

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 369/2002

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SECTION OFFICER (Judl.)

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 369/02
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s): Tapan Majumdar

- Vs. -

Respondent(s): G.O.I. Goms

Advocate for the Applicant(s): H. Rahman, Pratima Debra, S. Jahan
R. Sagan

Advocate for the Respondent(s): Railway Counsel

Notes of the Registry	Date	Order of the Tribunal
This is application in form C. F. for Rs. 50/- deposited vide IP 1/11/02 076575904 Dated 7.11.02 Dr. Registrar mb 21.11.02 Steps Taken 18/11/02	20.11.02	None appears for the applicant. Pass over for the day. List on 21.11.2002 for admission. ICU Sharma Member Vice-Chairman
	21.11.02	Put up again on 27.11.2002 for admission. ICU Sharma Member Vice-Chairman
	27.11.2002	List the case again on 11.12. 2002 for admission. Vice-Chairman
	11.12.02	None appears for the applicant today also. Put up the matter on 19.12.2002 for admission in presence of Mr. H. Rahman, learned counsel for the applicant. ICU Sharma Member Vice-Chairman

mb

19.12.02

None appears for the applicant today also. List on 20.12.2002 for admission and orders.

K. U. Sharma
Member

[Signature]
Vice-Chairman

mb

20.12.02

Heard Mr. H. Rahman, learned counsel for the applicant and also Mr. B.K. Sharma, learned Sr. Standing counsel for the Railway.

Issue notice of motion. Returnable by four weeks.

List on 23.1.2003 for admission.

K. U. Sharma
Member

[Signature]
Vice-Chairman

mb

23.1.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Administrative Member.

Heard Mr. B.K. Sharma, learned Sr. counsel for the respondent and also Mr. H. Rahman, learned counsel for the applicant.

List again on 7.2.2003 for admission to enable the respondents to obtain necessary instructions on the matter.

[Signature]
Member

[Signature]
Vice-Chairman

mb

7.2.2003

Put up again on 10.3.2003 to enable the respondents to file reply.

[Signature]
Member

[Signature]
Vice-Chairman

mb

No reply has been filed

[Signature]
7.3.03

Notice prepared and sent to Dls for info the respondent No. 1 to 6 by Regd Atty.

[Signature]
23/12

D/No 3450 to SS

Dtd 27/12/02

Notes of the Registry

Date

Order of the Tribunal

10.3.2003

Heard Mr.S.Sarma, learned counsel appearing for the respondents. The application is admitted.

Mr.S.Sarma, learned counsel has stated that the respondents are filing the written statement in course of the day.

In that view, the matter is therefore listed for hearing on 7.4.2003. The applicant may file rejoinder within two weeks from today.

Vice-Chairman

bb

7.4.

Division Bench did not sit today. The case is adjourned to 20/5/2003.

mb

20.5.03

Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is dismissed in terms of the order. No order as to costs.

Member

Vice-Chairman

pg

27.5.2003

Copy of the Judgment has been sent to the Office for issuing the notice to the applicant as well as to the Railway Advocate for the Regdn.

AS

12.3.03
W/s Submitted
by the Respondents.

No rejoinder has
been filed.

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4.4.03

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

✓ O.A. / R.A. No. 369 . . . of 2002.

DATE OF DECISION 20-5-2003.

... Sri Tapan Majumdar, Secretary, M/s Lumding
Youth Labourers Co-operative Society Ltd. APPLICANT(S).

... Mr H. Rahman ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

... Union of India & Ors. RESPONDENT(S).

... Sri S. Sarma ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR S.K. HAJRA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Ho'ble Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 369 of 2002.

Date of Order : This the 20th Day of May, 2003.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr S.K.Hajra, Administrative Member.

Sri Tapan Majumdar,
Secretary, M/s Lumding Youth Labourers
Cooperative Society Ltd.,
(Railway Contractor) Lumding Coal and Ash
Handling & Cinder Packing under
Lumding Zone, Jhulonpol Road,
P.O.Lumding, Dist.Nagaon, Assam.

...Applicant

By Advocate Sri H.Rahman,

- Versus -

1. Union of India,
represented by the Secretary,
Railway Board, Rail Bhawan,
New Delhi.
2. General Manager, N.F.Railway,
Maligaon, Guwahati-11.
3. Chief Personnel Manager,
N.F.Railway, Maligaon,
Guwahati-11.
4. Chief Mechanical Engineer,
N.F.Railway, Maligaon, Guwahati.
5. Divisional Railway Manager,
N.F.Railway, Lumding,
Dist. Nagaon, Assam.
6. Senior Divisional Mechanical
Engineer (Power), N.F.Railway,
Lumding, Dist. Nagaon, Assam.

