

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH: LUCKNOW:

Lucknow this the 03rd day of June 1998.

Original Application No.618 of 1992(L).

HON. MR. D.C. VERMA, MEMBER(J)

1. Bhailal S/o Misri Lal
2. Munna Lal S/o Ghasitey
3. Gajraj S/o Putti lal
4. Ram Kishan S/o Kali Charan
5. Kamlesh Kumar S/o Chavi Nath
6. Rajendra Kumar Dwivedi S/o Satya Narain Dwivedi
7. Sohan lal S/o Ram Bharosey
8. Nand Lal S/o Sadhu Ram
9. Vishwar S/o Radhey lal
10. Ram Dularey S/o Ghasu Prasad
11. Triveni Prasad Dubey S/o Ram Surat Dubey
12. Prem Chand S/o Misri lal
13. Virendra Kumar S/o Vijai Bahadur
14. Sarju Prasad S/o Mohan
15. Chunni lal S/o Sukh Lal
16. Dinesh Kumar Saxena S/o S.S.L. Saxena
17. Lallu Ram S/o Ram Bhaoresey
18. Om prakash S/o Satya Narain
19. Bhagwan Bux S/o Ram Bharosey
20. Ganga Sagar S/o Ram Das
21. Shiv Prasad S/o Bodhey
22. Ram Chandar S/o Ram Ratan
23. Avdhesh Kumar S/o Babu Maurya
24. Ram Bilas S/o Babu lal
25. Ram Kishore S/o Laxmi Narain
26. Ram Kumar S/o Bechha lal
27. Pradeep Kumar S/o Parmeshwar Din
28. Badloo Ram S/o Raja Ram
29. Ram Prakash S/o Paras Ram
30. Arvind Kumar S/o Ram Kishore
31. Mahesh Prasad S/o Daya Ram
32. Harikesh Kumar S/ Ram Nath
33. Bachneshwar Prasad S/o Nanhey Lal
34. Sheo Kumar S/o Surya Bhan

All the applicants are adult and working as Substitute Porters under Station Superintendent, Northern Railway, Lucknow.

All R/o C/o Chandra Pal Yadav House No. M 170/145, Alambagh, Lucknow

..Applicants

Versus



..2/-

1. Union of India -through-
General Manager, Northern Railway, baroda House,
New Delhi.
2. Divisional Operating Superintendent,
Northern Railway, Hazratganj, Lucknow.
3. Station Superintendent, Northern Railway, Lucknow.

..Respondents

For the applicants: Sri A.K. Shukla, Adv.

For the respondents: Sri S. Verma, Adv.

ORDER

Thirty four applicants of the present O.A. claimed that they be regularised as they have been working as Substitute Porters since long and have been disengaged by oral order.

2. Subsequently, on 30.9.97 learned counsel appearing on behalf of the applicants gave a statement that the present O.A. is pressed on behalf of six applicants namely, applicant no.1 Bhailal, applicant no.5 Kamlesh Kumar, applicant no.10 Ram Dularey, Applicant no.15 Chunni Lal, Applicant no.16 Dinesh Kumar Saxena and applicant no.17 Lallu Ram. The learned counsel further stated that the O.A. in respect of remaining 28 applicants may be dismissed as not pressed. The order was passed accordingly and the O.A. was dismissed as not pressed in respect of 28 applicants vide order dated 30.9.97. In the present O.A., therefore, the claim of only six remaining applicants, whose names have been given above, have been considered. Reference hereinafter made in respect of the applicants is for applicant no.1, 5, 10, 15, 16 & 17 only.

3. In brief, the facts of the case is that the applicants were appointed on different dates as Substitute Porters to work under control of Station Superintendent, Northern Railway, Lucknow against short term vacancy between 1975 & 1977. In broken period the applicants worked upto 24.7.1980. On 25th July 1980 Station Superintendent, Lucknow without giving any order/notice in writing and without payment of one month's salary asked the applicants not to come for work. The applicants thereafter filed the present O.A.

4. The claim of the applicants ^{is} /that they have completed more than 120 days of continuous service and were enjoying the pay scale and all other benefits available to a regular porter and therefore, they acquired the status of a temporary railway servant and their services could not have been terminated without notice. The applicants claimed that they were medically

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examined and appeared in the screening held for regularisation of services in May 1987. It has been alleged that though the applicants have been dis-engaged, the juniors namely, S/s Jai Narain Pandey, Rajendra Dwivedi, Har Govind, Kali Shanker, etc. have been retained in service as substitute porters.

