

**CENTRAL ADMINISTRITIVE TRIBUNAL
LUCKNOW BENCH**

O.A.No.127/2007
This the 21st day of May 2007

HON'BLE SHRI A.K. SINGH, MEMBER (A)
HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

1. Jagdish S/o Sri Bhola
2. Ram Lotan S/o Sri Bajrang Lal
3. Shivraj Singh Tomar S/o Sri Ray Singh
4. Ram Shankar S/o Sri Chandrika Prasad

Petitioners 1 to 4 above are
presently posted on the post
of Mali Mate

5. Satyanarayan S/o Sri Ram Dularey
6. Rati Pal S/o Sri Gullu
7. Bhagwati Prasad S/o Sri Mahanarayan
8. Ram Dhiraj S/o Sri Tanayee
9. Sri Kishan S/o Sri Jiwan
10. Nantu S/o Sri Gurubux
11. Amarnath Yadav S/o Sri Daya Ram Yadav
12. Shiv Dayal S/o Sri Ram Karan
13. Mauji Lal S/o Sri Santa
14. Ram Abhilakh S/o Vijayi
15. Bharat S/o Sri Bhagirath
16. Madho Prasad S/o Sri Chhotey Lal
17. Ram Milan S/o Sri Kandhai
18. Shabir Ahmad S/o Sri Jan Mohammad
19. Dev Narayan S/o Sri Ram Sudh
20. Sripal S/o Sri Santoo
21. Panchu Ram S/o Sri Mittu
22. Nankau S/o Sri Agnu
23. Ishwardin S/o Shiv Nath
24. Ram Kesh S/o Sri Ram Das
25. A.K. Sinha S/o Sri S.P. Sinha
26. Raghuraj Pandey S/o Sri Shohrat Pandey

27. Shiv Prasad S/o Sri Ram Saran
28. Hosila Prasad S/o Sri Parmeshwar
29. Parmanand Misra S/o Sri R.T. Misra
30. Sundar Lal S/o Sri Ori Lal
31. Harbhajan S/o Sri Ram Harakh
32. Mata Prasad S/o Sri Vishwanath
33. Devendra Singh S/o Sri Chandrama Singh
34. Ram Pratap S/o Sri Shiv Balak
35. Shankatha Prasad S/o Sri Bhagwan Deen
36. Abbas S/o Sri Bechu Lal

Petitioners 5 to 36 above as mentioned
 above are presently posted on the post
 of Head Mate under North Eastern Railway

37. Radheyshyam S/o Sri Raja Ram
38. Sundar S/o Sri Bhajan
39. Usman S/o Sri Rahim Bux
40. Raj Kumar S/o Sri Sant Ram
41. Ashok Kumar Yadav S/o Babu Ram Yadav
42. Banwari Lal S/o Sri Ram Bilas
43. Smt Gudda Devi W/o Mehi Lal
44. Smt Manju Srivastava W/o Sunil Kumar

Petitioners 37 to 44 are presently
 posted on the post of Mali
 Petitioners 1 to 44 are presently
 working on their respective posts
 as mentioned above at different
 places under the Senior Divisional
 Engineer (Co-ordination) North Eastern
 Railway, Lucknow.

... Applicant.

By Advocate:-Shri P.K. Srivastava.

Versus.

1. Union of India through its Secretary, Ministry of Railways (Railway Board), Government of India, Rail Bhawan, New Delhi.
2. North Eastern Railway through its General Manager,



(3)

Gorakhpur.

3. The Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
4. The Sr. Divisional Engineer (Co-ordination), North Eastern Railway, Lucknow Division, Lucknow.

... Respondents.

By Advocate:-Shri Arvind Kumar.

ORDER

BY HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

The applicants who have been working on the post of Malies, Head Malies and Mallmate have filed this original application against the respondents, challenging the surrender of some of the posts under the impugned orders Dt. 21.02.2005 (Annexure-2) Dt. 31.08.2006 (Annexure-3) and also entrustment of such Horticulture work by engagement of contract labour by inviting tenders under order Dt. 09.03.2007 (Annexure-4).

2. The applicants have challenged the action of the respondents on the ground that if the impugned orders are given effect and allowed, it is impossible to attend the Horticulture work by the remaining staff of 20. They also apprehending that they will either deploy on some other posts or will take some other adverse action and questioned the decision to get horticulture work through contract labour stating that it is clearly an unfair practice and against the provision of Contract Labour Act, 1970 and also violation of provision of Article 14 of the Constitution of India.

3. The respondents have filed Counter Affidavit denying the allegations and apprehension of the applicants, assuring that the decision and action of the respondent department are not going to

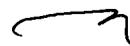


effect the financial status or right of the applicants as railway servants and thus prayed to dismiss the application.

4. Applicant have filed Rejoinder Affidavit reiterating their pleas and stand taken in the Original application .
5. Heard both sides.
6. The point for consideration is whether the applicants are entitled for the relief as prayed for.
7. The brief facts of the case are that these applicants 1 to 44 have been working in the posts of Malies, Head Malies and Mali Mate for the purposes of maintenance of lawns and other connected Horticultural works situated in the residence of officers and other establishments of the respondents. Some of the applicants are working for the last 30 years and all the applicants have been confirmed in their respective posts.