...Respondents

By Advocate Sri S.Sarma.

O R D E R (ORAL)

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking for a direction on the respondents to implement the scheme framed by the Railway Board to regularly absorb the contract labourers those completed 240 days continuous service. The O.A. is filed by the Secretary of the Lumding Youth Labourers Co-operative Society Limited (Railway Contractors) Lumding Coal Handling & Cinder Packing under Lumding Zone having its total members of 200 under the licence issued

by the Assistant Labour Commissioner, Guwahati. According to the applicants they worked under the contractors for more than 240 days and acquired a right for regular absorption. Some of the workers were absorbed by the railway against permanent vacancies in Group D post and these applicants were single out members of the association. Failing to get appropriate remedy before the authority the applicants moved the Gauhati High Court by their Writ Petition (C) No.5069/2002. By order dated 23.9.2002 the High Court disposed of the petition directing the applicants to approach this Tribunal for appropriate relief in accordance with law. Hence this application praying for absorption of the applicants.

2. The respondents contested the case and submitted its written statement. In the written statement the respondents contended that the claim of the applicant pertaining to the period between 1.1.78 to 31.12.78 and the writ petition was filed before the High Court after a lapse of 22 years. The Railway authority also put the plea of maintainability of this application on the score that none of the aggrieved person was associated with the application as required by the procedure prescribed under the Central Administrative Tribunal (Procedure) Rules. The relief claimed by the applicants was related back to the period 1977-78 i.e. much before the coming in force of the Tribunal under the Act 1985. The applicants are contract labourers and do not come within the jurisdiction of this Tribunal. The scheme referred to by the applicants was only applicable to open line casual workers and the cut off date for consideration was on or before 31.3.87. The Railway Board issued the notification for giving widespread publicity for absorption of casual labourers. No applicants of the present O.A. had applied for such absorption, asserted the respondents.

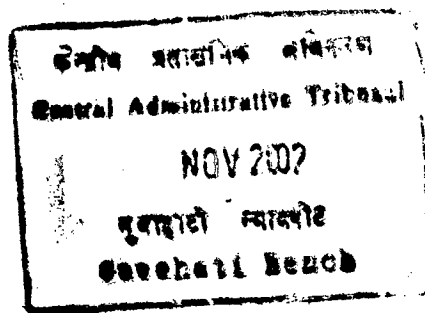
3. We have heard Mr H.Rahman, learned counsel for the applicants and Mr S.Sarma, learned counsel for the respondents at length. We have given our anxious consideration. It appears from the own showing of the applicants that they were working as casual labourers under the contractors. The dispute that has been raised is basically a dispute which cannot be said to be a subject matter relating to service in connection with affairs of the State and/or civil post. The pleadings are bereft of the material facts for adjudication also. An O.A can no doubt be entertained by the Tribunal in a single application having regard to the cause of action and the nature of relief prayed for that they have a common interest in the matter. Such permission may also be granted to an association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories of persons on whose behalf it has been filed and also provided that at least one affected person joins such an application. No such aggrieved workers are before us. In the application the applicants pleaded that these applicants rendered their service and worked for 240 days in the year 1977-78 and no details are ascribed as to why the applicants could not take initiative i.e. long before the Tribunal came into existence. The subject matter also seemingly a matter of trade dispute and outside the jurisdiction of the Tribunal. Mr H.Rahman, learned counsel for the applicants cited before us the decision rendered by the Calcutta Bench of the Tribunal in O.A.313/97, wherein the Calcutta Bench relying upon the decision rendered by the Supreme Court in Union of India & Ors. vs. Subir Mukherji & Ors. reported in AIR 1998 SC 2247, regarding jurisdiction and giving appropriate direction. We have

perused the decision. That was a decision rendered by the Calcutta Bench on the application of the aggrieved persons. That apart the respondents did not raise any objection as to the maintainability of the application under the Administrative Tribunals Act. Mr Rahman, the learned counsel appearing for the applicant also referred to decision rendered by the Supreme Court in Subir Mukherjee (supra) and contended that in the aforesaid case also the applicants were working as casual labourer under the Bandel Handling Porters Co-operative Society Ltd. In that case also 20 affected persons were before the Tribunal and those persons were initially engaged as labourers under the contractors for doing the work of Eastern Railway on contract basis. The said decision was a decision on facts and the Supreme Court was also satisfied as to the nature of the job rendered by the workers and their entitlement for their regularisation in the Railway service under the scheme on the facts situation. On consideration of all the materials on record and the nature of the O.A. and on consideration of the pleadings we are not inclined to exercise our discretion under Section 19 of the Administrative Tribunals Act. Accordingly the application is dismissed.

