

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 14 DEC 1988

APPLICATION NO. 1208 to 1486 /88 (F)

W.P. NO.

Applicant(s)

Thirunavkkarasu & 278 Ors

To

1. Shri Thirunavkkarasu K.,  
C/o The Chief Trainship Supervisor,  
Southern Railway, Bayyappanahalli,  
Bangalore - 560033.  
(And 278 Ors as per Sl. Nos. 2 to 279 in  
the final Order)

2. S/Shri R. Gururajan & M.L. Reddy,  
Advocates,  
83/1, I Floor, V Cross,  
Malleswaram Circle,  
Bangalore-560 003.

3. The General Manager,  
Southern Railway,  
Madras - 600 003.

4. The Divisional Railway Manager,  
Southern Railway,  
Bangalore - 560 023.

5. The Chief Personnel Officer,  
Southern Railway,  
Madras - 600 003.

6. The Divisional Commercial Supdt.,  
Southern Railway,  
Bangalore-560 023.

Respondent(s)

General Manager, S.Rly, Madras & 3 Ors

7. Shri M. Sreerangaiah,  
Advocate,  
3, S.P. Building,  
10th Cross, Cubbonpet,  
Bangalore-560 002.

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/SCAM/ORDER/ORDER  
passed by this Tribunal in the above said application(s) on 14 Dec 1988.

Issued  
K. M. J. M.  
16-12-88

*Shree*  
SECTION OFFICER  
DEPARTMENT OF RECORDS & MARK  
(JUDICIAL)

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Encl

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE 14<sup>TH</sup> DAY OF NOVEMBER, 1988

December  
1988  
Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman  
and  
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NOS. 1208 TO 1486/1988

1. Thirunavkkarasu K,  
S/o late Kuppan,  
aged about 33 years,  
Piece Rate Labour No.218.
2. T. Anbalagan  
S/o Theerthumalai,  
aged about 31 years,  
P.R.L. No.29.
3. M. Krishnamoorthi,  
S/o Shri Murugesan,  
aged about 29 years,  
P.R.L. No.543,
4. T.M. Muniswamy,  
S/o Shri Mari,  
aged about 30 years,  
P.R.L. No.31.
5. T. Krishnan,  
S/o Shri Teethan,  
aged about 30 years,  
P.R. L. No.96.
6. K. Mathiyalagan,  
S/o Shri Kolandhi,  
aged about 31 years,  
P.R.L. No.762.
7. M. Muthu,  
S/o .. Muthu,  
aged about 25 years,  
P.R.L. No.59.
8. K. Marai,  
S/o Shri Kuppan,  
aged about 27 years,  
P.R.L. No.205.
9. M. Vaiyapuri,  
S/o Shri Vaiyapuri,  
aged about 31 years,  
P.R.L. No.97.
10. C. Chinnadurai,  
S/o Shri Chinnakkannu,  
aged about 29 years,  
P.R.L. No.341.



11. L. Krishnan,  
S/o Shri Lakshmanan,  
aged about 35 years,  
P.R.L. No.968.
12. A. Basha,  
S/o Shri Abdulkapoor,  
aged about 35 years,  
P.R.L. No.482.
13. C. Murugesh,  
S/o Shri Chinnaswamy,  
aged about 27 years,  
P.R.L. No.467.
14. Kanniyammal,  
W/o Shri Selvaraj,  
aged about 30 years,  
P.R.L. No.415.
15. Mariyammal,  
W/o Shri P. Murugan,  
aged about 29 years,  
P.R.L. No.494.
16. Bayamma,  
W/o Shri Erappa,  
Aged about 45 years,  
P.R.L. No.27.
17. Manikkam,  
W/o Shri Subramani,  
aged about 45 years,  
P.R.L. No.331.
18. Devendran,  
S/o Shri Kannan,  
aged about 26 years,  
P.R.L. No.434.
19. Thirumurthi,  
W/o Shri Govindasamy,  
aged about 30 years,  
P.R.L. No.772.
20. Shankar,  
S/o Shri Rajaram,  
aged about 28 years,  
P.R.L. No.256.
21. Sampangi,  
S/o Shri Kannan,  
aged about 23 years,  
P.R.L. No.959

..... Applicants in  
A.No.1208 to 1227/  
88.

(All the applicants are Care of  
Chief Tranship Supervisor, Southern  
Railway, Byappanahalli,  
Bangalore)

22. C. Krishnan,  
S/o Shri Chinnapaiyan,  
aged about 35 years,  
P.R.L. No.576.
23. S. Govindaraj,  
S/o Shri Suriyan,  
aged about 37 years,  
P.R.L. No.596.
24. Muniyammal,  
W/o Shri Arumugam,  
aged about 36 years,  
P.R.L. No.691.
25. Sakkammal,  
W/o Shri Kaliyappan,  
aged about 26 years,  
P.R.L. No.251.
26. Chinnaswamy,  
S/o Shri Theethan,  
aged about 26 years,  
P.R.L. No.198.
27. Manoharan,  
S/o Shri Mari,  
aged about 27 years,  
P.R.L. No.139.
28. Kolandairaj,  
S/o Shri Annamalai,  
aged about 30 years,  
P.R.L. No.894.
29. Karthikeyan,  
S/o Shri Dhanapal,  
aged about 23 years,  
P.R.L. No.960.
30. D. Murthy,  
S/o Shri Duraisamy,  
aged about 24 years,  
P.R.L. No.912.
31. Subramani,  
S/o Shri Chinnaraj,  
aged about 29 years,  
P.R.L. No.376.

32. Chinnappappa  
W/o Chinnaraj,  
aged about 30 years,  
P.R.L. No. 374.

33. Sampath,  
S/o Shri Aruldass ,  
aged about 30 year,  
P.R.L. No.833.

.... Applicants in  
A.Nos.1228 to  
1241/89.

34. Muniyammal,  
D/o Shri Selvaraj,  
aged about 25 years,  
PRL No.728.
35. Indira,  
W/o Shri Nagaraj,  
aged about 23 years,  
PRL No.62.
36. Arumugam,  
S/o Shri Thoppalan,  
aged about 38 years,  
PRL No.458.
37. E. Arumugam,  
S/o Shri Erusan,  
aged about 55 years,  
PRL No.
38. V. Govindasamy,  
S/o Shri Venkataraman,  
aged about 38 years,  
PRL No.535.
39. Manimekalai,  
W/o Shri Bari,  
aged about 25 years,  
PRL No.609.
40. K. Bari,  
S/o Shri Kolandai,  
aged about 26 years,  
PRL No.257.
41. Gandhiyammal,  
W/o Shri Krishnamurthy,  
aged about 26 years,  
PRL No.130.
42. Kamalamma,  
W/o Shri Jayaraman,  
aged about 26 years,  
PRL No.476.
43. Malliga,  
W/o Shri Ramu,  
aged about 27 years,  
PRL No.515.
44. Shanthi,  
W/o Shri Chelladurai,  
aged about 29 years,  
PRL No.7.
45. D. Munisamy,  
S/o Shri Duraisamy,  
aged about 24 years,  
PRL No.969.

.... Applicants in  
A.Nos.1242 to  
1253/1988.

46. A. Madan,  
S/o Shri Andiyappan,  
aged about 30 years,  
PRL No.69.
47. K. Madhu,  
S/o Shri Kandasamy,  
aged about 30 years,  
PRL No.636.
48. C. Lakshmi,  
W/o Shri Chinnadurai,  
aged about 40 years,  
PRL No.490.
49. Pappamma,  
W/o Shri Kadirvelu,  
aged about 38 years,  
PRL No.554.
50. Kanikarchi,  
W/o Shri Periya Thambi,  
aged about 38 years,  
PRL No.550.
51. M. Balan,  
S/o Shri Munisamy,  
aged about 25 years,  
PRL No.842.
52. Theetan,  
S/o Shri Pandiyan,  
aged about 22 years,  
PRL No.517.
53. Amasi,  
S/o Shri Perumal,  
Aged about 24 years,  
PRL No.974.
54. Lakshmanan,  
S/o Shri Govindarai,  
aged about 24 years,  
PRL No.435.
55. Sampath,  
S/o Shri Subramani,  
aged about 26 years,  
PRL No.581.
56. Chinnasamy,  
S/o Shri Mookkan,  
aged about 32 years,  
PRL No.164.
57. Muniyammal,  
W/o Shri Govindan,  
aged about 25 years,  
PRL No.519.
58. Santhosam,  
W/o Shri Parasuraman,  
aged about 35 years,  
PRL No.377.

59. A. Mahalingam,  
S/o Shri Annamalai,  
aged about 30 years,  
PRL.No.24.
60. Raman,  
S/o Shri Muniswamy,  
aged about 26 years,  
PRL No. 796.
61. Perumi  
W/o Shri Kadiresan,  
aged about 28 years,  
PRL No.365.
62. Banyaru,  
W/o Shri Seenu,  
aged about 33 years,  
PRL No.120.
63. T. Seenu,  
S/o Shri Theethan,  
aged about 35 years,  
PRL No.119.
64. Elumalai,  
S/o Shri Kannan,  
aged about 25 years,  
PRL No.689.
65. Rani,  
W/o Shri Subramani,  
aged about 26 years,  
PRL No.13.
66. Anbalagan,  
S/o Shri Dass,  
aged about 27 years,  
PRL No.790.
67. V. Kannan,  
S/o Shri Veerasamy,  
aged about 35 years,  
PRL No.573.
68. Parandhaman,  
S/o Shri Kolandai,  
aged about 35 years,  
PRL No.756.
69. Rajamma,  
W/o Shri Murthy,  
aged about 38 years,  
PRL No.633.
70. Vailort,  
W/o Shri Dass,  
aged about 40 years,  
PRL No.771.
71. Mathiyalagan,  
S/o Shri Annamalai,  
aged about 35 years,  
PRL No.121.

