

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

Original Application No. 1210/1999

DATE OF ORDER: 29th MARCH 2004

B E T W E E N :

1. A.APPALA NAIDU,
RAILWAY PARCEL PORTERS
ELURU RAILWAY STATION,
W.G.DIST.
2. K.JOGINAIDU,
AS ABOVE
3. NIMADALA APPA RAO,
AS ABOVE
4. BOMMI SATYANARAYANA,
AS ABOVE
5. PAPPALA NARAYANA,
AS ABOVE
6. GOPISETTI BABU RAO,
AS ABOVE
7. PENTAKOTA APPALA NAIDU,
AS ABOVE
8. TURUPILLI SURYANARAYANA,
AS ABOVE
9. BHIMUNI SRI~~N~~IVASA RAO,
AS ABOVE
10. KOTARU HARIKRISHNA,
AS ABOVE
11. KOLAGANA SREERAMULU,
AS ABOVE
12. NAKKA SRINIVASA RAO,
AS ABOVE
13. KAREDDY VENKATA RAMANA,
AS ABOVE
14. GORRELLA SRINIVASA RAO,
AS ABOVE
15. KONAGALA KANNAIAH,
AS ABOVE
16. GORRELA DHANAMJAYA RAO,
AS ABOVE

17. TURUPILLI RAMESH,
AS ABOVE

18. GORRELA SRILNIVASA RAO,
AS ABOVE

.....Applicant(s)

A N D

1. THE CHAIRMAN,
RAILWAY BOARD,
RAIL BHAVAN,
NEW DELHI.

2. THE GENERAL MANAGER,
SOUTH CENTRAL RAILWAY,
RAIL NILAYAM,
SECUNDERABAD.

3. THE DIVISIONAL RAILWAY MANAGER
SOUTH CENTRAL RAILWAY,
VIJAYAWADA DIVISION,
VIJAYAWADA.

.....Respondent(s)

Counsel for the Applicant(s): Sri S.LAXMA REDDY Advocate

Counsel for the Respondent(s): MR. N.R.DEVARAJ
SC FOR RLYS.

C O R A M

THE HON'BLE JUSTICE SRI K. R. PRASADA RAO, VICE-CHAIRMAN

THE HON'BLE SRI S. K .AGRAWAL, MEMBER(ADMN)

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O R D E R

(PER HON'BLE JUSTICE SRI K. R. PRASADA RAO, VICE-CHAIRMAN)

1. All the applicants in the present O.A, apprached this Tribunal seeking for a declaration that the action of the respondents in not regularising and absorbing the services of the applicants on regular basis by creating regular posts and not granting them regular scales of pay and not extending the benefit of the judgment of the Hon'ble Supreme Court of India



reported in AIR 1995 SC 1617 and further judgment of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1217/97 dated 16.12.1997 is totally illegal and without jurisdiction and consequently to direct the respondents to regularise and absorb the applicants with all consequential benefits, such as, granting them regular scales of pay etc.

2. It is the case of the applicants that all of them were engaged by the Railways as Licenced Parcel Porters for the purpose of handling the parcel works, such as, loading and unloading and transport at Eluru Railway Station in West Godavari District. All the applicants except the applicants No. 17 and 18 have ^{under} service ranging from 6 to 30 years and the applicants No.17 and 18 are having service of three years and one year respectively. Their service particulars are shown in Column No.7 of Annexure-I filed along with the O.A. They have been continuously working since the date of their engagement as Licenced Parcel Porters in the Railway Station till date. They are exclusively engaged by the Railways for the purpose of handling the parcel works connected to the Railway Station. It is the further case of the applicants that Eluru Railway Station is one of the notified Railway Stations out of the 22 Stations on Vijayawada Division, where the Railway Board has permitted the Railways to entrust the handling of the parcels to the Railway Licenced Porters and the rates as well as the hours of duty are fixed by the Railway Board. The Railway Porters do the job of parcel handling work as entrusted by the railway authorities under their supervision and with the use of the trolleys and other transport equipment supplied by the railways. The number of hours of duty is fixed at 8 hours a day and the porters are engaged on shift basis throughout the day and night. The railway parcel handling work is a permanent and regular nature of work through out the year and all the applicants have