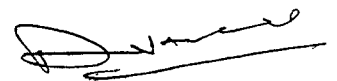
5. The respondents' case is that, as per the record, none of the applicants, except applicant no.15 Chunni Lal and applicant no.17 Lallu Ram, were ever engaged as substitute porter under the respondents. It has been further submitted that even these two applicants have not worked for the requisite number of days and therefore, facilities available to a temporary railway servant were never given to these two applicants.

6. In their Counter Affidavit, the respondents have given the procedure, which is followed at the time of engagements as a substitute porter. It has been submitted that before a substitute is engaged, he is required to go for medical examination and when they are found medically fit by the competent authority of the Railway, such persons are engaged as a substitute against day-to-day casualties and are paid wages on the basis of number of days they are put to work. It has been further submitted that seniority list of the substitute was prepared and such substitutes were screened in the year 1987 and in the year 1991. Persons who were declared successful in screening test by the duly constituted Screening Committee were absorbed against regular vacancies. The case of the respondents is that no person, obviously junior to the applicants, has been working as substitute in the division. The case of the respondents' further is that no substitute could be engaged without personal approval of the D.R.M. prior to 1981 and without the approval of General manager after 1981. The engagement of Casual Labourers/Substitutes without prior approval of DRM/GM, who were competent authority to give approval, is void ab initio.

7. The applicants have with their rejoinder affidavits filed a large number of documents to show that they were engaged for various periods by the departments. One computer list has also been filed but the same is incomplete and without any signature or date. The covering letter with which this computer list was circulated is also not enclosed. So genuineness of this computer list cannot be ascertained. However, another list of working Substitute Porters, who worked under Station Superintendent, Northern Railway, Lucknow between 1.1.86 to 30.6.87, has been filed which bears the seal of Station Superintendent, Northern Railway, Lucknow and each page also bears the initial and seal. This hand prepared list contains the name of applicant no.10 Ram Dularey at Sl.no.63 and of applicant no.16 Dinesh Kumar Saxena at sl.No.11. There is no document on record to show that applicant no.1 Bhailal and applicant no.5 Kamlesh Kumar were ever engaged by the respondents. It is admitted in para 4.18 of the O.A. that the applicants were not issued any appointment letter or service card as were issued to the casual labourers. Though it has been claimed that the applicants were issued privilege pass, a letter of medical examination but no such privilege pass or letter of medical medical examination in respect of applicant no.1 Bhailal and applicant no.5 Kamlesh Kumar has been filed. In view of foregoing discussion, applicant no.1 Bhailal and applicant no.5 Kamlesh Mumar have no case.

8. It is admitted to the respondents that applicant no.15 Chunni Lal and applicant no.17 Lallu Ram were engaged by the respondents but they had not completed the required working days. Though the respondents' case is that the applicant no.10 Ram dularey and applicant no.16 Dinesh Kumar Saxena were not engaged by the respondent but the documents on record and the hand written list issued under the signature and seal of Superintendent, Northern Railway, Lucknow contains the

name of these two applicants. It, therefore, appears that the cases of four applicants namely, applicant no.10 Ram Dularey, applicant no.15 Chunni Lal, applicant no.16 Dinesh Kumar Saxena and applicant no.17 Lallu Ram were not examined properly by the respondents. In view of all these, in the interest of justice, it would be better to afford an opportunity to these four applicants to produce their relevant documents before the competent authority, who ^{make an inquiry} may get the cases of these applicants examined and in case, it is found that these four applicants were duly engaged and have completed the required working days, they be granted temporary status and be considered for regularisation from a date from which their juniors. if any, were regularised. If regularisation is made from a back date, applicants shall not be entitled for back wages except benefit of seniority, which they may get in view of regularisation. The wages shall be admissible only from the date the applicants are engaged. The inquiry aforesaid shall be completed by the respondents within a period of two months after affording an opportunity to the four applicants to produce their relevant documents. The result of the inquiry shall also be communicated to the applicants. The O.A. is decided accordingly. No costs.



MEMBER (J)

Dated: June 03, 1998.

Narendra/-