72. Nagammal,  
W/o Shri Mathiyalagan,  
aged about 33 years,  
PRL No.122.

73. C. Kaliyappan,  
S/o Shri Chendrayan,  
aged about 27 years,  
PRL No.391.

74. Chinnasamy,  
S/o Shri Muniyappan,  
aged about 26 years,  
PRL No.740.

75. Kamala,  
W/o Shri Govindasamy,  
aged about 35 years,  
PRL No.536.

76. Chellappan,  
S/o Shri Venkatachalam,  
aged about 35 years,  
PRL No.45.

77. Durairaj,  
S/o Shri Audiyappan,  
aged about 27 years,  
PRL No.192.

78. Kodagari,  
W/o Shri Chinnathambi,  
aged about 33 years,  
PRL No.12.

79. Ponnusamy,  
S/o Shri Muniyan,  
aged about 35 years,  
PRL No.211.

80. Chinnasamy,  
S/o Shri Theethan,  
aged about 28 years,  
PRL No.65.

81. Mari,  
W/o Shri A. Kali,  
aged about 35 years,  
PRL No.156.

82. Manikkamma,  
W/o Shri Perumal,  
aged about 33 years,  
PRL No.26.

83. Raniyammal,  
W/o Shri Ganesan,  
aged about 26 years,  
PRL No.23.

84. Salamma,  
W/o Shri A. Krishnan,  
aged about 33 years,  
PRL No.22.

85. S. Govindasamy,  
S/o Shri Bendrayan,  
aged about 35 years,  
PRL No.226.

86. Palaniyammal,  
W/o Shri Govindasamy,  
aged about 30 years,  
PRL No.227.

87. S. Velumani,  
S/o Shri Sakkan,  
aged about 32 years,  
PRL No.600.

88. Indira,  
W/o Shri Velumani,  
aged about 24 years,  
PRL No.760.

89. N. Nagendran,  
S/o Shri Mokkan,  
aged about 28 years,  
PRL No.222.

90. Chandira,  
W/o Shri Nagendran,  
aged about 26 years,  
PRL No.223.

91. N. Ganeshan,  
S/o Shri Nedumaran,  
aged about 27 years,  
PRL No.21.

92. V. Sivan,  
S/o Shri Veeran,  
aged about 34 years,  
PRL No.726.

93. Palaniyammal,  
W/o Shri Kuppan,  
aged about 24 years,  
PRL No.726.

94. D. Munisamy,  
S/o Shri Muniyan,  
aged about 26 years,  
PRL No.895.

95. M. Annamalai,  
S/o Shri Muniyan,  
aged about 37 years,  
PRL No.94.

96. Mariyammal,  
W/o Shri Annamalai,  
aged about 35 years,  
PRL No.95.

97. Muniyappan,  
S/o Shri Mari  
aged about 35 years,  
PRL No.646.

98. Thankammal,  
W/o Shri Sakkan,  
aged about 36 years,  
PRL No.225.

99. Chinnaraj,  
S/o Shri Chinnakannan,  
PRL No.704.

100. Madhammal,  
W/o Shri Chinnaraj,  
aged about 20 years,  
PRL No.869.

101. A. Arumugam,  
S/o Shri Annamalai,  
aged about 26 years,  
PRL No.16.

102. Rathinammal,  
W/o Shri Arumugam,  
aged about 24 years,  
PRL No.17.

103. Nagarathinammal,  
W/o Shri Durairaj,  
aged about 23 years,  
PRL No.191.

104. Subramani,  
S/o Shri Sendarayan,  
aged about 25 years,  
PRL No.742.

105. Annamalai,  
S/o Shri Muniyappan,  
aged about 37 years,  
PRL No.1.

106. Vennila,  
W/o Shri Munusamy,  
aged about 27 years,  
PRL No.52.

107. Kariyappan,  
S/o Shri Perumal,  
aged about 35 years,  
PRL No.871.

108. C. Munnisamy,  
S/o Shri Chinnamuniyan,  
aged about 30 years,  
PRL No.228.

109. Jadaiyan,  
S/o Shri Kuppan,  
aged about 23 years,  
PRL No.619.

110. Algesan,  
S/o Shri Sennan,  
aged about 33 years,  
PRL No.34.

111. M. Kuppan,  
S/o Shri Mari,  
aged about 37 years,  
PRL No.585.

112. Chandira,  
W/o Shri Kuppan,  
aged about 35 years,  
PRL No.586.

113. Theethammal,  
W/o Shri Alagesan,  
aged about 30 years,  
PRL No.252.

114. Kannagi,  
W/o Shri Annamalai,  
aged about 35 years,  
PRL No.647.

115. Bethamma,  
W/o Shri Chellappan,  
aged about 26 years,  
PRL No.710.

116. K. Raju,  
S/o Shri Kuppusamy,  
aged about 30 years,  
PRL No.194.

117. Manormani,  
W/o Shri Krishnan,  
aged about 26 years,  
PRL No.642.

118. Ramachandran,  
S/o Shri Chinnamuniyan,  
aged about 25 years,  
PRL No.259.

119. Rani,  
W/o Shri Chinnasamy,  
aged about 25 years,  
PRL No.67.

120. Kantha,  
W/o Shri Raju,  
aged about 27 years,  
PRL No.195.

121. Sanjaiyammal,  
W/o Shri Kannan,  
aged about 40 years,  
PRL No.419.

122. Muniyammal,  
W/o Shri Venkatesh,  
aged about 28 years,  
PRL No.425.

123. Subramani,  
S/o Shri Periyasamy,  
aged about 29 years,  
PRL No.816.

124. Nagaraj,  
S/o Shri Velliyan,  
aged about 28 years,

125. A. Murugan,  
S/o Shri Pandiyan,  
aged about 30 years,  
PRL No.562.

126. Raja,  
S/o Shri Challan,  
aged about 38 years,  
PRL No.498.

127. T. Challan,  
S/o Shri Tholan,  
aged about 37 years,  
PRL No.522.

128. Sekar,  
S/o Shri Chinnasamy,  
aged about 27 years,  
PRL No.70.

129. Muniyammal,  
W/o Shri Sekar,  
aged about 25 years,  
PRL No.253.

130. Govindammal,  
W/o Shri Muniyan,  
aged about 37 years,  
PRL No.75.

131. Narayanan,  
S/o Shri Munusamy,  
aged about 30 years,  
PRL No.196.

132. Devan,  
S/o Shri Thulukuppan,  
aged about 23 years,  
PRL No.924.

133. Govindaraj,  
S/o Shri Adimoolan,  
aged about 24 years,  
PRL No. 707.

134. Armugam,  
S/o Shri Krishnachari,  
aged about 24 years,  
PRL No.887.

135. Kantha,  
W/o Shri Murugan,  
aged about 28 years,  
PRL No.563.

136. Saroja,  
W/o Shri Chnnaiyan,  
aged about 30 years,  
PRL No.387.

... Applicants in A, Nos  
1332 to 1343/1988.

137. Sathya,  
S/o Shri Rangasamy,  
aged about 24 years,  
PRL No.732.

138. Loganathan,  
S/o Shri Murugesan,  
aged about 27 years,  
PRL No.712.

139. C. Mani,  
S/o Shri Chinnasamy,  
aged about 26 years,  
PRL No.76.

140. Shri A. Ramu,  
S/o Shri Annappan,  
aged about 29 years,  
PRL No.572.

141. P. Krishnan,  
S/o Shri Paruraman,  
aged about 35 years,  
PRL No.731.

142. Muniyammal,  
W/o Shri Krishnan,  
aged about 28 years,  
PRL No.574.

143. Vijayakumar,  
S/o Shri Annamalai,  
aged about 29 years,  
PRL No.779.

144. Sowriraj,  
S/o Shri Mudiyappan,  
aged about 27 years,  
PRL No.679.

145. Jakkaraiah,  
S/o of Shri Kurappa,  
aged about 40 years,  
PRL No.699.

146. P. Balakrishnan,  
S/o Shri Pannusamy,  
aged about 36 years,  
PRL No.611.

.... Applicants in A.Nos.  
1344 to 1353/1988.

147) Chinnanan,  
Son of Sri Palani,  
aged about 34 years  
PRL No.754.