been performing the duties of handling the parcel work entrusted to them in their respective shifted duties restricting to 8 hours and some times more than eight hours. It is the further case of the applicants that when the respondents have not paid the minimum rates of wages under the Minimum Wages Act and when they failed to pay the minimum rates of wages, all the applicants had to approach the authorities under the Minimum Wages Act for enforcement of their minimum wages and the Minimum wages authorities directed the respondents to pay the minimum wages through various awards like PW 4/96, PW 46/96, PW 2/97, PW 2/98, PW 3/98 the last one covering from February 1998 to July 1998. All these applicants are also the applicants in that P.W. cases. Since the applicants have been working as Licenced Porters directly under the control of the railway authorities, and even working for several years ranging from 6 to 30 years and the nature of job being permanent in nature, the applicants have made a representation to the respondents for regularising their services and also conducted Dharnas before the office of the second respondent. They also made representations through Dakshina Madhya Railway Porters Karmika Sangh on 18.2.1996 through registered post ack. due for regularising their services and also agitated the matter peacefully to ventilate their grievances. But the respondents have not taken any action for regularising their services.

3. The further case of the applicants is that in similar circumstances, the Hon'ble Supreme Court of India as also the Principal Bench of the CAT at New Delhi have directed the respondents in respect of the Licenced Parcel Porters working under the contractors for regularising their services in the railways. In furtherance of the said decision rendered by the


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Hon'ble Supreme Court and the Principal Bench of the CAT which ~~is~~ relating to the parcel porters who were already regularised. These applicants are similarly placed as the applicants in those cases and therefore, they are entitled to the similar relief. ~~The~~ The applicants who ^{are} 18 in number therefore filed the present O.A. seeking for the above reliefs.


4. The respondents filed their reply statement contending that the applicants are neither employees of railway establishment nor they were engaged in any post in the railway establishment. They are only porters holding licence on Railway stations to carry luggage of the travelling public and they cannot come under the purview of the provisions of the Administrative Tribunals Act, and this Tribunal has no jurisdiction to entertain this application. They denied that the applicants are engaged as licenced parcel porters for the purpose of handling the parcel works such as, loading and unloading and transport at Eluru Railway Station, ~~nor~~ they were given licence on payment of prescribed licence fee to the railways to earn their livelihood by carrying the passenger luggage. These porters are called "licensed porters" and the charges paid by the passengers are called as "Porterage charges" in the Railways terminology. Basically the railway carries men and materials from one place to another place under different tariff rules. As regards the materials, if it a small quantity, it will be treated as 'parcel' and it will be transported in brake-van (SLR) attached to the passenger carrying train. Secondly, excess luggage of the passengers is booked under 'luggage tariff' and transported in brake-van. Usually, brake-van capacity on every passenger carrying train is either 8 or 16 tonnes as the case may be. The space in the brake-van is meant for the use by all en-route stations. Moreover, the trains cannot be detained for ^{work} ~~want~~ of loading and unloading of parcels or luggages. There is no certainty for loading/unloading for all the trains having stoppages at the

station. The unloading/loading is conditioned by various factors. If the goods are booked in bulk quantity, those will be booked under 'goods tariff' and are transported in goods trains. The consignors/consignees have to engage their own hamals to load/unload goods from the goods trains. This traffic has been dealt by the Goods Shed which are away from the main stations. Whereas parcel and luggage traffic is dealt at the station usually in Parcel office. At many stations, the railways are posting their departmental employees (Group-D staff) to load/unload the parcels and luggage in the brake-van, if there is justification for posting of such persons. Where the loading/unloading of parcels is less and do not justify posting of a regular employee, Licensed porters will be engaged. In the instant case, the staff at Eluru Railway Station was permitted ~~was~~ ^{permitted} to engage licensed porters on rotation basis as there are no departmental employees, to load/unload the parcels/luggage. The payment for such engagement is being made on hourly basis in terms of the Railway Board letter dated 8.6.1971. As per the said letter, the rates payable to the licensed porters should be fixed per hour basis (which should be based on the minimum rate payable to the local unskilled worker, per day as fixed by the local authorities) without linking ~~it~~ ^e to the weight or number of parcels handled. Thus the railway administration has given the opportunity to the licensed porters of Eluru Railway Station to earn their income by attending the parcels loading and unloading and not otherwise. The administration never made any assurance to the licensed porters that they ~~were~~ ^{will be} engaged as railway parcel porters. Further, if any person fails to pay his licence fee, his licence will automatically get terminated. The question of number of years of service at the station does not arise, because they were licensed to work as porters to carry

