labourers and for departmentalization of the same in terms thereof the C.P.O., Eastern Railway has given appointment to 40 such cleaning labourers but without regularizing the service of these applicants. The applicants have further stated that from the record it would appear that the applicants were initially engaged as Cleaner/Safaiwala in the lavatories and urinals at Howrah station and they had been all along performing the same duty under different contractors continuously since 1986 and as such they deserve to be regularized in Group 'D' posts as per the law of the land and the order of the Tribunal (mentioned above). Since the respondents



failed to do the same, they have filed this O.A. claiming the following reliefs:-

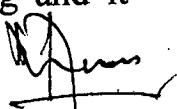
- i) Leave be granted to file the application jointly under Rule 4(5)(a) of Administrative Tribunal(Procedure) Rules,1987;
- ii) To direct the respondents not to replace the applicants by any other persons and further directing the respondents to absorb and/or regularize the services of the applicants in Group 'D' posts in the Railways in extension of the benefit of the judgment and order dated 13.3.1997 contained in Annexure-C hereof;
- iii) To direct the respondents until regularization of services in Group-D post, to accord temporary status and salary on monthly basis from the date of their respective entitlement on completion of 360 days continuous service under the principal railway employers and to draw all arrears arising out therefrom;
- iv) To direct the respondents to deal with and dispose of the representations contained in Annexure-D hereof;
- v) To produce all records of the case for conscionable justice;
- vi) And to pass such further or other order or orders as to your Lordships may deem fit and proper.

3. The respondents have filed written reply disputing the claim of the applicants. In the reply the respondents have stated that "Pay and Use" system of toilets at Howrah station premises was started w.e.f. 31.3.1986. While awarding the contract it was stipulated that no charge would be leviable from them to the Administration and they would charge 20 paise per user in lieu of which they will main the lavatories. As per the agreement the contractor was to supply his own staff to run the toilets and all statutory obligations in staff matters and the responsibilities for payment of statutory dues were also given to the contractors. After completion of the contract period with M/s. S.N. Roy, the contract for maintenance of "Pay and Use"

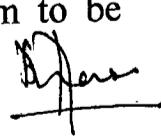


toilets was awarded to M/s. Sulav International. Sulav International was maintaining the same from 1.1.1995 to 31.12.1995 engaging their own labours. After 31.12.1995 two contractors namely M/s. Sulav International and M/s. Kalpataru Construction were engaged on short time basis. Both the contractors were entrusted to maintain the "Pay and Use" toilets at Howrah Station up to 30.4.1996. From 1.5.1996 three contractors Viz. M/s. Kalpataru Construction ,M/s. Fraternal Enterprise and M/s. Live and Let Live Society were engaged for the same job. Two contractors namely M/s. Fraternal Enterprise and M/s. Live and Let Live Society were terminated on 10.4.1997 and 31.4.1997 respectively. After termination of the contract with the above two contractors, M/s. Kalpataru was awarded the duty of maintenance of "Pay and Use" toilets at Howrah station area up to 30.4.1999. Thereafter M/s. Kalpataru Construction is continuing the maintenance of "Pay and Use" toilets at Howrah station area. The respondents have clearly stated in the written reply that labourers were engaged in the Railways as contractor's staff and their payments etc. were given by the contractors under whom they worked, therefore, Railway authorities do not come in the picture and the respondents are in no way obliged to regularize the labourers engaged by the contractors.

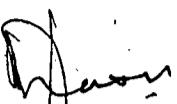
4. We have heard the 1d. Counsel for both sides and have gone through the pleadings of the case. From the perusal of the record it appears that the work of maintaining "Pay and Use" toilets was originally awarded to one contractor who engaged some labourers for performing duties so entrusted to them. With the passage of time contractors kept on changing and it



appears that many of the labourers who had been working earlier, continued to work with the subsequent contractors. From the submission made by ld.counsel for the respondents it is obvious that the labourers were to be provided by the contractors themselves. So, they were appointed by the contractors not by the Railway authorities. ld. Counsel for the applicant has referred to the O.A.No.1045/1995 which was decided in favour of the applicants. From the perusal of the said judgment it appears that M/s. Bandel Handling Porters Cooperative Society Ltd. was engaged by different Government organizations including Eastern Railways on contract basis to supply labourers and the petitioners of the said case were directed by the society to perform the functions of labourers under the Assistant Superintendent of Printing Press, Howrah, Eastern Railway and Sr. Superintendent of Printing & Stationery, Eastern Railway, Calcutta on the basis of a contract concluded between the society and the Railway authorities. This case is not applicable to the present case as in the present case no such contract was there between the labourers and the Railway Authorities. In fact the work of maintenance of "Pay and Use" lavatories was awarded to different contractors at different time and they themselves engaged labourers and paid them for such work. As such the labourers have no right to get absorbed in the Railway in Group 'D' posts. As per the latest decision of the Hon'ble Apex Court also the persons who were originally engaged by contractor in the railway services and continued to work in the department with the different contractors thereafter; cannot claim to be absorbed in the Railway as Group 'D' employees.



5. In view of the facts mentioned above, the O.A. is dismissed being devoid of any merit. Accordingly, the M.A. No.469/2005 also stands dismissed. No order as to cost.


MEMBER(A)


MEMBER(J)