148) Vellaiyan  
Son of Shri Poocheri  
aged about 39 years  
PRL No.684

149. Kanniyamma  
Wife of Shri Chinnanan  
aged about 30 years  
PRL No.755

150. A. Nateshan  
Son of Shri Annamalai  
aged about 23 years  
PRL No.946.

151. P.S.Vediyappan  
son of Shri Saminathan  
aged about 25 years  
PRL No.911.

152. Kuppan  
Son of Shri Munusamy  
aged about 29 years  
PRL No.568.

153. Chinnapappa  
Wife of Shri Raman  
aged about 22 years  
PRL No.797.

154. Segar,  
Son of Shri Ramasamy  
aged about 24 years  
PRL No.520.

155. Mani  
Son of Shri Muniyappan  
aged about 26 years.  
PRL No.649.

156. Neelagandan  
Son of Shri Annamalai  
aged about 27 years  
PRL No. 532.

157. Boobathy  
Son of Shri Kandasamy,  
aged about 24 years  
PRL No. 757.

158. Dhanappal  
Son of Shri Palani  
aged about 33 years  
PRL No. 785.

159. Panjalai  
Wife of Shri Dhanappal  
aged about 28 years  
PRL No.786.

160. Kadresan  
Son of Shri Jaliyan  
aged about 30 years  
PRL No.864.

161. Thirugnanam  
Son of Shri Lashmanan  
aged about 21 years  
PRL No. 913.

162. Atumugam  
Son of Shri Annamalai  
aged about 37 years  
PRL No.766.

163. Munusamy  
Son of Shri Mari  
aged about 27 years  
PRL No. 631.

164. Ellamma  
Wife of Shri Shamenna  
aged about 30 years  
PRL No.364.

165. Machareka  
Wife of Shri Murugan  
aged about 35 years  
Prl No. 511.

166. Sriganda Rao  
Son of Shri Ramji Rao  
aged about 26 years  
PRL No.651.

167. Rajenderan  
Son of Shri Saminathan  
aged about 25 years  
PRL No.613.

168. Theethan  
Son of Shri Annamalai  
aged about 23 years  
PRL No. 948.

169. Muthu  
Son of Shri Ramasamy  
aged about 29 years  
PRL No.567.

170. Rajammal  
Wife of Shri Kuppan  
aged about 27 years  
PRL No.598.

171. M.Krishnan  
Son of Shri Mookkan  
aged about 23 years  
PRL No. 81.

172. Kamala  
Wife of Shri Kuppuswamy  
aged about 38 years  
PRL No. 512.

212. Kasiyammal  
Wife of Shri Kothandapani  
aged about 33 years  
PRL No.396.

213. N.S.Krishnamoorthy  
Son of Shri Subbaiyanadu  
aged about 34 years  
PRL No.590.

214. Kashiymmal  
Wife of Shri Vijayakumar  
aged about 23 years,  
PRL No.860.

215. V.Nehru  
Son of Veiyuri  
aged about 26 years,

216. Kumaresan  
Son of Shri Mari  
aged about 28 years  
PRL No.28.

217. C.Lokanathan  
Son of Shri Chinnasamy  
aged about 24 years  
PRL No.734.

218. Narayana  
Son of Shri Munivenkatta  
aged about 27 years  
PRL No.335.

219. Sundararaj  
Son of Shri Rangasamy  
aged about 27 years  
PRL No.571.

220. C.Natarajan  
Son of Shri Chinnapaian  
aged about 27 years  
PRL No.276.

221. Salammal  
Wife of Shri X.Periyasamy  
aged about 33 years.  
PRL No.103.

222. Asirvadham  
Son of Shri Yesusadiyan  
aged about 33 years  
PRL No.103.

223. Moorthy  
Son of Shri ~~MMKXAN~~ Sagadevan  
aged about 29 years,  
PRL No.855.

224. Ramachandran  
Son of Shri Muniyan  
aged about 27 years  
PRL No.958.

199. L.Chinnalagu  
Son of Shri Lakshamanan  
aged about 24 years  
PRL No.961.

200. K.Murugan  
Son of Shri Karuppan  
aged about 29 years  
PRL No. 763.

201. Maklingam  
Son of Shri Kuppusamy  
aged about 25 years  
PRL No.603.

202. C.Mogan  
Son of Shri Chinnapaian  
aged about 29 years  
PRL No. 460.

203. Karuppi  
Wife of Shri Kari  
aged about 24 years  
PRL No.889.

204. Lakshmi  
Wife of Shri Murugan  
aged about 25 years  
PRL No. 601.

205. Venkattamma  
Wife of Shri Fangappa  
aged about 40 years  
PRL No.6.

206. Lakshmiyamma  
Wife of Shri Govindhappa  
aged about 40 years  
PRL No.300.

207. Rajamma  
Wife of Shri Muniyappa  
aged about 45 years  
PRL No.8.

208. Thayamma  
Wife of Shri Kannappan  
aged about 35 years  
Sweeper.

209. Muthamma  
Wife of Shri Narayanaswamy  
aged about 45 years  
PRL No.43.

210. CA.Mani  
Son of Adimoolan  
aged about 22 years  
PRL No.578.

211. Mariyammal  
Wife of Shri Admoolan  
aged about 24 years  
PRL No. 910.

186. Yellaiyamma  
Wife of Shri Munusamy  
aged about 27 years  
PRL No.32.

187. Mariyammal  
wife of Shri Shivan  
aged about 30 years  
PRL No.36.

188. C.Madhan  
Son of Shri Chimmuniyan  
aged about 23 years  
PRL No.723.

189. Kaliyappan  
Son of Shri Veerappan  
aged about 30 years  
PRL No.779.

190. Meenatchi  
Wife of Shri Arivalagan  
aged about 24 years  
PRL No.738.

191. Muniyammal  
Wife of Shri Marappa  
aged about 30 years  
PRL No.506.

192. M.Selvaraj  
Son of Shri Murugesan  
aged about 28 years  
PRL No.955.

193. Ponnurangam  
Son of Shri Ellappan  
aged about 32 years.  
PRL No.524.

194. Chinnapaigan  
Son of Shri Dhanapal  
aged about 25 years  
PRL No. 849.

195. S.Kethaprumal  
Son of Shri Saminathan  
aged about 29 years  
PRL No.454.

196. A.Kumar,  
Son of Shri Arumugam  
aged about 29 years  
PRL No.562.

197. K.Madhappan  
Son of Shri Kadaul  
aged about 27 years  
PRL No.662.

198. L.Thamilsevlan  
Son of Shri Lakshmanan  
aged above 23 years  
PRL No.861.

173. Arunachalam  
Son of Shri Gundan  
aged about 32 years  
PRL No.133.

174. M.Kandan  
Son of Shri Munusamy.  
aged about 32 years  
PRL No.127.

175. Murugamma  
Wife of Shri Kandan  
aged about 28 years  
PRL no.128.

176. V.Madhan  
Son of Shri Vellaiyan  
aged about 33 years  
PRL No.105.

177. Kanga  
Wife of Shri Madhan  
aged about 30 years  
PRL No.106.

178. Ramalingam  
Son of Shri Lakshamanan  
aged about 23 years  
PRL No.673

179. Samynathan  
Son of Shri Muniyan  
aged about 32 years  
PRL No.751.

180. Pandiyan  
Son of Shri Vellaiyan  
aged about 37 years  
PRL No. 872.

181. Natesan  
Son of Shri Vellaiyam  
aged about 28 years  
PRL No. 79.

182. Chelliayamma  
Son of Shri Periyasamy  
aged about 35 years  
PRL No.234.

183. Thethamma  
Wife of Shri Muniyappan  
aged about 34 years  
PRL No. 109.

184. Arivalagan  
Son of Shri Mookkan  
aged about 27 years  
PRL No.140.

185. Ganitha  
Wife of Shri Ranganathan  
aged about 24 years  
PRL No.588.

... Applicants in A.Nos.  
1380 to 1392/1988.

225. Manorama  
Wife of Shri Nehuru  
aged about 24 years  
PRL No.560.

226. G.Sekar  
Son of Shri Govindaraj  
aged about 21 years  
PRL No.870.

227. G.Mani  
Son of Shri Gopal  
aged about 27 years  
PRL No.620.

228. S.Munisamy  
Son of Shri Selvaraj  
aged about 28 years  
PRL No.380.

229. Pawn,  
Son of Shri Ponnurangam  
aged about 31 years,  
PRL No.395.

230. Karppagam  
Wife of Shri Lokenathan  
aged about 21 years  
PRL No.896.

231. Honnegowda  
Son of Shri Honnegowda  
aged about 38 years  
PRL No.338.

232. G.Ramalingam  
Son of Shri Gopal  
aged about 37 years  
PRL No.542.

233. D.Nandhi  
Son of Shri Duraisamy  
aged about 35 years  
PRL No.618.

234. L.Nagajirao,  
S/o Sri Lakshman Rao  
aged about 25 years  
PRL No.629.

235. Lekshman Rao  
S/o Sri Subajirao  
aged about 29 years  
PRL No.533.

236. Chandra  
S/o Shri Balan  
aged about 23 years  
PRL No.963.

237. D.Balaramman  
S/o Shri Dhanpal  
aged about 24 years  
PRL No.717.

238. Unnamalei  
W/o Sri Buddappan  
aged about 31 years  
PRL No.144.

239. Krishnaveni  
W/o Sri Kanniyappan  
aged about 26 years  
PRL No.8888 890.

240. Sri R.Sekar  
S/o Sri Rathnam  
aged about 28 years  
PRL No.255.

241. K.Manokaran  
S/o Sri Koladhivelu  
aged about 26 years  
PRL No.575.

242. Munigan  
S/o Sri Periyapaiyan  
aged about 45 years  
PRL No.821.

243. Munisamy  
S/o Sri Periyapaiyan  
aged about 37 years  
PRL No.822.

244. parvathi  
S/o Sri Rajaram  
aged about 40 years  
PRL No.362.

245. Krishnan  
S/o Sri Chinnaraj  
aged about 22 years  
PRL No.883.

246. Susila  
D/o Sri Rajaram  
aged about 22 years  
PRL No.922.

247. Lakshmi  
W/o Sri Subramani  
aged about 27 years  
PRL No.8 692.

248. Irusammal  
S/o Sri Basha  
aged about 35 years  
PRL No.483.

249. Dhanalakshmi  
W/o Sri Thomas  
aged about 40 years  
Prl No.446.

250. K.Rathanam  
S/o Sri Kuppan  
aged about 27 years  
PRL No.616.

251. Babu  
S/o Shri Kadharbasha  
aged about 25 years  
PRL No.736

252. Muniyammal  
W/o Shri Sekar  
aged about 27 years  
PRL No.469

253. Manoharan  
S/o of Shri Chinnadurai  
aged about 26 years  
PRL No.286

254. Gunamani  
W/o of Shri Kannan  
aged about 30 years  
PRL No.541

255. T.Kuppaiya  
S/o Shri Jayaraman  
aged about 25 years  
PRL No.761

256. Kannammal  
W/o of Shri Chinnapaiyan  
aged about 40 years  
PRL No.461

257. Anthoni  
S/o of Shri Nanaprakasan  
aged about 25 years  
— PRL No.422

258. V.Ranganathan  
S/o Shri Veeran  
aged about 27 years  
PRL No.587

259. Jayalakshmi  
W/o of Shri Kannan  
aged about 21 years  
PRL No.901

260. M.Kannan  
S/o of Shri Mookan  
aged about 28 years  
PRL No.157

261. Chidharaj  
S/o of Shri Ponnan  
aged about 33 years  
PRL No.181

262. I.Ponnarangam  
S/o of Shri Iyakkannan  
aged about 30 years  
PRL No.339

263. Kodhandapani  
S/o of Shri Iyakkannu  
aged about 34 years  
PRL No.334

264. T.Raji  
S/o of Shri Theethan  
aged about 27 years  
PRL No.38

265. Kaliyammal  
W/o of Shri T.Raji  
aged about 25 years  
PRL No.718

266. Lakshman Rao  
S/o of Shri Manoj Rao  
aged about 30 years  
PRL No.437

267. Subbamma  
W/o of Shri Munisamy  
aged about 45 years  
PRL No.502

268. Lakshmi  
W/o of Shri Krishnappa  
aged about 25 years  
PRL No.954

269. Krishnamma  
W/o of Shri Venkataramaiah  
aged about 35 years  
PRL No.504

270. S.Govindaraj  
S/o of Shri Sundaram  
aged about 35 years  
PRL No.566

271. Easwara Rao  
S/o of Shri Famoji Rao  
aged about 33 years  
PRL No.287

272. Vijaya  
W/o of Sri Venkatesh  
aged about 26 years  
PRL No.725

273. Muniyamma  
W/o of Shri Pandurangan  
aged about 40 years,  
PRL No.310

274. Kuppan  
S/o of Shri Kandasamy  
aged about 26 years  
PRL No.711

275. Sivagami  
W/o of Shri Boobathy  
aged about 24 years  
PRL No.631

276. Gopal  
S/o of Shri Mookan  
aged about 26 years  
PRL No.853.

277. Mari  
W/o of Shri Ponnusamy  
aged about 30 years  
PRL No.212

278. Sakkammal  
W/o of Theethan  
aged about 34 years  
PRL No.239

279. Omkali  
W/o Shri Theethan  
aged about 37 years  
PFL No.632. ....

Applicants in  
A.Nos.1484 to 1485/83.

( All the applicants are care of The  
Chief Tranship Supervisor,  
Southern Railway, Byappanahalli,  
Bangalore - 560 033 ).

( Shri F.C.Guru Rajan &  
Shri M.L.N.Reddy .... Advocates )

vs.

1. The General Manager,  
Southern Railway,  
Madras - 600 003.

2. The Divisional Railway  
Manager,  
Southern Railway,  
Bangalore - 560 023.

3. The Chief Personnel  
Officer,  
Southern Railway,  
Madras - 600 003.

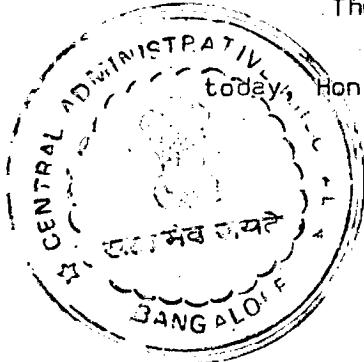
4. The Divisional Commercial  
Superintendent,  
Southern Railway,  
Bangalore - 560 023. ....

Respondents

( Shri M.Sreerangaiah .... Advocate )

These applications having come up before the Tribunal

today, Hon'ble Shri L.H.A. Fego, Member (A) made the following :



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ORDER

These are in all 278 applications, wherein, the main prayer is for a direction to the respondents (R), to treat the applicants as piece-rate labourers (PRLs, for short) at Byappanahalli (BYPL, for short), Bangalore, as temporary railway employees and to grant them all service benefits, to which the latter are entitled.

2. The following is the background to these applications. According to the details furnished by the applicants, they are seen to be working as PRLs at BYPL, intermittently, for various spells between 1975 to 1988. Some of them are recent entrants and have started working as PRLs, during the current year. The applicants allege, that though most of them have been working as PRLs at BYPL, for over a decade and for more than 3 hours a day, as in the case of the regular railway employees, they have been denied service benefits like, regular pay-scale, leave allowance, weekly rest, bonus and other incentives, and retiral benefits, enjoyed by the other railway employees, merely because, they are engaged on piece-work basis.