passengers luggage for a consideration to be paid by the passengers alone. The respondents also denied that the applicants are exclusively engaged by the Railways for the purpose of handling the parcels works connected to the Railway Station. The Railway administration has permitted the station staff at 22 stations over Vijayawada Division to engage licensed porters on rotation basis to load/unload parcels and luggage in the absence of the departmental employees and not otherwise. In case they are engaged, they will be paid on hourly basis as indicated by the applicants in terms of Railway Board letter dated 8.6.1971. The respondents also denied that the number of hours of duty is fixed at 8 hours a day and the licensed porters are engaged in shift basis throughout the day and night. The respondents have further submitted that the staff at Eluru Railway Station has engaged the service of few licensed porters only at the time of arrival of passenger trains which is having only few minutes of stoppage time at the station to load/unload the parcels into brake-van and not otherwise. The licensed porters at Eluru Railway Station have been getting income from three sources in the span of 8 hours i.e. (i) from passengers for carrying their belongings, (ii) from merchants for carrying their parcels from outside the parcel office to platform and vice versa and (iii) from railways for carrying booked parcels. Hence the parcel handling is not their main source of income. The respondents have admitted the fact that the applicants have filed claim petitions under PW 4/96, 5/96, 46/96, 2/97, 2/98 and 3/98 for alleged difference of wages under provisions of ^{Minimum} Wages Act, contrary to the guidelines under letter dated 8.6.1971 before the Deputy Commissioner of Labour at Eluru and the said authority has awarded huge amounts to the applicants taking erroneous view of law. However, the Railway administration challenged these awards before the Hon'ble High Court of A.P.




through writ petitions and in turn the Hon'ble High Court suspended the said awards. The dispute made by the Dakshina Madhya Railway Porters Karmik Sangh, Nellore for regularisation of services of the licensed porters resulted in ID No.21/98 before the Industrial Tribunal, Hyderabad which is still pending. The licensed porters Union has already approached the Hon'ble Supreme Court of India through W.P.No.480/1990 praying for a direction to the Railways for absorption of their services. The said writ petition came to be dismissed on 6.5.1991. The issue involved in the present O.A. came up for consideration before the Calcutta Bench of this Tribunal in OA.No.1024 and 1209 of 1989 and OA.No.425/1990. While this Tribunal observing that the licensed porters cannot claim absorption by regularisation in the railway services as they cannot be treated at par with independent casual labourers engaged by the Railway administration directed that they should be paid remuneration/wages at the rate of scale which is admissible to casual labour having temporary status. However, the Hon'ble Supreme Court on appeal by the Railway Administration set aside the directions of this Tribunal vide its judgment dated 30.10.1996 in the Civil Appeal Nos. 9378 & 9379 of 1995. The said judgment has been followed by a Bench of this Tribunal earlier in TA.No.3 of 1992 and CP.No.61 of 1994. The Hon'ble High Court of A.P. has also rejected the plea of licensed porters to treat them as regular workmen or casual workmen in W.P.No.8933 and 8648 of 1985 duly holding that they cannot be treated as casual labour or regular workmen. The applicants are not engaged by the Railway Administration exclusively for parcel handling. They are licensed to carry passengers luggage on payment of portage charges by the passengers themselves and not otherwise. The applicants never worked under the disciplinary control and administration never forced any of the applicants to do parcel handling. The Railway administration has been paying charges



like any passenger as and when the services of the applicants were engaged on hourly basis in terms of the Railway Board letter dated 8.6.1971. The respondents have therefore submitted that the applicants' services cannot be regularised and prayed for dismissal of the O.A.

