

98

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :  
AT HYDERABAD.

O.A.No.766 of 1994.

Date of order - August, 1997.

Between :

J. Gangu Naidu, aged 38 years,  
Son of Paidithalli,  
Badge No.15, Licensed Porter,  
Visakhapatnam R.S.  
Visakhapatnam.

... Applicant.

And

1. Union of India, represented  
by its Chairman, Railway Board,  
Rail Bhavan, New Delhi.
2. General Manager,  
South Eastern Railway,  
Calcutta- 43.
3. Divisional Railway Manager (Comml.)  
Waltair, S.E. Railway. ... Respondents.

Counsel for the applicant - Mr. K.K.Chakravarthy.

Counsel for the respondents- Mr. N.R. Devaraj, CGSC.

-----

Coram :

The Honourable Mr. R. Rangarajan, Member (Admn.)

The Honourable Mr. B.S. Jai Parameshwar, Member (Judl.)

O R D E R.

(As per Hon. Mr. B.S. Jai Parameshwar, Member (J))

1. None appeared for the applicant. The applicant was also absent when the case was taken up for hearing. Since this O.A. was filed during July, 1994, we felt not inclined to adjourn the same due to absence of the applicant. Heard Mr. N.R. Devaraj, learned counsel for the respondents.

This is an application under Section 19 of the Administrative Tribunals Act. This application was filed on 4.7.94.

Jc  
21/8

2. The applicant claims to be working as Casual Licensed Porter for loading and unloading of parcels at Visakhapatnam Railway Station. It is stated that there were about 293 Porters who were engaged on the same job at the said station. Those 293 Porters formed a group and they have been paid the scale of pay of a Group 'D' post, it is stated that the Pay Revision Committee has prescribed the monthly salary to such Porters who are attending to the similar duties. The applicant claims that he is also performing the similar duties at the Railway Station and that he has been paid wages on hourly basis. The applicant complains of discrimination in payment of wages. It is his case that the Licensed Porters of Visakhapatnam Railway Station are paid the salary of a Group 'D' official, whereas the Casual Licensed Porters performing the similar duties have been paid wages on hourly basis. Thus the applicant claims for absorption as a Porter in the Visakhapatnam Railway Station. Further it is stated that earlier he was also a party to T.A.No.3 of 1992; that the said T.A. was decided on 27.7.93 by this Bench; that the respondents failed to implement the direction given in the said T.A. and hence a criminal case was filed by the Labour Enforcement Officer(Central), Visakhapatnam and a sum of Rs.6000/- was imposed as fine on the Divisional Commercial Manager, Visakhapatnam, ~~and~~ that on account of the said imposition of fine, the respondent No.3 issued a circular bearing No.WCC/1/0/94 dated 30.6.94 advising to engage the Licensed Porters for the Brake-Van duties at the railway station upto 4 hours per day at the maximum. The applicant submits that the impugned circular dated 30.6.94 has been issued as a vengeance.

Bv

3. The applicant has filed this O.A. praying to quash the impugned circular dated 30.6.94 as it is illegal and violative of the principles of natural justice and consequently to direct the respondent No.3 to adopt the procedure in vogue as on 30.6.94, regarding engagement of the licensed Porters for 8 hours per day.

4. The respondents have filed a counter stating that the particulars as given by the applicant in the O.A. do not tally with the records maintained at the Visakhapatnam Railway Station; that the Badge No.15 pertains to one K. Bairagi, son of Somulu; that the contention of the applicants in T.A.No.3/92 for absorption has been denied by this Bench; that the decision to reduce the working hours for the Casual Licensed Porters from 8 hours to 4 hours had been taken in the normal course and not as a consequent upon the imposition of fine by the Assistant Labour Commissioner(Central), Visakhapatnam; that the reduction in the working hours was <sup>a</sup>mere reiteration of the Railway Board's instruction in letter No.70-TG.IV/6SE/7 dated 26.9.70 and the letter of the Chief Commercial Manager, South Eastern Railway, Calcutta bearing No.G.26/3/Genl. dated 6.12.91; that it was in no way connected with the imposition of fine; that the applicant is not entitled to seek a direction to engage him for specified hours per day; that the engagement of 4 hours per day is in total conformity with the Railway Board's instructions; that the decision has been taken without <sup>on the part</sup> any mala fide intention of the Railways but with a view to implement the decision taken by the Railway Board and the Zonal Headquarters and that O.A. be dismissed with costs.