3. They claim, that they are "workmen" under the provisions of the Industrial Disputes Act, 1947, as also of the Administrative Tribunals Act, 1985. They refer to Writ Petition No. 171 of 1986, filed in the

Supreme Court, by the Transhipment Workers of the Tranship Shed, Tiruchirapalli and another, against the Union of India and others, on which they state, that the Supreme Court directed on 4-2-1987 (Ann.A), that they be treated as temporary railway employees and given the benefit of pay and allowance, weekly rest, bonus and other incentives, leave allowance etc., on the terms specified therein.

4. Despite the above directions of the Supreme Court, the applicants allege, the said benefit has not been extended by the respondents, to the PRLs at BYPL, including the applicants. They state, that on 1-2-1988 (Ann.B), Shri S. Jayaram the President of the Southern Railway, Loading and Unloading Mazdoor Union, Madras, addressed a representation to R-2, with a request, to extend the benefit of the above judgment of the Supreme Court, to the PRLs at BYPL, but there has been no response so far, on account of which, they were constrained to approach this Tribunal for redress, through their present applications.

5. Before we go into the merits of the case, it would be helpful to familiarise with the scenario of the nature and mode of work, of the PRLs at BYPL, and with the salient aspects of the railway transhipment system itself.

6. BYPL near Bangalore, is a Goods Transhipment Point between broad and metre gauge lines, on the Southern Railway. When a railway system has more than one gauge,

as in the case of the Southern Railway, a series of junctions would come into existence, where the different gauges converge, giving rise to the question of regulation of transhipment of goods by rail. With due regard to the norms of both economy and efficiency, only certain junctions are selected for goods transhipment work. These are known as the 'transhipment points'. Some of these would in course of time, need to be eliminated, as a result of conversion of rail gauge and/or rationalisation of goods traffic, as pointed out by the respondents. As the said work of rail gauge conversion and rationalisation of goods traffic, is already in progress, they state, that goods transhipment works at BYPL, may reduce substantially, in the none too distant future.

7. The respondents state, that as the volume of work at the transhipment points is both uncertain and fluctuating, the railways initially thought of entrusting this work, to a contractor or to a cooperative labour contract society. One such society they state, is currently functioning at, Korekkupet (near Madras) on piece-rate labour system.

8. Transhipment work at BYPL, is said to have been handled by a contractor upto 1972. The services of the contractor came to be terminated in 1972, as a matter of policy, in order to eliminate the intermediary,

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in the interests of the workers, who it is said, used to extract commission from the workers and thereby reduce their earnings. In order, that the labourers engaged by the contractor, on transhipment work may not suffer as a result, for want of means of livelihood, they were continued on that work, on lumpsum payment of wages per wagon, as fixed by the railways, for various commodities, as at Ann.R-1. These are known as piece-rate labourers (PRLs) as stated earlier. These PRLs are said to form themselves, into convenient groups and regulate their hours of work, according to the load and nature of work to be handled.

9. The wagons that are to be transhipped, are placed on the following different grids:

- (i) Dump
- (ii) Narrow Transhipment Point
- (iii) Covered Transhipment Point
- (iv) Gravity and
- (v) Crane.

10. The respondents state, that the PRLs turn up for work and organise themselves in groups on their own, depending upon the volume and the nature of work. They further state, that they do not work regularly and adhere to any fixed time-schedule.

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They depart no sooner than the transhipment work apportioned by them according to groups, is over.

11. According to the respondents, the work of PRLs, is not supervised by the railway administration and no muster roll is maintained by it, as a check on their daily attendance. They state, that there have been instances, when the railway wagons have been loaded by them unevenly and even beyond their carrying capacity and that these defects when detected by the train examining staff, are rectified with the help of the railway staff and extra complement of labour. They further state, that the PRLs are not penalised by the railway administration for such defective work or for not attending to work. They point out, that on many occasions, the applicants have not turned up, even though adequate work-load was available and consequently, the work had to be deferred to the next day, as would be evident from Ann.R-2. In short, they assert, that the railway administration exercise no control over them. They have furnished details in R III, to show that during the period from 1-8-1987 to 31.7.1988, the applicants have not attended to transhipment work regularly but only intermittently.

12. They aver, that in 1972, when the contract system was abolished, the complement of labourers at BYPL, was barely 180, but as on date, the strength of

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PRLS

PRLs, has risen to 473 (246 male and 227 female).

They state, that piece-work rates have been revised upwards, from time to time and to date, the increase is as much as nearly 20%, in the case of coal and over 25%, in regard to other goods.

13. The respondents have explained the background, to the issue of Identity Cards to the PRLs. They clarify, that ~~as~~ there were complaints, that the group leaders, to whom lumpsum payment of wage was made, by the railway administration, in accordance with the rates fixed per wagon, for the transhipment work undertaken, were not apportioning the wage equitably, among the PRLs in his group. In order to remedy this situation, they state, the system of Identity Cards was introduced, as also to regulate entry to the railway platform, as a security measure.

14. With this prelude, on the genesis of the PRL system and on the account of its functioning, let us now proceed to examine the case in all its diverse facets, which we have heard in extenso, for four days i.e., from 15 to 18-11-1988, almost in rapt attention, going through a spate of rulings, through which we were taken by both sides.

15. The applicants have filed a rejoinder on 15-11-1988, to the reply dated 26-10-1988, of the respondents, resisting the applications. They have



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also

also furnished, an additional statement of facts on 22-11-1988, along with certain documents. The respondents have in response thereto, filed on 23-11-1988, a supplementary statement of facts, along with some more documents.

16. Shri Narasimhan, learned Counsel for the applicants, assisted by his able junior, Shri Gururajan, developed with learning and finesse, the mainspring of his argument, on the legal aspect of the jural relationship of master and servant (or employer and employee) respectively, between the respondents and his clients, relying on a catena of decisions.

17. Tracing the genesis of transhipment work at BYPL, he said, that upto 1972, it was being undertaken through contractor system, whereafter, it was abolished and the 180 workmen who were engaged by the contractor, under that system, came to be continued as PRLs and paid wages on piece-work rates, on their out-turn of work, as fixed by the railway administration. As on date, he pointed out, that the strength of these workmen, had risen to 473, among whom, 279 are before us, in the present applications. No sooner than this contract system was terminated, by the respondents and the applicants were continued by the respondents on transhipment of work as PRLs, with the elimination of the contractor, as the intermediary, a legal relationship of 'master and servant'

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came into inception he said, as was evidenced by the control exercised by the railway administration over the PRLs, in the matter of regulation of ~~work~~ and ~~work~~ payment of wages, through a system of identity cards evolved by it. Most of the PRLs, were continued on transhipment work for over a decade, which he said, testified to sustained and adequate workload, over the years and therefore, this work could by no means, be categorised as ephemeral, so as to deny the applicants as PRLs at BYPL, the status of temporary railway employees, along with the attendant service benefits, he asserted.

18. In order to prove, that his clients as PRLs, had all the lineaments of regular railway employees and that the flow of transhipment work at BYPL, was sustained and adequate, he invited our attention to the following additional documents furnished by him, on 18-11-1988.

- (i) Memo dated 16-4-1986, issued by the Divisional Personnel Officer, Southern Railway, Bangalore, selecting 30 PRLs from BYPL, from various Grids for induction as Substitute TPT Porters, on regular pay scale of Rs.196-232; with concession of age-relaxation.
- (ii) Memo dated 6-5-1980, by R-2, creating 100 posts of Transhipment Hamals temporarily, for a period of one year, for the benefit of PRLs at BYPL.
- (iii) Letter dated 27-11-1987, addressed by R-4, to one Shri S. Jayaraman, President of the Loading and Unloading Mazdoor Union, BYPL, transferring the work of transhipment of bamboo



bamboo chips from SBC to BYPL, to compensate transhipment work at the latter transhipment point.

(iv) Prescribed printed form of "Injury Report of Employee", dated 19-10-1986, filled in by Smt. Rajammal, one of the PRLs and entertained on 20-10-1986 by the Railway Divisional Medical Officer, S.Rly., Railway Health Unit, Bangalore Cantonment.

(v) Admission Medical Certificate, under the Workmens' Compensation Act, 1923, in respect of the said Smt. Rajammal, PRL, attested by the aforesaid Railway Divisional Medical Officer, on 22-10-1986.

(vi) Discharge Medical Certificate, under the Workmens' Compensation Act, 1923, in respect of Shri D. Balaraman, PRL, signed on 16-11-1988, by the said Railway Divisional Medical Officer.

(vii) Requisition for admission and treatment/consultation, in respect of the above Smt. Rajammal, attested on 20-9-1986, by the selfsame, Railway Divisional Medical Officer.

(viii) Hospital permit issued on 26-9-1983, by the same Railway Divisional Medical Officer, in respect of one Shri Pengasamy, PRL.

(ix) A list of PRLs (in all 20) residing in quarters, constructed by the railway administration at BYPL.

(x) Revised Classification of Accounts of Expenditure and Earnings, of the Union Ministry of Railways, as updated upto 15-3-1978, wherein the Revenue Expenditure on transhipment and Repacking operation, is classified as below, under various heads of account:

Main Head - 400 Transhipment and Repacking Operation.

Sub-Head - 410 Transhipment Goods

Detailed-

Head: 410 -do-

19. Shri Narasimhan next contended, that the case of his clients was on all fours with that of the PRLs at Tiruchirapalli, who in Writ Petition No.171 of 1986, filed before the Supreme Court, had received a decision in their favour on 4-2-1987(Ann.A), to treat them as temporary railway employees. The respondents, should have graciously extended the benefit of this judgment to his clients, he urged, but they have unfairly denied the same to them on one pretext or the other, he alleged, inspite of the written representation addressed on 1-2-1988 (Ann.B) by Shri S.Jayaram, President, Southern Railway Loading and Unloading Mazdoor Union, Madras, to R-2. He pleaded, that the same benefits conferred on the PRLs at Tiruchirapalli by the Supreme Court, as temporary railway employees, in the above writ petition, may be extended to his clients, who were similarly placed and were working in the same railway zone, namely, the Southern Railway.

20. Shri M.Sreerangaiah, learned Counsel for the respondents, intervened to say, that the railway administration had filed an application before the Supreme Court on 29-4-1988, for modification of its Order dated 4-2-1987, in the said writ petition and therefore, the matter was under its consideration.

21. Shri Narasimhan asserted, that nowhere in their reply to the applications, the respondents had



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stated

stated, that the case of the PRLs at Tiruchirapalli, was different from that of the applicants, before us.

22. He then took us through a catena of judicial rulings, to establish the jural relationship of master and servant (employer and employee) between the respondents and his clients.

23. He first relied on the dicta of the Supreme Court, in 1974 SCC(L&S) 31 SILVER JUBILEE TAILORING HOUSE & ORS. -vs.- CHIEF INSPECTOR OF SHOPS & ESTT. AND ANR., wherein, he said, that the Supreme Court, after referring to its ~~various~~ <sup>earlier</sup> various rulings, as also to a series of decisions of English and American Courts on the subject, had observed that:

(i) even though regular hours of work were not prescribed and the tailors were not obliged to attend the tailor's shop daily and were allowed to take the work home, there was a relationship of employer and employee between them;

(ii) in recent years, the test of right to control the manner of doing the work, as traditionally formulated, cannot be treated as an exclusive test;

(iii) when after stitching, the cloth was liable to be checked and returned if not found satisfactory, the ultimate authority over the performance of the work, resided in the employer, which revealed that the worker was subject to directions of the latter; and

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(iv)

(iv) it is not necessary, that a servant should be under the exclusive control of one master and should work whole time in the shop and that he can be employed by more than one employer.