5. Earlier this matter was heard and disposed of by this Tribunal by order dated 16.2.2001, dismissing the O.A. In view of the orders passed by the Hon'ble Supreme Court dated 22nd August, 2003 in W.P.(Civil) No.433 of 1998 to the effect that pending disposal of the petitions before the said Court there should be no regularisation of parcel porters working at different railway stations notwithstanding any order of any Court, Tribunal or authority. The said order dated 16.2.2001 passed by this Tribunal was challenged before the High Court of A.P. in W.P.No.1724 of 2002 by the applicants. The said writ petition came to be allowed by order dated 14th March, 2002 setting aside the order of this Tribunal and remanding the case for fresh consideration in accordance with law. A further direction is given to this Tribunal to record a finding as to whether the applicants are the licensed parcel porters at all for the period ranging from 6 to 30 years as claimed by them and is there any master and servant relationship between the railways and the applicants and as to whether they can be considered as railway employees at all and if so, whether they are entitled for any regularisation as such.

6. After remand of the case to this Tribunal, we have heard the arguments advanced by the learned counsel for the applicants Mr. S. Lakshma Reddy and the learned Senior Standing Counsel for the respondents Mr. N.R. Devaraj. We have also carefully perused all the documents produced before us in support of the claims made by the applicants.



7. The fact that all the applicants are licensed porters working at Eluru Railway Station is admitted by the respondents in their reply statement though they contended that the ^{license} funds given to them ^{are} is not for the purpose of engaging their services exclusively as parcel porters for loading/unloading of the parcels. However, the respondents admitted the fact that since the staff at Eluru Railway Station was permitted to engage licensed porters on rotation basis as there ^{are} no departmental employees to load/unload the parcels/luggage, they were being engaged on hourly basis in terms of the Railway Board's letter dated 8.6.1971 for handling the parcels, and they were being paid wages on the minimum rate payable to the local unskilled worker per day as fixed by the local authorities without linking it to the weight or number of parcels handled. However, the respondents denied that the applicants were being engaged for 8 hours per day for handling the parcels and they are being engaged in shift basis throughout the day and night. The respondents also contended that the Railway Administration has been paying charges like any passenger as and when the services of the applicants were engaged on hourly basis in terms of the Railway Board's letter dated 8.6.1971. In view of the said contentions taken by the respondents it must be seen whether the applicants have produced sufficient documentary evidence in support of their contention that their services were utilised by the Railway Administration exclusively for parcel handling works as railway parcel porters on par with independent casual labourers engaged by the Railway Administration and that there is master and servant relationship between the railways and the applicants and ^{therefore} ~~therefore~~ they are entitled for regularisation of their services.

8. The applicants have mainly relied upon the awards obtained by them in respect of arrears of wages payable to them by the railway authorities for the parcel handling works done by

