

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 17/91

~~XXXXXX~~No.

198

DATE OF DECISION 30.4.1991

Shri Balu Baburao Lande & 9 otrs. Petitioner

Mr. E. K. Thomas.

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

Shri Subodh Joshi.

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. P.S. CHAUDHURI, Member (A)

The Hon'ble Mr. T.C.S. Reddy, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Yes

No

P. S. Chaudhuri
(P.S. CHAUDHURI)
M(A)

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

ORIGINAL APPLICATION NO. 17/91

SHRI BALU BABURAO LANDE and others.
Licenced porter No.36,
Thane Railway Station,
Thane.

.... Applicants

Vs.

The General Manager,
Central Railway,
Bombay-VT and others.

.... Respondents

CORAM HON'BLE SHRI P.S.CHAUDHURI, MEMBER(A)

HON'BLE SHRI T.C.S.REDDY, MEMBER (J)

Appearance

Shri E.K.Thomas, adv,
for the applicants.

Shri Subodh Joshi, Adv,
for the respondents.

ORAL JUDGMENT

DATED: 30th Apr 1991

(PER : P.S.CHAUDHURI, M(A))

This application under section 19 of the Administrative Tribunals Act, 1985 was filed on 15.1.1991. In it the applicants who are working as Licenced Porters at Thane Railway Station on Central Railway are seeking a declaration that they are temporary/casual labour and are entitled to all consequential reliefs.

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3

D.A.NO.17/91

2. We have heard Mr.E.K.Thomas, learned counsel for the applicants and Mr.Subodh Joshi ~~learned~~ counsel for the respondents.

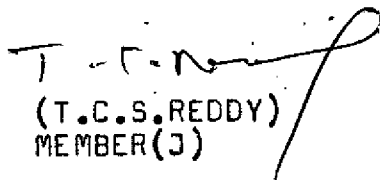
3. It is not disputed that the applicants are licencees carrying passengers' luggage in return for consideration. It is also not disputed that they are, in addition, engaged off and on by the Railway ^{for} handling the Railway's luggage. It was Mr.Thomas' submission that as a consequence of the second item of work they are holders of civil posts or, at least, casual labour. We are not impressed with this line of reasoning. The applicants are clearly licensees and the sporadic work that they do for the Railway is at par with the work that they do for passengers for the consideration paid by the passengers. For us to have jurisdiction in respect of an application filed by any person an essential pre-requisite is that that person must be the holder of a civil post under the Union. There is no way in which the applicants in the present case can be considered to be holders of civil post, under the Union. We have, therefore, no difficulty in holding that we have no jurisdiction in respect of this application.

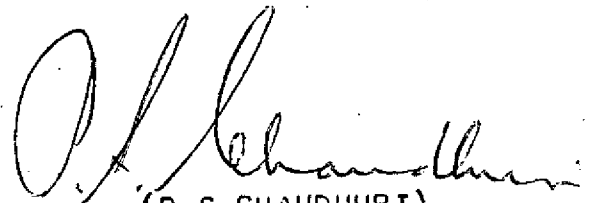
4. The application is accordingly summarily rejected under Section 19(3) of the Administrative Tribunals Act, 1985. We directed that the original copy of the application

6

OA NO.17/91

be returned to the applicants alongwith a copy of this order. The applicants are at liberty, if so advised, to present the same before the proper forum. A copy of the application and the original copy of this order be retained as part of the Tribunal's record. In the circumstances of the case there will be no order as to costs.


(T.C.S. REDDY)
MEMBER (J)


(P.S. CHAUDHURI)
MEMBER (A)

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
BOMBAY - 400 001

REVIEW PETITION NO.46/91 IN O.A. No.17/91

Shri Balu Baburao Lande & Ors.
Licenced Porter No.36
Thane Railway Station
Thane

.. Applicants

V/s.

The General Manager
Central Railway
Bombay VI, & Ors.

.. Respondents

CORAM: HON.SHRI P S CHAUDHURI, MEMBER(A)
HON.SHRI T C REDDY, MEMBER (J)

TRIBUNAL ORDER

DATED: 12-09-1991

This review petition under section 22(3)(f) of the Administrative Tribunals Act, 1985 was filed on 29.7.91 for reviewing the judgment and order in O.A. No.17/1991 decided on 30.4.1996, a copy whereof was received by the applicants on or about 29.6.1991.

2. After careful consideration of the points raised in the review petition, and the facts and circumstances of the case, we see no reason why the review petition should not be disposed of by circulation⁴ and hence, in terms of rule 17(3) of the Central Administrative Tribunal (Procedure) Rules, 1987, we so proceed to deal with and decide it.

3. In O.A. No.17/91 the applicants who are working as Licenced Porters at Thane Railway Station of Central Railway sought a declaration that they are temporary/casual labour and are entitled to all consequential reliefs. By the order dated 30.4.1991 we held that there was no way in which the applicants can be considered to be holders of Civil Posts in the Union, and, therefore, held that we have to jurisdiction in respect of this⁵ application and had summarily rejected it.

4. Under Order XLVII, Rule 1, CPC a person

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aggrieved by a decision may apply for a review on the ground of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision was taken, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

5. A review of the judgment and order dated 30.4.91 is now sought on the ground that in Narayanan V. Southern Railway, 1979 KLT 851, the Kerala High Court had held that Licenced Railway Porters are Railway employees.

6. We are of the opinion that this ground does not come within the perview of review as mentioned. We are also not satisfied that the judgment now sought to be relied on could not have been produced at the time when the case was decided.

7. In Sow. Chandra Kanta V. Sheikh Habib (AIR 1975 SC 1500) the Supreme Court has held that:

"... once an order has been passed by this Court a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

Again in Aribam Tuleshwar Sharma V. Aribam Pishak Sharma, the Supreme Court has held that:

"... there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may be exercised

also

9

on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the subordinate court."

8. Quite apart from this what the Kerala High Court have held in Narayanan's case (supra) is that "there is, therefore, no room for doubt that there is a relationship of employer and employee between the Railway Administration and the Licenced Porters". It has not been held that Licenced Porters are holders of civil post, under the Union. It is only by being holders of civil posts under the Union that Licenced Porters could have come within our jurisdiction.

9. In this view of the matter, we see no merit in the review petition. It is, accordingly, dismissed.

T. Chandrasekhar
(T C REDDY)
MEMBER (J)

P. S. Chaudhuri
(P S CHAUDHURI)
MEMBER (A)

12-9-91