24. Shri Narasimhan submitted, that the above dicta were of avail to his clients, in proving the jurel relationship of master and servant.

25. We notice that in the above case, the Supreme Court also observed, that in order to decide the relationship of employer and worker, it is relevant to consider, that the workers attend the shop belonging to the employer and work on the machines of the shop and that, they can be removed, if the work was not satisfactory. The following observation of the Supreme Court in the above SILVER JUBILEE TAILORING case is also relevant:

"28. It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell, a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear, that no magic formula can be propounded, which factors should in any case be treated as determining ones. The plain fact is

that



that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction.

29. During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be the decisive factor. But, it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one."

J. Narasimhan

26. Sri next called in aid, the judgment of

the Supreme Court in 1983 (Lab & IC) 1509 M/s.

SHINING TAILORS vs. INDUSTRIAL TRIBUNAL II, U.P.,

LUCKNOW & ORS. 7 the ratio of which as under:

"Tailors working on piece-rate basis in a big tailoring establishment are workmen of the owner of the establishment. Every piece rated workman is not an independent contractor. Piece rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen. The employer's right to reject the end product if it does not conform to the instructions of the employer speaks for the element of control and supervision. So also right of removal of the workman or not to give the work has the element of control and supervision. The right of rejection coupled with the right to refuse work would certainly establish master servant relationship (AIR 1974 SC 37)."

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27. He then sought to derive support from the decision of the Supreme Court, in AIR 1978 - SC 1410 HUSSAIN BHAI v. ALATH FACTORY TEZHILALI UNION, the gist of which is as below:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact the employer. He has economic control over the workers, subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship excontractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor."

28. Shri Narasimhan next placed reliance, on the ruling of the Supreme Court in AIR 1987 SC 447 L/M/s P.M.PATEL & SONS v. UNION OF INDIA, the essence of which is as under:

"The terms of the definition of "employee" are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. Accordingly, a home worker, by virtue of the

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fact



fact that he rolls beedis, is involved in an activity connected with the work of the factory engaged in the task of rolling beedies. In this view, the words "in connection with" in the definition of "employee" cannot be confined to work performed in the factory itself as a part of the total process of the manufacture. Further, in the context of the conditions and the circumstances in which the home workers of a single manufacturer of beedies go about their work, including the receiving of raw material from factory, rolling the beedies at home and delivering them to the manufacturer subject to the right of rejection of the manufacturer there is sufficient evidence of the requisite degree of control and supervision for establishing the relationship of master and servant between the manufacturer and the home worker. What is to be remembered is that the work of rolling beedis is not of a sophisticated nature, requiring control and supervision at the time when the work is done."

29. He then sought to buttress his case on the following ratio, of the judgment of the Supreme Court in AIR 1966 SC 370 MANAGEMENT OF D.C.Dewan Mohideen Sahib & Sons & ANR. -vs.- SECRY. UNITED BEEDI WORKERS' UNION, SALEM & ANR.<sup>7</sup>, which has been referred to in SILVER JUBILEE TAILORING case, aforesaid mentioned (para 25 above):

".....The contract is practically one sided in that that the proprietor can at his choice supply the raw materials or refuse to do so, the so-called contractor having no right to insist upon the supply of raw materials to him. The so-called independent contractor is even bound not to employ more than nine persons in his so-called factory. The sale of raw materials to the so-called independent contractor and resale by him

of

of the manufactured bidis is also a mere camouflage, the nature of which is apparent from the fact that the so-called contractor never paid for the materials. All that happens is that when the manufactured bidis are delivered by him to the appellants, amounts due for the so-called sale of raw materials is deducted from the so-called price fixed for the bidis. In effect all that happened is that the so-called independent contractor is supplied with tobacco and leave and is paid certain amounts for the wages of the workers employed and for his own trouble. We can therefore see no difficulty in holding that the so-called contractor is merely an employee or an agent of the appellants as held by the appeal court and as such employee or agent he employs workers to roll bidis on behalf of the appellants. The work is distributed between a number of so-called independent contractors who are told not to employ more than nine persons at one place to avoid regulation under the Factories Act."

30. He also sought sustenance, from the decision of the Supreme Court in AIR 1965 SC 404 SHIVANANDAN SHARMA -vs.- THE PUNJAB NATIONAL BANK LTD., in regard to the relationship, between Punjab National Bank and its Treasurers. In that case, the Supreme Court, observed as under:

"A master is one who not only prescribes to the workmen the end of his work, but directs or at any moment may direct the means also, or, as it has been put, 'retains the power of controlling the work', a servant is a person subject to the command of his master as to the manner in which he shall do his work. An independent contractor is one who undertakes to

produce



produce a given result but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified before hand.

If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master. It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party. The question as to whose employee a particular person was has to be determined with reference to the facts and circumstances of each individual case."

31. In the above background, the Supreme Court held, that the fact that the Treasurers were the servants of the Bank and that their nominees must equally be so and that if the Treasurers' relation to the Bank, was that of servants to a master, merely because the servants were authorised to appoint and dismiss the ministerial staff of the Cash Department, would not make the employees in the Cash Department, independent of the Bank. In this situation, the Supreme Court further observed, that the ultimate employer would be the Bank through the agency of the Treasurers.

32. Lastly,

32. Lastly, Shri Narasimhan depended upon the ruling of the Supreme Court in 1964(1) LLJ 737 L TANDUR & NAVANDGI STONE QUARRIES(P)LTD., BASHEERABAD, ANDHRA PRADESH -vs.- THEIR WORKMEN, to substantiate the jural relationship existing between the respondents and his clients, as master and servants, the ratio of which is given below:

"Master and servant - Relationship of - Question whether persons are workmen or independent contractors-Determination of.

If the appellant employed certain persons and called them his kamgars or workmen, and the relevant part of the record in respect of their wages supported this theory, then it would be difficult to accept the appellant's version that these persons are not its workmen or employees, but independent contractors. Once it is shown satisfactorily by the documents kept by the appellant itself that the relationship between the appellant and the so-called contractors commenced with their employment as employees, then there is very little room for argument as to whether the parties are related to each other as master and servant or not. The hours of work, the manner of paying the wages, and the quantity of work expected from the employees are then matters of contract; but as soon as the basic relationship of master and servant is satisfactorily proved by the appellant's documents, the terms of contract and the problem as to whether the work is supervised by the employer or not, becomes relatively unimportant."

33. In the context of the decision of the Supreme Court in the above case, he asserted, the question of hours of work did not arise, once the stage of contract was over and therefore post-appointment regulations in this regard, had no relevance to master and servant relationship, he contended.



34. Summing up on the question of the jural relationship of master and servants, between the respondents and his client, Shri Narasimhan stressed, that the case of his clients was squarely governed, by the above rulings of the Supreme Court, primarily on the premise of control (both the right to control and supervise the manner of work of the employees) exercised on his clients, by the respondents and of his clients forming an organic part of the organisation of the railways, as evidence of which, among other things, he invited attention anew, to the documentary evidence adduced by him (para 18 supra). The case of his clients he emphasised, satisfied the various indicia, outlined in various rulings of the Supreme Court cited above, based on the main twin criteria of "control" and "organisation". Shri Narasimhan explained, that over the years, the law had evolved and the shift in emphasis now was, from the old traditional concept of "control", to that of being part and parcel of the "organisation", though "control" yet continued to be an important factor.

35. He emphasised, that material facts such as: monthly payment of wages to his clients as PRLs and the manner of payment; issue of identity cards to them with their photograph and left hand thumb impression thereon; marking of their attendance etc. clearly proved, that there was a contract of

service, as actually admitted by the respondents on page 5 of their reply, that the respondent exercised visible control on the applicants and that the applicants formed part and parcel of the railway organisation, as they worked on the very premises of the railways. The very nature of work, he argued, did not warrant stipulation of regular work hours and the respondents were only making a bogey of it, he alleged, with a motive to deny the benefit of service conditions of temporary employees, to his clients. The posts of Transport Porters, Transport Hamals and Transport Maistries, he submitted, were on regular pay-scale and were continued year after year, he said. Their essential duty, he pointed out, was to supervise the work of labourers in regard to transhipment of railway goods. If transhipment work was uncertain or its volume inadequate, as stated by the respondents, the above posts of porters, hamals and maistries, he said, ought to have been abolished. The fact that this was not done, was proof to the contrary, he asserted.

36. Some of the PRLs he submitted, were absorbed as permanent railway workers and this could not have been done, he sedulously argued, unless they were railway employees initially.

37. Annexure R-II, which is a statement showing the details of correlation of the availability of wagons and the PRLs, in itself bewrays, the control

exercised



exercised by the respondents, on the work of the PRLs, Shri Narasimhan argued.

38. As an ancillary argument, he dwelt on the aspect of invidious discrimination of his clients, as compared to the PRLs of Tiruchirapalli Transhipment Shed, within the same railway zone viz., the Southern Railway, who he stressed were similarly circumstanced, <sup>but</sup> the benefit of the Supreme Court judgment referred to above, in regard to service conditions as temporary railway employees was not extended to his clients. This was flagrant violation of Article 14 of the Constitution, he alleged.

39. Shri Narasimhan, relied on the following rulings, to substantiate the claim of his clients, for equal pay for equal work, under Article 14 of the Constitution:

(i) 1987 FJR 124 (NATIONAL FEDERATION OF P & T EMPLOYEES AND ANR. -vs.- UNION OF INDIA & ANR.);

(ii) AIR 1987 SC 2509 (BHAGWAN DASS v. STATE OF HARYANA);

(iii) AIR 1987 SC 777 (CATERING CLEANERS OF SOUTHERN RAILWAY v. UNION OF INDIA & ANR.);

(iv) AIR 1988(2) SC 372 (Y.K. MEHTA v. UNION OF INDIA).

(v) ATR 1988(1)CAT 183 (DMS EMPLOYEES' UNION -vs.- UNION OF INDIA & ORS.).

(vi) 1986(53) FLR 55 (VISHNATH & ORS. -vs.- STATE OF UTTAR PRADESH & ORS.).

40. Inviting our attention to the case of CATERING CLEARERS, Shri Narasimhan, averred, that it was analogous to the case before us, in that, cleaning work in catering establishments in the railways, was undertaken on contract system and later on, it was taken up through regular workmen in the railways. The railways had not satisfactorily explained in that case, he stated, as to why the said work was intermittent and could not be supervised by them.

41. Shri M.Sreerangaiah, learned Counsel for the respondents, in countering the above contentions of Shri Narasimhan, questioned at the outset, the very maintainability of these applications, under Section 14 (specifying the jurisdiction, power and authority of the Tribunal) of the Administrative Tribunals Act, 1985 (1985 Act, for short), read with Sec.3(q) ibid (defining the term, "service matters").