them from the Minimum Wages authorities. The applicants have furnished the details of the periods for which they obtained the awards in Annexure-7 enclosed along with this O.A. According to the said statement furnished by them, they have obtained awards for the periods from 1.11.1984 to 30.9.1999 i.e. for a period of 15 years by approaching the said authority in Case nos. PW 5/96, 46/96, 2/97, 2/98, 3/93, 7/99, 3/99 for the periods from 1.11.1984 to 31.10.1988, 1.11.1988 to 31.10.1993, 1.11.1993 to 30.11.1995, 1.12.1995 to 31.5.1996, 1.6.1996 to 31.5.1997, 1.6.1997 to 31.1.1998, 1.2.1998 to 31.7.1998, 1.8.1998 to 31.3.1999 and from 1.4.199 to 30.9.1999. The respondents have also admitted in their reply statement that the applicants have filed claim petitions in PW 4/96, 5/96, 46/96, 2/97, 2/98 and 3/98 for alleged difference of wages under the provisions of the Minimum Wages Act and the said authority under the Minimum Wages Act has awarded huge amounts to the applicants under the awards passed. They further submitted that the Railway Administration has challenged those awards before the Hon'ble High Court of A.P. through writ petitions and in turn the Hon'ble High Court was pleased to suspend the said awards. However, in the rejoinder filed by the applicants, the applicants submitted that even the High Court directed payment of claim wages and payment of compensation for Rs.5 lakhs + 5 lakhs in two cases. The applicants, therefore, contended that the said circumstance clearly establishes ^{the fact} that all the applicants rendered service as parcel porters directly under the Railway Administration at Eluru Railway Station for several years drawing full wages and became entitled for seeking regularisation of their services. It is also their contention that the above said circumstance also indicates that there is master and servant relationship between the Railway Administration and the applicants. Further the applicants have produced the certified copies of depositions given by the witnesses examined in the above referred cases before the authority under the Payment of Wages Act to point out that there are clear admissions by some railway officials

to the effect that the applicants were rendering services as licenced parcel porters. It is pointed out by the learned counsel for the applicants that Sri C.J.C. Nagur, Assistant Commercial Manager, South Central Railway, Vijayawada who is examined as RW-2 in PW Case No.46/96 has given evidence stating that Ex.R.6 produced in that case shows the details of ^{parcels} par namely, no. of parcels, weight in quintals, separately ^c outward and inward yearwise. It indicated that there was reduction in traffic handled at Eluru Railway Station, from 1986 to 1996. He was also confronted with the document Ex.R-5 which is the ^{use of} utilisation of licenced porters at Eluru Railway Station for handling parcels and he confirmed about it. He has stated in his evidence that the main job of the applicants is to carry passengers' luggage. The Railways pay for the work extracted from them hour-wise. In his cross-examination this witness has stated that he is aware of the minutes of the meeting dated 14.11.88 signed by the railway officers and the representative of the porters as per Ex.A-3 and as per Ex-A-4 the General Manager has given a reply to the Union that at 22 stations in Vijayawada Division, licenced porters are being used for handling parcels and there is no proposal for extending this to 5 other stations as demanded by the Union. It is further elicited in his evidence that Eluru is one of those 22 railway stations where the railway authorities are entrusting parcel handling works to the licensed porters. It is also elicited in his cross-examination that the parcel handling is a regular job, being done on every day. Though from the above evidence given by this witness it is clear that the applicants' services were being used for parcel handling works at Eluru Railway Station by paying them wages at the minimum rate payable to the unskilled workers as fixed by the local authority, his evidence also supports the contention of the respondents that the main job of the applicants is only to carry passengers' luggage and their

services were also being utilised by the railways for handling the parcels.

8. The applicants also relied upon the deposition given by one Sri Nuti Sankara Rao examined as RW-1 in PW Case No.46/96 who worked as Parcel Supervisor at Eluru Railway Station since February 1992. Even this witness has stated in his evidence that the main job of the licenced railway porters is to carry passengers luggage and some of them attend to the parcel loading & unloading. According to him, they work in two shifts of 20 persons each and they were taking 10 persons per shift of 8 hours duration for their work. If there is no sufficient work of parcels, only the needed persons/porters will attend and the remaining will go for passengers luggage. Thus the evidence given by this witness also ^{does not} clearly establish the fact that the services of the applicants were being utilised exclusively for parcel handling work^s as licenced porters for parcel handling works at Eluru Railway Station. According to this witness, their main work is to carry passengers' luggage. ^{It is also} not possible to make out from the evidence of this witness that each of the applicants ^{was} working in two shifts for 8 hours and ^{whether} they were continuously working for the entire day attending to the parcel handling as full time job. It is also the evidence of this witness that the porters do their job under his supervision ^{is} or whoever/in charge of the shift. Parcel handling porters will work in shifts along with them. From these answers given by him, the learned counsel for the applicants tried to contend that the applicants were under the direct supervision of the railway officers while attending the parcel handling works and therefore it must be presumed that there is master and servant relationship between the Railway Administration and the applicants.