Since 2005, the respondent department started surrendering some of these posts from out of 104 posts of Head Malies, Mali Mates and Mali of Horticulture branch which are under the supervision of 4th Respondent. Under Annexure-2 Dt. 21.12.2005, the department surrendered 25 posts of Mali Mate and 29 posts of mali. Again in the year 2006, under Annexure-3 Dt. 31.08.2006, they have surrendered 10 posts of Mali Mate and 5 posts of Mali. While the remaining 35 labours are managing the entire Horticulture work, 4th the Respondent issued the impugned order Annexure-4 Dt. 09.03.2007, restricting the Horticulture work relating to maintenance of lawns in the Banglows of the officers except the Divisional Railway Manager, additional Divisional Railway Manager to the Horticulture department and intended to entrust the maintenance of lawns in the banglows of D.R.M and Addl. D.R.M. by engaging Mali on contract basis by inviting tenders.

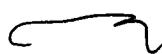
It is also not in dispute that because of surrender of posts



under Annexure-2 and Annexure-3, no Railway employee has been retrenched or removed from service. According to the respondents they have taken such decision on the basis of man power analysis conducted time to time in consultation of Trade Unions of railway employees.

8. It is the case of the applicants that the existing sanction strength of workers are not sufficient to meet the work in the Horticulture wing, instead of taking fresh and additional appointments, the respondents department have surrendered 69 post out of 104 posts, without indicating the reasons and the latest orders under Annexure-4 Dt.09.03.2007, entrusting the work to the contract basis reduces their promotional chances and also apprehended for their deployment in other posts.
9. In respect to the claim under Annexure-2 and 3 ,admittedly by surrender of some posts , none of these applicants have been effected. Further the respondents have assured that they are not going to retrench the service of the applicants and also not to cause any adverse effect on their financial status or rights as railway servants. When the surrendered posts are in respect of excess posts and not in connection with the applicants, effecting the rights of the applicants does not arise.
10. If the said orders are in respect of the applicants and further by such orders the applicants are going to be effected they are justified to question the validity of same and also raising objections in respect of non furnishing of any reasons therein is sustainable.

In such circumstances for questioning the validity of such orders, there is no cause of action arises to the applicants and such persons further raising objection that no reasons are assigned for surrender of such posts in Annexure-2 and 3 is not within the purview of the applicants. Thus the applicants are not entitled to



seek any relief against the order covered under Annexure-2 and 3 and by challenging the correctness of the same.

11. The main claim, in respect of the 2nd relief covered under Annexure-4, entrustment of Horticultural work to the contract labour system the applicants have raised objection in respect of violation of Sec-7 and 9 of Contract Labour (R&A) Act, 1970 by the respondents department. Admittedly the applicants are neither contract labours nor they are claiming any relief under the provisions of Contract Labour (R&A) Act, 1970 and in such circumstances, going into the merits of such objections of the applicants and merits of the respondents in involving the said Act is not at all desirable for deciding the claim of the applicants within the Jurisdiction of this Tribunal. Though the applicants are not justified to question the contract labour Act and also violation of any of its provision by the respondent department, they are justified to ventilate their grievances, how they would be effected by adoption of such act in their field of Horticultural and also required remedies or reliefs from the department, to safeguard their legitimate rights.

12. It is the apprehension of the applicants that by entrustment of their Horticulture work to the contract labour that they will either deploy on some other work or will take some other adverse action. It is also their contention that because of introduction of contract labour system, they lose their promotional chances to the next higher post. But in the Counter Affidavit, the respondents have assured that the decision and action of the respondent department are not going to effect the financial status or rights of the applicants as Railway servants and such extent of assurance of the respondent department is not sufficient to remove the doubt and apprehension of the applicants in respect of their future promotional

avenues and other service conditions. On such ground whether the applicants are justified and entitled to seek for stay of operation of impugned Annexure-4 under which the Respondent/department undertaken to entrust Horticulture work through contract labour system.

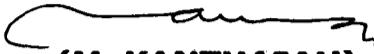
In the larger interests and better administration of the respondent/department, they are at liberty to take decision to abolish existing posts and also introduce new system like contract labour in the field of Horticulture department and in such circumstances, it is not safe to stop the department for introduction of such new system, for the sake of limited interests of the applicants in respect of their promotional avenues and other service conditions. It is also the duty of the respondent department to safeguard the interest and right of the applicants not only as railway servants but also their service conditions for which they were absorbed in service. At the same time, it is the duty of the respondent /department as modal employer while introducing new system to safeguard the right and interest of existing employees and their service condition , which would serve the purpose of the applicants.

13. In view of the above circumstances, the claim of the applicants to quash the impugned order Annexure-4 under which the respondent/department intends to entrust some of the Horticulture department were through contract labour is dismissed with a direction to the department not to defraud the lawful and justified rights of the applicants in respect of their promotional and other service conditions, by introduction of new system of contract labour under Annexure-4.

14. In the result, Original application is dismissed to quash the order covered under Annexure-2 and Annexure-4 with a direction to

(8)

the respondent/ department, to protest the lawful and justified claims of the applicants as per rules in respect of their promotional and other service conditions, while introducing contract labour system in the department of Horticulture. No costs.


(M. KANTHAIAH)
MEMBER (J) 21.05.07


(A.K. SINGH)
MEMBER (A)

/amit/