42. In order to appreciate his contention, we extract below, the provisions of both these Sections:

"Sec.3(q). "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of



India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects—

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever; "

xxx                   xxxx                   xxx  
xxx                   xxxx                   xxx

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

- (a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning—
  - (i) a member of any All-India Service; or
  - (ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post

under

under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause(c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause(ii) or sub-clause(iii) of clause(b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

**Explanation.**— For the removal of doubts, it is hereby declared that reference to "Union" in this sub-section shall be construed as including references also to a Union territory."

43. Shri Sreerangaiah asserted, that from a plain, conjoint reading of the provisions of the above two Sections, it was clear, that unless a person was appointed to service, as contemplated therein, this Tribunal, could exercise no jurisdiction, power and authority over redressal of his grievance, garbed as "service matter".



44. In the instant cases, he submitted, that the railway administration had not issued any order of appointment to the applicants, to service under it, either in writing or orally. There was also no recruitment rule, he said, governing the appointment of PRLs, as railway employees. The applicants he stressed, thus held no "civil post", in the railway administration and therefore, could not have the status, as "civil servants".

45. According to him, they did not have the status of even casual labourers, who unlike them, were subject to specific terms and conditions of recruitment and to the rigour of departmental discipline. In the case of casual labourers, he said, conditions such as age-limit, passing of a medical test etc., were prescribed for their recruitment. In course of time, on their satisfactory completion of 120/180 days, of continuous service, as casual labourers, under the railway administration, they were eligible for temporary status, in the open line and construction units respectively, he stated. They had to adhere strictly, to the discipline and regimen of attending to the work allotted, within the prescribed hours, and their attendance was vigilantly monitored, through a regular muster roll, he said. They were liable to penal action by the railway administration, in the event of default by them, in their duty.

46. As compared to the casual labourers, Shri Sreerangaiah stressed, that the applicants, who are PRLs, are fancy-free and attend to transhipment work on their own, as and when they like and also depart in like manner, regardless, whether the work undertaken by them, is completed or not, without any restriction or control imposed on them, by the railway administration. They are also not liable to any punitive action, by the railway administration, as in the case of the casual labourers. It was thus evident, he emphasised, that the applicants as PRLs were not only inferior in status to the casual labourers and in fact, had no status and attributes, to qualify them, to be considered as temporary railway employees straightaway, as prayed by them, in these applications. Besides, he stated, that there was no sanctioned establishment for the PRLs, in the railway administration and no posts were created for them and therefore at best, their status was that of a transient labour force, assisting the railway administration, in meeting the exigency of handling transhipment work, with all its vagaries.

47. Developing his argument resourcefully, Shri Sreerangaiah referred to the pertinent Rules of the Indian Railway Establishment Code (REC, for short) to show, as to how the applicants could not be regarded



as railway employees. Citing the definition of the term "Railway Servant", under Rule 103(43) ibid, he emphasised, that it excluded casual labourers, who were on a higher plane than the PRLs, for the reasons stated by him earlier. Rule 215 ibid, required sanction of posts prior to appointment, Rule 219 laid down the general conditions of recruitment, and Rules 222 and 225 respectively, prescribed a medical examination and declaration of date of birth, with proof thereof, in the case of casual labourers, all of which, he stressed, revealed, that the PRLs, have no comparison to the casual labourers and therefore, they had no basis, to claim preferential treatment, in considering them for appointment, as temporary railway employees straightaway, without fulfilling the pre-requisites, as in the case of casual labourers.

48. Rebutting/preliminary objection, raised by Shri Sreerangaiah, in regard to the jurisdiction, power and authority of this Tribunal, to entertain the applications before us, Shri Narasimhan, learned Counsel for the applicants, argued, that Shri Sreerangaiah had erred, in reading the provisions of the 1985 Act, in isolation, by confining himself to only Sections 3(q) and 14 thereof, and inferring therefrom, without a proper comprehension of the anatomy of that Act, that the applications were not maintainable

before

before this Tribunal. He pleaded, that Sec.28 of the 1985 Act, should not be lost sight of, while reading Secs. 3(q) and 14 ibid. All these sections he urged, should be read conjointly and in their plenitude, taking duly into account, their context, object, collocation and the general congruity with the concept or object, they sought to articulate.

49. Section 28 ibid is reproduced below, for ready reference:

"28. Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution.— On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except—

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

50. Shri Narasimhan sedulously contended, that all the three rules harmoniously read as above, led to the inevitable conclusion, that all those who

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came



came within the ambit of the Industrial Disputes Act, 1947, as in the case of the applicants (by virtue of the fact that they fell within the category of "workmen" as defined under that Act, railways having been categorised as an industry), would ipso facto, be governed by the provisions of the 1985 Act, in respect of their "service matters" as defined under the latter Act. He cited the ruling of the Supreme Court, in 1978 Supreme Court Cases(L&S) 215 (BANGALORE WATER SUPPLY & SEWERAGE BOARD vs. A.RAJAPPA & ORS.) to support the contention, that his clients came within the purview of an industry. In the above context, he elaborated, that what could be adjudicated under the Industrial Disputes Act, 1947 (1947 Act, for short) could likewise, be decided by this Tribunal, under the 1985 Act, as that constituted "service matter", as defined under the latter Act. Therefore, he emphasised, the 1985 Act had to be read as a whole, to help comprehend its true import. It was striking, he said, that Rule 3(q) referred to "service matters" in relation to a person, on which he sought to lay accent, to fortify his deduction as above, that the applications were maintainable, before this Tribunal.

51. He relied on a string of decisions, to refute the contention of Shri Sreerangaiah, that no appointment order was issued, in regard to the applicants, that they held <sup>the</sup> 'civil posts', so as to bring their

grievances within the ambit of "service matters", under the relevant provisions of the 1985 Act.

52. Referring to the dicta of the Supreme Court in AIR 1967 SC 884 (STATE OF ASSAM V. KANAK-CHANDRA DUTTA) he stated, that the Supreme Court had observed therein, with reference to the post of mauzadar, that the fact, a person was neither a wholetime employee nor drew salary but commission, did not alter the status of his post, namely, that of a "civil post", as posts outside regularly constituted services, need not necessarily carry a definite rate of pay and offer wholetime employment. The service rendered by his clients, he affirmed, was of a similar nature. He submitted, that the Supreme Court further observed, that Article 310(2), contemplates, that a post may be abolished and a person holding a post, may be required to vacate the post and it emphasised, the idea of a post, existing apart from the holder of the post. It also remarked, he said, that the State may create or abolish the post, as also regulate the conditions of service of persons, appointed to the post. Shri Narasimhan therefore pleaded, that the ruling of the Supreme Court as above, was apposite to the cases before us.

53. Wherever there was no legislation, he submitted, the executive could act in the matter of making appointments, particularly in the Railways, where



the Railway Board had wide powers in this regard. The contention of Shri Sreerangaiah, that no appointment could be made, in the absence of a rule was not valid, he, argued, in the light of the dicta of the Supreme Court in 1978 SCC(L&S) 23 (RAMESH PRASAD SINGH v. STATE OF BIHAR AND OTHERS). This case related, to appointment to the post of Executive Engineer in the Electricity Board. The Supreme Court observed, that the High Court erred in inferring, that in the absence of rules laying down qualifications, for appointment to the post of Executive Engineer, ~~therein,~~ the private respondents could not be excluded from consideration. It further stated, that it was not obligatory to frame the recruitment rules, before the service was constituted or a post was created or filled up and that in the absence of rules, qualification for a post, could be validly laid down in the self-same executive order, creating the service or post and filling it up, according to those qualifications.

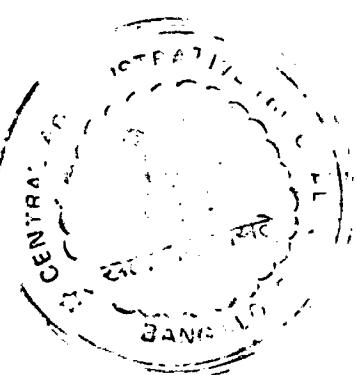
54. The Railways had overlooked the jural relationship of the applicants as employees with the Railways as their employer, Shri Narasimhan contended, particularly in the context of the fact, that they were in continual employment in their service, on transhipment duty, for a long period, in some cases,

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extending

extending over a decade, and the earlier contract system was since abolished.

55. He next relied on the decision of the Principal Bench (Delhi) of the Central Administrative Tribunal in ATR 1988(1)CAT 183 (D.M.S. EMPLOYEES' UNION v. UNION OF INDIA AND ORS.), in the case of daily rated badli workers, employed under the Delhi Milk Scheme and performing the same duties, as regular Class IV mates. That Bench, he said, did not accept the contention of the respondents, that since the badli workers were casual workers, they did not hold any post, in the Delhi Milk Scheme. On the contrary, it observed, that Section 14 of the 1985 Act, brought within the jurisdiction of the Tribunal, not only those, who held any "civil post under the Union" but also those, who were appointed to any 'civil service' of the Union, on the ground, that since the badli workers, were rendering service, in connection with the affairs of the Union, "service matters" relating to them, ~~they~~ squarely came within the jurisdiction of the Tribunal. That Bench also referred to the ruling of the Supreme Court, in ATR 1988(1) (S.C.) 172 [DHIRENDRA CHAMOLI & ORS. -vs.- THE STATE OF UTTAR PRADESH] in the case of casual workers employed in Nehru Yuva Kendras in the country and performing the same duties as Class IV employees. The Supreme Court held in that case,



case, that it made no difference, whether they were appointed in sanctioned posts or not and that so long as they performed the same duties, they must receive the same salary and conditions of service as the Class IV employees.

56. The view expressed by the Delhi Bench in the aforesaid DMS Employees' Union case, he said, was reiterated in 1986 (53) FLR 55 (VISHNATH v. STATE OF U.P.).

57. Counteracting the arguments of Shri Narasimhan, on the question of jural relationship of master and servant (employer and employee) of the railway administration, with the applicants, Shri Sreerangaiah argued, that for the reasons stated by him earlier, highlighting the differences between PRLs and the casual labourers, it was more than evident, that the railway administration did not exercise any control on the applicants as PRLs or on the nature of their work and that the applicants were not a part and parcel of the railway organisation. The mere fact that they worked in the railway premises, regardless of the above factors, did not ipso facto import to them that organic relationship, he contended. Pointing out to Anns. R-II and R-III, he iterated, that they revealed, that the applicants attended to transhipment

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work

work at BYPL in a fancy-free manner, without adhering to any discipline of work-hours and also departed abruptly likewise, sometimes not completing the work, taken on hand. This put the railway administration in no little difficulty, he said and virtually it was at the mercy of the PRLs, in regard to transhipment work, whenever the PRLs tarried and the work consequently had to be deferred. It was difficult to understand in this background, as to how it could be inferred, that the railway administration was exercising control on the PRLs, including the nature of transhipment work performed by them and that the PRLs, formed part of the railway organisation, as claimed by the applicants.

58. In order to bolster the case of the respondents, Shri Sreerangaiah relied on the following rulings.

59. He first invoked the decision of the Supreme Court in AIR 1957 SC 884 (STATE OF ASSAM -vs.- KANAK CHANDRA), pointing out, that it observed therein, inter alia, as under, in regard to the appointment of a mauzadar in Assam State:

"9. The question is whether a Mauzadar is a person holding a civil post under the State within Art. 311 of the Constitution. There is no formal definition of "post" and "civil post".