9. In the light of the evidence given by the above witnesses ^{the} main job of the applicants was to carry passengers luggage and their services were also being utilised whenever there was sufficient work for parcel handling by the railway authorities

~~and therefore~~^c it is not possible to draw an inference that they were working as regular railway employees. As rightly pointed out by the learned counsel for the respondents that whenever parcel handling work was being attended by the applicants, necessarily the said work was to be supervised by the concerned railway officers. That circumstance by itself, therefore, does not establish the relationship of master and servant between the Railway Administration and the applicants.

10. The applicant also relied upon the deposition given by one Sri Mallela Shyamasundara Rao as R.W.-2 in PW Case No.5/2000 and Sri Nimmakunta Sai Gopal examined as RW-1 in P.W.case No.5/2000, certified copies of which are produced as Annexure-12 & 13. RW-1 Sri Nimmakunta Sai Gopal has stated in the chief examination that the applicants are not railway employees and they have no fixed wages. According to him, they were given licence mainly to carry luggage of passengers which is their main source of income. As a supplementary income they are getting work of parcel loading and unloading through them and payments are made for the work done on hourly basis in terms of Railway Board letter of 1997 basing on the wages fixed by the Collector. According to this witness, they never asked the applicants to stop carrying passengers luggage and attend[✓] the parcel loading. This evidence given by this witness who is the Chief Parcel Supervisor at Eluru Railway Station is ^{also} not of any help to the applicants. In his cross-examination it is elicited that the work of parcel handling by porters is done under the supervision of the parcel staff and the parcel handling work is being done by the applicants round the clock in shift system. It is further elicited in his cross examination that the Railway Porters Union approached the management pursuant to the orders of the High Court in W.P. No. 19718 of 1983 and arrived at an understanding for 280 man hours per day for handling parcels by the licensed porters at Eluru Railway

station and the arrears of Rs.4,84,613.95 ps. was paid to the porters at Eluru Railway Station in pursuance of Ex.A-4. He also identified the acquittance sheet of such payment as Ex.A-5. It is also in the evidence of this witness that there are ^{more} than 30 trains involving parcel operations during 24 hours and trains will come at different times. The porters and the parcel staff must be alert round the clock to handle the parcels at different trains. The parcel handlong work is of regular nature.

11. Placing reliance on the above facts elicited in the cross examination of the said witness, the learned counsel for the applicants argued that the evidence of this witness establishes the fact that the parcel handling work done by the applicants is a regular work available round the clock at Eluru Railway Station. But his evidence also shows that the applicants were attending to the parcel handling work only to supplement their income which they were mainly getting as licensed porters for carrying passengers luggage.

12. Mallela Shyamasundara Rao who was examined as RW-2 in PW.Case No.5/2000 is working as Assistant Commercial Manager at Vijayawada. Even this witness has stated in his chief examination that the applicants are not railway employees. They were given licence to come on platform mainly to carry passengers luggage. In addition to that, they also get parcel handling work done through the porters as and when there is work and they pay them remunerations for parcel handling depending on the number of minutes/hours they work. It is also in his evidence that the Railway Board's orders ~~are~~ are issued in 1971 to make payments on hourly basis for parcel handling and prior to that, the payment was made on weight basis. At Vijayawada, Rajahmundry and some other places, there were regular railway employees for parcel handling and they are called Parcel porters and Hamals. In those stations, to attend the passengers luggage, there are additional licensed porters.

According to him, they are not keeping licensed porters with them for 8 hours and they are attending on their own. The number of minutes and hours the porters attend to the parcel handling is noted by the Parcel Supervisor. Ex.R-1 is the extract of the daily sheets prepared by the Parcel Office personnel in regular course of business. ^{his} The evidence of this witness ^{also} does not show that at Eluru Railway Station the applicants are exclusively working as parcel porters and Hamals. On the other hand, it is found from his evidence that the applicants are licensed porters to carry passengers luggage at Eluru Railway Station, and their services are also being used/ utilised for handling the parcels by paying them wages on hourly basis as per the Railway Board circular. Thus even the evidence given by this witness ^{also} is not of much assistance to the applicants to prove their claim that they are working as regular employees of the railways for parcel handling at Eluru Railway Station and are being engaged for the said work exclusively.