R

5. The applicant has filed a reply stating that his correct Badge number is 173 and that in the O.A. it was mistakenly mentioned as 15; that he was a party to T.A.No.3/92; that one K. Bairagi whose Badge number is 15 was a party in O.A.No.1145/93; and that he desires to place reliance on the circulars dated 1.5.47, 8.6.71, 24.7.91, 31.7.91 and 11.2.92. Though the applicant stated to have enclosed the copies of the said circulars to the reply, no such copies are available along with the reply filed by him. It is further stated that during the year 1970, the Divisional Superintendent, Waltair made a reference informing his inability to engage <sup>the</sup> Porters for 4 hours due to flow of trains one after another and receipt of heavy number of parcels; that there was correspondence between the Divisional Superintendent, Waltair and the Chief Commercial Superintendent, South Eastern Railway; that the Divisional Superintendent, Waltair disagreed to engage the Porters at the reduced hours; that the action of the third respondent in issuing the circular dated 30.6.94 is arbitrary and that the same is liable to be quashed.

6. The impugned circular dated 30.6.94 is at page 43 of the O.A. The Senior Divisional Commercial Manager, Waltair has issued the said circular. He is respondent No.3 in the O.A. He has given instructions for engaging the Licensed Porters for Brake-Van duties only for a period of 4 hours per day at the maximum. Further, it was advised to draw double the existing number of Brake Van Porters and split them into 6 groups per day engaging each group for 4 hours only daily.

7. The applicant has challenged this circular in this O.A. The main contention of the applicant is that the same has been issued on account of imposition of

B

fine by the Assistant Labour Commissioner(Central), Visakhapatnam. On the other hand, the respondents contend that the said circular was issued in accordance with the Railway Board's instructions dated 26.9.70 and the Chief Commercial Manager's letter dated 6.12.91. The learned counsel for the respondents has produced the copies of these two letters. In para-2 of letter dated 26.9.70 the Ministry of Railways has explained as follows :

- "2. Clearly, licensed porters should be utilised for railway handling work which is not of a regular nature justifying employment of full time staff. Normally such work should not necessitate the employment of an individual licensed porter for two to three hours a day. This can always be ensured deploying a suitable number of men on a given job, such as loading and unloading of parcels and luggage for mail, express and passenger trains, the duration which is normally limited to a few minutes at a time. If necessary, different batches of licensed porters could be employed on such work at suitable interval unless the work is of a continuous nature, in which case the proper course of action would be to employ regular railway employees instead of employing licensed porters."

In the letter dated 6.12.91 it is stated that it was categorically explained vide office letter of even number dated 9.10.91 that the Licensed Porters engaged in handling the work are not entitled for weekly rest and that they should not be engaged for more than 4(four) hours in a day. Engagement of the Licensed Porters on 8-hours shift is a violation of the directives issued by the Railway Board. The respondents rely upon these letters in justifying the reduction of the working hours from 8 hours to 4 hours per day at the maximum to the Licensed Porters engaged in the Brake-Vans.

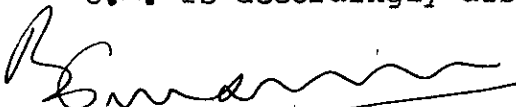
8. It is for the department to fix the duration of work for each Licensed Porter. The concerned <sup>Administration</sup> Railway is the best judge to decide the duration of work for a

*R*

Licensed Porter. That administration may also take into consideration the work load in each Railway Station and fix the duration of work for the Licensed Porters. No hard and fast rule can be laid down to give specific hours of duty to the Licensed Porters. In some Stations there may not be any need for a Licensed Porter to work for more than 4 hours and in some Stations there may be need for getting the work done by the Licensed Porters exceeding 4 hours. It is for this reason, in the letter dated 26.9.70 they had clearly stated that there must be six batches of Licensed Porters so that each batch may work continuously about the day.

9. We find no reasons to interfere with the decision of the Railway Board or the decision of the respondent No.3 for reducing the duration of work for the Licensed Porters. It is upto the authorities to fix the duration of work for the Licensed Porters. We are not convinced that the impugned circular was issued with any mala fide intention or as a result of any vengeance. The respondent No.3 has issued the impugned circular in accordance with the decision of the higher ups arrived on the basis of experience and work load available in Stations.

10. Hence we find no merits in this O.A. and the O.A. is accordingly dismissed. No order as to costs.


  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDICIAL).

  
( R. RANGARAJAN)  
MEMBER ( ADMINISTRATIVE ).

21.8.97

Dated the 21<sup>st</sup> August, 1997.

DJ/

  
D. R. G

2/9/97  
TYPED BY  
COMPILED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD

THE HON'BLE SHRI R. V. IYER : M (A)

AND

THE HON'BLE SHRI S. S. JAI PARAMESHWAR:  
(M) (J)

Dated: 21-8-97

ORDER/JUDGEMENT

M.A./R.A./C.A.NO.

in

C.A.NO.

766/94

Admitted and Interim Directions  
Issued.

Allowed

Disposed of with Directions

Dismissed ✓

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