The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A "civil post" is distinguished in Art.310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, as employment in a civil capacity under the Union or a State, see marginal note to Art.311. In Art.311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Arts.309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. In the context of Arts.309, 310 and 311, a post denotes an office. A person who holds a "civil post" under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Art.310. A post

under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post."

60. Relying on AIR 1956 RAJ 104 (SHER SINGH -vs.- STATE OF RAJASTHAN), he stated that the High Court had declared, that a choudhary, appointed under the Land Revenue Act of Bikaner, held a "civil post".

61. Citing yet another case, namely AIR 1959 ASSAM 118 (BINDU NATH CHAUDHURY v. STATE OF ASSAM), he submitted, that the High Court had observed, that the mouzadar held the post of a Government servant.

62. Concluding, Shri Sreerangiah, stated, that in all the above case cited by him, it was evident, that in order to hold a "civil post", the person must have a formal order of appointment to that post, by a competent authority and that, that authority must exercise the desired control and

supervision



supervision on his work, by enforcing disciplinary action, in case of default. Such was not the position, he stated with vehemence, in the case of the applicants, who could not be therefore, regarded as holding "civil posts" and therefore, he asserted, that the applications before us, were not maintainable, in accordance with Section 14 of the 1985 Act, read with Sec.3(q) ibid. The various rulings cited by Shri Narasimhan, he submitted, related to private firms and undertakings, which bore no parity to the control and discipline exercised over <sup>a4</sup> / "civil post", in Government and therefore, these rulings had little relevance to the case before us, he said.

63. As a riposte to the above, Shri Narasimhan, relying on the judgment of the Supreme Court in 1964(9) FLR 238 (STATE OF U.P. & ANR. -vs.- AUDH - NARAIN SINGH & ANR.), argued trenchantly, that the principles enunciated in para-6 therein, in particular, in regard to determination of jural relationship, between master and servant, applied equally, both to the private and public sectors and was not confined to Government alone. What was crucial, he emphasised, was that employer should have the power prima facie, to direct the work to be done and the manner in which it was to be achieved, when <sup>the</sup> relation would be that of master and servant. Such a situation

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prevailed in the case of his clients, he pleaded.

The said para is extracted below, for ease of reference.

"6. Whether in a given case, the relationship of master and servant exists is a question of fact, which must be determined on a consideration of all material and relevant circumstances having a bearing on that question. In general selection by the employer, coupled with payment by him of remuneration or wages, the right to control the method of work, and a power to suspend or remove from employment are indicative of the relation of master and servant. But, coexistence of all these indicia is not predicated in every case to make the relation one of master and servant. In special classes of employment, a contract of service may exist, even in the absence of one or more of these indicia. But ordinarily the right of an employer to control the method of doing the work, and the power of superintendence and control may be treated as strongly indicative of the relation of master and servant, for that relation imports the power not only to direct the doing of some work, but also the power to direct the manner in which the work is to be done. If the employer has the power *prima facie*, the relation is that of master and servant."

64. Shri Sreerangiah also raised the question of limitation. He submitted, that these applications were filed on 26-8-1988, while the cause of action is said to have arisen for them on 4-2-1987 i.e., the date when the Supreme Court gave its verdict (Ann.A), in Writ Petition No. 171 of 1986, filed by the Transhipment Workers of the Tranship Shed at Tiruchirapalli and another. The applications should



therefore

therefore have filed an application under Section 19 of the 1985 Act, before this Tribunal, on or before 3-2-1987, in case it was conceded, that these applications were maintainable, under the said Act, he submitted. There was an apparent delay of more than 6 months in filing the applications, he said, which was not at all explained by the applicants, he asserted. The applications were therefore clearly barred by limitation, he contended.

65. Shri Narasimhan sought to counter this contention, stating that Shri S. Jayaram, the President of the Southern Railway Loading and Unloading Mazdoor Union, Madras, had addressed a representation on 1-2-1988 to R-2, with a request to extend the benefit of the judgment of the Supreme Court in the aforesaid Writ Petition No. 171 of 1986, to the PRLs at BYPL, to which he said, there was no response as yet.

66. Shri Sreerangiah explained, that as the said Mazdoor Union was not a recognised one, no credence was given to its representation.

67. Shri Narasimhan thereon posed a question to him, as to how the Railways had taken cognisance of the letter addressed to them, in this behalf, by the selfsame Shri Jayaram, in his capacity as

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President

President of the aforesaid Mazdoor Union and given him a reply, Shri Sreerangaiah could not elucidate.

68. Shri Sreerangaiah submitted, that the case of the applicants before us, was not on all fours, to that of the Transhipment Workers at the Tranship Shed, at Tiruchirapalli, as it was distinguishable, on a prominent incentive feature at BYPL, where a substantial number of posts, namely 100, were created as a special case, to help absorb the PRLs, in the posts of Transhipment Hamals and Transhipment Maistries and some of them were already absorbed in these posts, he said, as explained in paras VI(i) to (iv), of the reply to the applications. Such a feature was conspicuously absent, in the case of the Transhipment Shed at Tiruchirapalli, he said. Besides, he submitted, that the railway administration had filed an application, before the Supreme Court on 1-1-1987, with a prayer to modify its Order dated 4-2-1987, in the aforesaid Writ Petition No.171 of 1986 and the same was pending before it.

69. Shri Marasimhan countered the above argument on the premise, that it was only an ad hoc arrangement and therefore, the PRLs at BYPL, could not look forward to this incentive as a matter of right, or as a matter of course or guarantee.

70. The trend of regulation of irregular service in the various Departments of the Government of India, he stated, was well-known and there was nothing novel about it. The mode of recruitment for this purpose was not relevant, he argued. The true spirit of jurisprudence on the matter, was evident he said, in the dicta of the Supreme Court in 1987 - FJR 124 (NATIONAL FEDERATION OF P & T EMPLOYEES(DAILY-RATED) & ANR. -vs.- UNION OF INDIA & ANR.) on the question of equal pay for equal work, which took no notice of the economy difficulty, experienced by the State.

71. Taking all these aspects into account, Shri Narasimhan fervently pleaded, that it would be unfair, to distinguish the case before us, from that of Tiruchirapalli.

72. We have heard the matter in extenso, for nearly 4 days continuously, from 15 to 18-11-1988 and examined the relevant voluminous record placed before us and the catena of rulings cited by either side, to advance their case. We have bestowed the utmost thought on the rival pleadings. The case law, particularly on the subject of jural relationship between master and servant (employer and employee) with a string of rulings, veritably seems like a palimpsest, with layer upon layer of varying dicta. We had to go

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through

through the minutiae, with meticulous care to see the light from the darkness, as it were - clarior e tenebris.

73. The first point that we need to examine in this case, is the maintainability of the applications, raised as a preliminary question by Shri Sree-rangaiah. Let us read Section 3(q) of the 1985 Act, (para 49 above), which defines the term "service matters", in the context of the case before us "service matters" in relation to a person means, "all matters relating to the conditions of his service in connection with the affairs of the Union". The provisions of Section 14 ibid(para 49 above) in that context, imply that this Tribunal can exercise jurisdiction, power and authority in this case in the case of all the applicants only if their "service matters" relates to the conditions of their civil services in a civil post, in connection with the affairs of the Union.

74. Let us now turn to Section 28 ibid(para 56 supra). It bars the jurisdiction of all Courts, including that of the High Courts, in respect of all matters over which this Tribunal is vested with jurisdiction, power and authority, from the date their jurisdiction, power and authority, became exercisable by the Tribunal.

75. Consequent to deletion of Section 2(b)ibid, by the Administrative Tribunals (Amendment) Ordinance, 1986,



which

which was later substituted by Administrative Tribunals (Amendment) Act No. 19 of 1986, with retrospective effect from 1-11-1985, the provisions of the 1985 Act, became applicable, even to persons governed by the provisions of the Industrial Disputes Act, 1947. In other words, this Tribunal was also vested with jurisdiction, power and authority, to deal with grievances and complaints of persons, governed by the Industrial Disputes Act, 1947 as well, but at the same time, the Industrial Labour Court or other authority constituted under the 1947 Act, remained intact, as their jurisdiction, was not taken away. Thus, both this Tribunal as well as the Industrial Tribunals, are vested with jurisdiction, to deal with these disputes if they related to a "civil servant", referred to in Section 14(1) of the 1985 Act, provided, such persons were also "workmen", within the meaning of the 1947 Act.

76. Shri Narasimhan has contended, that his clients fall within the category of 'workmen', as defined in the 1947 Act, by virtue of the fact, that they were carrying out railway transhipment work and the railways are deemed to be an industry in support of which he has cited RAJAPPA's case (para 50 supra). As a corollary, he has further pleaded (para 50 above) that what could be adjudicated under the 1947 Act, could also be decided

under the 1985 Act, as that related to "service-matter", as defined in the latter Act.

77. We are not persuaded by this reasoning of Shri Narasimhan, as it suffers from a patent error, in the interpretation of the provisions of the 1985 Act. In fact, a three Member Bench of this Tribunal, sitting on the Allahabad Bench, presided over by K. Madhava Reddy, J., the then Chairman of this Tribunal, has dealt with this matter exhaustively in II(1988)ATLT (CAT) 509 (S.K.SISODIA v. UNION OF INDIA & ORS.), in its decision rendered recently on 20-4-1988, wherein it has inter alia held, that this Tribunal, can entertain the grievance of a person governed by the 1947 Act, provided (emphasis added), it is a "service matter" and can grant appropriate relief under that Act. Earlier, we have explained the true import and meaning of the term "service-matter", as defined under the 1985 Act.

78. We are in respectful agreement with the above decision in SISODIA's case.

79. The next question in logical sequence, to which, we have to address ourselves is, whether the applicants held any "civil post", under the Union. The term "civil post", has not been defined under the 1985 Act. Neither is it seen to be defined anywhere. We have therefore to look to the decided cases, to find an answer.



80. Let us examine some of these cases.

In AIR 1953 All 17 (MOHAMMAD MATTEEN QIDWAI v. GOVERNOR-GENERAL IN COUNCIL), the Court observed that the term "civil servant" was a flexible one, and that "all posts held by any public servant (emphasis added), if the post did not belong to the Military Department or the Defence Forces, must be deemed to be a "civil post", under the Crown".

81. This matter has been dealt with at length, in AIR 1966 SC 884 (STATE OF ASSAM v. KANAK - CHANDRA) in regard to the post of Mouzadar (para 59 above). The Supreme Court pointedly observed, that .... "A post is an employment but every employment is not a post. A casual labourer is not the holder of a post (emphasis added)". In this context, it is pertinent to examine the distinguishing features, between a casual labourer and a PRL. The details furnished in paras 45 and 46 above, clearly reveal, that casual labourers, are on a higher plane than the PRLs, in regard to their status, as employees in the railways. Yet, they are not included within the term "Railway Servant", as defined in Rule 143(43) of the IREC and as observed by the Supreme Court in KANAK CHANDRA's case, <sup>as they</sup> are not holders of a post.