This witness was confronted with the extracts of Muster Rolls for licensed porters maintained at Eluru Railway Station marked as Ex.A.7 and A.8, for the periods December, 1981, May, 1981, January 1982, December, 1982, June 1983, December, 1983, June 1984, November 1985, December 1985, June 1985, February 1986, August 1986 and September, 1993. This witness also admitted the fact that the Attendance Registers were maintained duly noting the absence of respective porters in Muster Rolls upto January, 1996. He also admitted the fact that in the Muster Rolls it is mentioned that the porters are working in two batches in 1995-96 as if they are working in alternative days covering 24 hours a day. This witness further admitted that as per Ex.A.6 Railways have entrusted the handling of parcels to licensed porters at 22 stations including Eluru and 288 man hours are fixed for Eluru Railway Station at 8 hours per day. But all the above facts elicited in the cross examination of this witness are not sufficient to come to the

conclusion that the applicants were attending the parcel handling works at Eluru Railway Station as full time job and exclusive work. Since the evidence of this witness clearly establishes that the applicants are given licence mainly for carrying passengers luggage and in addition to that work, they are also entrusted with the parcel handling subject to payment of wages on hourly basis, the applicants cannot be considered as full time employees of the railways.

13. At this stage, the learned Standing Counsel for the respondents brought to our notice that the claims ^{similarly placed} made by other licensed porters attending to the parcel handling work in addition to the work of carrying the luggage of the passengers at the Railway Station ^{by the respondents} has been rejected by the Hon'ble High Court of A.P. in W.P.Nos.8933 and 8648 of 1985 by the judgment rendered on 23rd September, 1985, copy of which is produced by the respondents. In the said judgment it has been observed as follows :

" It is an admitted fact that the Railway porters are licensed porters, who carry the goods of the passengers in the Railway station while alighting and boarding into the Train. In addition to this, Railway Administration entrusted loading and unloading of goods to them and payments are being made as per the circular and now as per the directions issued by this Court. They cannot be treated as casual labour or regular workmen. In these circumstances, the direction sought for cannot be granted."

In similar circumstance ^{of} and on similar lines ^{the claim made} the claim made by the applicants in the ^{in the} present O.A. ^{in the} has been rejected, in the above decision. Further even this Tribunal has rejected a similar claim for regularisation in T.A.No.3/1992 by order dated 27.7.1993, copy of which ^{is} produced by the respondents, observing that the request of regular ^{absorption} has already been turned down in the past not only by the High Court

of Andhra Pradesh but also by the Hyderabad and Cuttack Benches of the Tribunal. Secondly, it is for the respondents ^{to decide} whether they should engage them on rotational basis as is being done with a view to benefit a larger number of licensed porters. However, this Tribunal granted relief to the applicants by holding that whenever a Licensed porter is engaged by the Railways for a minimum of 8 hours a day for the work of loading and unloading of goods from the Brake wagon, such licensed porters would be entitled to be paid at the rate of 1/30th of the ^{minimum} ~~minimum~~ of the scale of the pay of a Luggage Porter, and that the said directions will have only prospective effect.

14. The learned Standing Counsel for the respondents also brought to our notice that even the Hon'ble Supreme Court has ^{considered} ~~ensured~~ the status of the licensed porters and their sources of income and passed a detailed order in CA No.9378-79 of 1995 on 30.10.1996 observing as follows :

" In the present case it has been found that the respondents are not railway employees and have been handling the parcels on the basis of an agreement in terms of the licenses that have been issued to them by the railway station. Moreover, in this present case, it cannot be said that the respondents stand par with casual labourers employed on temporary basis by the railway administration. On behalf of the appellants it has been pointed out that a casual labour employed on temporary basis cannot engage in other employment and his earnings are limited to the wages / remuneration received from the railway administration but the respondents, being licensed porters, are free to take additional earnings by carrying the luggage of the passengers at the railway station. There is nothing on record to controvert the said submission. In these circumstances, it must be held that the Tribunal was in error in giving directions regarding payment of remuneration/ wages to the respondent at the rate of which is admissible to a casual labour having temporary status."

A copy of the said judgment in CA No.9378-79 of 1995 dated 30.10.1996 is produced by the respondents. It is also brought to our notice by the learned Standing Counsel for the respondents that the direction given in TA No.3/1992 in respect of applicant M. Chella Rao in that case to pay him wages at the rate of 1/30th of the minimum of the scale of the pay of a Luggage porter has been set aside by the Hon'ble Supreme Court in CA No.752-753 of 1997 by allowing the said appeals by order dated 10th February, 1997, copy of which is produced, by following the decision rendered in C.A.Nos.9378-79 of 1995 dated 30.10.1996. Thus it is found from the above legal ^{portion} ~~decision~~ that the case of the applicants is similar to that of the ^{over 3} ~~licensed~~ porters of railway stations decided by the Hon'ble Supreme Court in the above referred cases. We, therefore, find that ^{Case of} ~~the~~ applicants who are similarly placed ~~as~~ licensed porters at Eluru Railway Station who are granted lincece mainly for carrying passengers luggage and who are also doing the parcel handling work of the railways is clearly covered by the decision of the Hon'ble Supreme Court. and therefore, ^{We find it 3} ~~the~~ applicants are not entitled to seek for regularisation of their services as railway employees and for absorption.


15. The learned counsel for the applicants relied upon a decision of the Supreme Court reported in AIR 1995 SC 1617 in the case of National Federation of Railway Porters, Vendors and Bearers vs. Union of India and others, wherein it was held that "Railway parcel porters working on contract labour - absorption by Railways on regular basis." But we find that the above decision is not applicable to the case of the applicants since it is found that the applicants are not engaged exclusively as railway parcel porters either by way of contract labour or by any other mode and the licences were granted to them only for the purpose of carrying the luggage

of the passengers on the railway platform at Eluru Railway Station and they were allowed to handle railway parcels on payment of wages on hourly basis on the minimum rate payable to the local unskilled worker per day as fixed by the local authorities in terms of the Railway Board letter dated 8.6.1971.

16. The learned counsel for the applicants has also relied upon a decision of the Principal Bench of the C.A.T. at New Delhi in OA No.1217/1997 dated 16.7.1997, copy of which is produced as Annexure-3 to the O.A. But in the above decision the Tribunal only directed the respondents to approach the Labour Commissioner, UP at Kanpur for conducting an enquiry in the same manner as has been done at the instance of the Hon'ble Supreme Court and in the interest of the working class, and thereafter to follow the directions issued by the Hon'ble Supreme Court if they are applicable to the case of the applicants. Further it may also be noted here that in the said case, the applicants were engaged by a contractor which is a Cooperative Society. It is, therefore, clear that the applicants in the above case are also railway parcel porters working on contract labour. So we find that the above decision is also not applicable to the facts of the present case. He further submitted that the same decision has been reaffirmed in a later decision of the Hon'ble Supreme Court in W.P.(Civil) No.433 of 1998 decided on 22nd August, 2003.

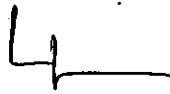
17. For all the above reasons, we record our findings that the applicants are not the railway employees and there is no master and servant relationship between the Railway Administration and the applicants ^{they} are not entitled for regularisation of their services on regular basis by creating regular posts.

18. In the result, this O.A. is dismissed. In the circumstances, we direct the parties to bear their respective costs.


(S.K.AGARWAL)
MEMBER(A)


(K.R. PRASADA RAO)
VICE CHAIRMAN

DATED THE 29th DAY OF MARCH, 2004.


1.4.2004

DJ/