82. On satisfactory completion of 120/180 days of continuous service, in the railways, the casual labourers, are eligible for temporary status, in the

railways, in the open line and construction units respectively. Once they acquire the status of a temporary railway servant, by operation of law, their conditions of service, are governed as set out in Chapter XXIII of the Indian Railway Establishment Manual. Rule 2301 thereunder, defines a "temporary railway servant", as under:

"2301. Definition.— A "temporary railway servant" means a railway servant without a lien on a permanent post on a railway or any other administration or office under the Railway Board. The term does not include "casual labour", "a contract" or "part-time employees" or "an apprentice" (emphasis added).

83. The above definition of a "temporary railway servant", has been cited by the Supreme Court in AIR 1982 SC 854 (L.ROBERT D'SOUZA v. THE EXECUTIVE ENGINEER, SOUTHERN RAILWAY & ANR.).

84. It is manifest from the above, that under the statutory rules of the railways, neither the casual labourer nor part-time employees, as in the case of the PRLs, in which category the applicants lie, are "temporary railway servants". The applicants have not challenged the validity of this Rule.

85. The Jabalpur Bench of the Central Administrative Tribunal, has in its recent decision, rendered



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on

on 28-4-1988, in ATR 1988(2) CAT 405 (ANURUDH SINGH & ORS. v. UNION OF INDIA & ORS.) held, that the casual labourers, engaged in the Department of Telecommunication, were not holders of "civil posts" and declined to admit their applications. In doing so, it relied on the judgment of the Supreme Court in KANAK CHANDRA's case (vide para 59 above) and cited reference to a decision taken by it likewise, on 3-12-1987 in O.A. No. 567 of 1986 (DEHARDAS v. UNION OF INDIA) and on 30-3-1988, in O.A. NO.354 of 1986 (RAMMOO & ORS. v. UNION OF INDIA & ORS.).

86. Taking into account the above facts and rulings and particularly the observation of the Supreme Court in KANAK CHANDRA's case (para 59 above, in particular) and the statutory definition of the term "temporary railway servant" (para 82 above), as also the view expressed by the Delhi Bench of this Tribunal in SISODIA's case (paras 77 and 78 supra), we are clearly of the view, that the applicants do not hold any "civil post", in the railways and consequently, their grievance in the applications before us, on which they have sought redress, cannot be termed as a "service matter", as defined in Section 3(q) of the 1985 Act. We therefore, uphold the contention of Shri Sree-rangaiah, that these applications are not maintainable.

87. Having

87. On the conclusions we have reached on the question of jurisdiction, it is really unnecessary for us, to examine all other questions, urged by both sides. But, as our order is subject to the jurisdiction of the Supreme Court, under Article 136 of the Constitution, we consider it proper, to express our views succinctly, on other questions as well.

88. The claim of the applicants for a declaration, to treat them on par, with the workers of the Transhipment Shed, Tiruchirapalli, in conformity with the decision of the Supreme Court (Ann. 'A' and para 3 above, referred to as "the TIRUCHIRAPALLI CASE") is a continuing claim. In that view, these applications made on 26-8-1988, if we had jurisdiction to examine the dispute, are in time. We see no merit in this objection of the respondents and therefore, reject the same.

89. The decision of the Supreme Court in TIRUCHIRAPALLI case, is relied on by the applicants, not as a "binding precedent" but only to claim equality of treatment. Sri Narasimhan, who argued these cases ably, did not rightly take the stand, that the decision of the Supreme Court in TIRUCHIRAPALLI case, was a 'binding precedent'.

90. The decision of the Supreme Court in TIRUCHIRAPALLI case, reads thus:

"Thanks to the learned Counsel appearing in the case particularly to Shri R. R. Venkataramani and the Additional Solicitor General Mr. G. Ramaswamy. We are



happy to record that we have been able to arrive at a happy solution of the problem. There will be an order in the following terms:

1. Those who have put in a service of 5 years and above as on 1-1-1981 shall be treated as temporary employees with effect from 1-1-1981.

2. Those who have more than 3 years but less than 5 years as on 1-1-1981 shall be treated as temporary employees with effect from 1-1-1982.

3. Those who have completed 360 days but less than 3 years as on 1-1-1981 shall be treated as temporary employees with effect from 1-1-1983.

4. Those who complete 360 days on any date after 1-1-1981 shall be treated as temporary employees with effect from that date.

5. For the purpose of fixation of pay and pensionary benefits 50% of the services rendered prior to 1-1-1981 shall be taken while full service will be reckoned from 1-1-1981 and pay will be fixed proforma upto 1-1-1986 and the pay scales and allowances shall be implemented from 1-1-1986 (Date of effect of the recommendations of the IV Central Pay Commission).

6. The conditions of service in relation to weekly rest, pension, gratuity, leaves, allowances etc., shall be the same as admissible to permanent class IV employees.

7. P.L.B. (Productivity Linked Bonus) as applicable to the Railway employees should be paid for the years, the respective workmen are eligible.

8. The Transhipment work at Thiruchirapalli Transhipment yard shall not be given out on contract of any kind.

In regard to the following matters, the matter is left to the Railway Administration to take appropriate decision in consultation with the employees.

1. Work norms should be fixed for general Merchandise and coal, separately.

2. The Railway shall frame an incentive scheme for duty performance over and above the norms so fixed to maintain efficiency and productivity.

3. Certain percentage of the volunteers may be permitted to opt for less strenuous nature of work having avenues of promotion every year.

In regard to some of the items mentioned in the order, Shri P.P.Singh, learned Counsel appearing for the Railway Administration states that the Railway Administration has already given much more than what we have provided. If that is so, the workmen will be entitled to the benefits already given.

The Writ Petition is disposed of accordingly."

This decision is based on the concession of the parties before the Court. The decision itself does not set out the facts of the case, <sup>and</sup> the questions that arose for decision. The decision also does not lay down any principle.

91. The law of "binding precedents", evolved in Anglo-Saxon Jurisprudence, has been recognised in our country, in that, Article 141 of our Constitution, has taken due note of the same and given effect to it, in stating, that the law declared by the Supreme Court, shall be binding on all Courts. The cardinal feature of a 'binding precedent' is, that the ratio decidendi, or the principle enunciated in a case, binds all the subordinate courts but not the actual decision itself in a case, which binds

only



only the parties thereto. As the decision in TIRUCHIRAPALLI case, is not preceded by any discussion and does not lay down any principle, we cannot treat the same as a "binding precedent", to be followed in these cases. We, cannot therefore treat the decision in TIRUCHIRAPALLI case, as a "binding precedent".

92. The true scope and ambit of Article 14 of the Constitution, has been explained by the Supreme Court, in a catena of rulings. In RAM KRISHNA DALMIA AND OTHERS v. JUSTICE S.R.TENDULKAR & OTHERS (AIR 1958 SC 538) and RE: SPECIAL COURTS BILL CASE (AIR 1979 SC 478), the Court has reviewed all the earlier cases and epitomised, the principles underlying Article 14 of the Constitution. The new dimension of Article 14 of the Constitution, namely, "arbitrariness is the very anti-thesis of the rule of law" enshrined in Article 14 of the Constitution, evolved for the first time, in E.P. RUDYAPPA v. STATE OF TAMIL NADU (AIR 1974 SC 555) has been elaborated and explained in SMT. MANEKA GANDHI v. UNION OF INDIA & ANR. (AIR 1978 SC 597) and AJAY HASIA & ORS. v. KHALID MUJIB SEHRAVARDI & ORS. (AIR 1981(1) SCC 258 = AIR 1981 SC 487). Bearing <sup>in mind</sup> the principles enunciated in these cases, we must examine the claim of the applicants, to extend to them, the benefit of the decision of the Supreme Court, in TIRUCHIRAPALLI case.

93. While the applicants claim, that the fact-situation, on which their claim is founded, is wholly alike to that in the TIRUCHIRAPALLI case and therefore, the benefit of that decision, must ipso facto be extended to them, to ensure equality of treatment, the respondents vehemently counter the same, by delineating the various circumstances, which according to them, differentiate the cases before us, from the TIRUCHIRAPALLI case.

94. In the TIRUCHIRAPALLI case, the Supreme Court has not set out the fact-situation at all, on account of which, we are not in a position to decide with certainty, that it is on all fours with the cases before us, bearing in mind specially, the legal maxim - nullum simile est idem nisi quatuor pedibus currit - no like is identical, unless it runs on all fours. With this handicap, we must now examine the question.

95. At first blush, it may seem that the fact-situation in the TIRUCHIRAPALLI case and the cases before us is alike, but closer scrutiny reveals otherwise, as to support the rebuttal of the respondents. When once we notice that these two cases are not like on all fours (emphasis added - as distinguished from being identical), it is difficult for us, to uphold the contention of the applicants, that they should be extended the very benefits, extended by the Supreme Court, in TIRUCHIRAPALLI case.



96. We have earlier set out in fair detail, the nature of work, its distribution, and other ~~in regard to the PRLs.~~ relevant features. We were told, that not infrequently, the entire family consisting of both adults and minors, are engaged in transhipment work, at BYPL. The minors by their very age, would have been disqualified for regular appointment in any Government service, let alone in the Railways. Besides, we were informed, that many of the PRLs at BYPL, after attending to work at BYPL, also seek employment in organisations nearby, like, the Food Corporation of India and other private organisations. In these circumstances, we cannot on any principle, direct all such PRLs, to be absorbed as "regular employees" or accorded the status of "temporary employees", in the Railways.

97. We have also carefully examined the scheme evolved by the respondents, for absorbing the PRLs, in regular posts in the Railways, as and when regular vacancies occur. We are of the view, that the criteria outlined therein, for the said purpose, are fair and just.

98. On the foregoing discussion, we hold, that the claim of the applicants, that they are similarly situated, as those working at Tiruchirapalli and that the benefit of the decision of the Supreme Court, in TIRUCHIRAPALLI case, should be extended to them, is ill-founded. We, therefore, see no merit in this claim of the applicants and reject the same.

99. Before we part with these applications it would be pertinent to make the following observations. Statistics reveal, that a million people join the labour force, every three months, in our country, and that this pressure is relentless. The situation is indeed grim. The Supreme Court has brought out graphically, in its judgment, in AIR 1987 SC 2342 (DAILY RATED CASUAL LABOUR EMPLOYED UNDER P & T DEPARTMENT -vs.- UNION OF INDIA AND OTHERS) the tableau of growing acute unemployment, in the country and the imperative need, to find a solution to this problem, in our march towards attaining the socialist goal. The problem is not easy of solution. Under our democratic set-up, what perhaps is required, is a pluralist approach, to our economic problems, rather than a populist socialist approach, which seeks to make the State, the universal provider and dispenser of jobs and goods. The latter approach would be ruinous to our country's economy, for the simple reason, that it would impose an intolerably expensive and top-heavy administrative and executive apparatus, on a poor subsistence economy. In this background, it would be prudent and politic, to let all available agencies, put their shoulder to the wheel and do their devoir, to help mitigate the problem of unemployment in the country, whether it be the State or Corporate enterprises or individual entrepreneurs, instead of expecting the State, to be



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the

the guardian and saviour of all things.

Perhaps, then only, we would be able to come out of this morass.

100. In the result, we dismiss these applications, with no order as to costs.



Sal-

(K.S. PUTTASWAMY)  
VICE CHAIRMAN.

Sal-

(L.H.A. REGO)  
MEMBER(A).

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*[Signature]* 14/2  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

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