There shall, however, be no order as to costs.


(S.K. HAJRA)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE CHAIRMAN



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Tafelberg Napamden
Filed by Haribwe Radew

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH AT GUWAHATI

An application under Section 19 of the Central Administrative Tribunal Act, 1985.

ORIGINAL APPLICATION NO. 369 / 2002.

Shri Tapan Majumdar,
Son of late Rabindra Kumar Mazumdar,
Secretary of M/s Lumding Youth Labourers
Cooperative Society Ltd(Railway
Contractor) Lumding Coal and Ash
Handling & Cinder Packing under
Lumding Zone, Jhulonpol Road,
Post office- Lumding, District.-Nagaon,
Assam.

..... Applicant.

- Versus -

1. The Union of India, represented by
the Secretary, Railway Board,
Ministry of Railway, Rail Bhawan,
New Delhi.
2. General Manager, N.F. Railway,
Maligaon, Guwahati- 11.
3. Chief Personnel Manager, N.R. Railway,
Maligaon, Guwahati- 11.

4. Chief Mechanical Engineer,
N.F. Railway Maligaon, Guwahati 11.
5. Divisional Railway Manager,
N.F. Railway, Lumding, Distt-Nagaon,
Assam.
6. Senior Divisional Mechanical
Engineer (Power), N.R. Railway,
Lumding, Distt-Nagaon, Assam.

..... Respondents.

I. PARTICULARS OF THE ORDER AGAINST WHICH
THIS APPLICATION IS MADE

This application is made in compliance with
the order dated 23.9.2002 passed by the
Hon'ble Gauhati High Court passed in W.P.(C)
No. 5069/2000.

..... (Annexure -2)

II. JURISDICTION :

The applicant declares that the cause of
action of this application is within the
jurisdiction of this Hon'ble Tribunal.

III. LIMITATION:

The applicant further declares that this
application is filed within the prescribed
period of limitation.

IV. FACTS OF THE CASE:

1. That your humble applicant is a citizen of
India and is a permanent resident of Lumding in the

Japan Majumdar

district of Nagaon (Assam) and as such, he is entitled to all the rights and protections guaranteed to a citizen of India and the rules framed thereunder.

2. That your humble applicant is the Secretary of the M/S Lumding Youth Labourers Cooperative Society Ltd (Railway Contractors) Lumding Coal Handling & Cinder Packing under N.F. Railway, having its registered office at Lumding in the district of Nagaon, Assam.

3. That your humble applicant is the Secretary of the above-named Cooperative Society having its total members around 200 and the Government of India, Office of the Licensing Officer ^{under} ~~under~~ Asstt. Labour Commissioner, Guwahati issued a certificate giving a licence under the Contract Labourers (Regulation and Abolition) Act, 1970 for a period of 25.1.78 to 24.1.79.

A copy of the licence issued to the Co-operative Society is enclosed herewith and marked as Annexure- 1.

4. That your humble applicant begs to state that under the licence granted by the Assistant Labour Commissioner, Guwahati, your humble applicant applied for loading and unloading job in various stations like Lumding, Chapormukh, Dimapur etc. where coal

~~ukh~~

duties performed by the labourers as as follows:-

- (a) Coal loading to engine from the stock-
yard and unloading from tailor before
repair,
- (b) Loading and unloading of coal from the
wagons of the Yard,
- (c) Coal stack levelling and maintaining and
grouping as per requirement,
for
- (d) Maintaining the steam engine (Emergency
Relief

Relief train and goods-train and loading
coal to the crane,

(e) Clearing the cinder dust from the burning
coal as ashes etc. etc.

6. That your humble applicant begs to state that as the contractors under the authority of the contract licence engaged the labourers from time to time as required by the department in various loco sheds and Stock-yards and as such, the services of the workers are utilised by the Railway authorities through the contractors regularly and continuously and thus most of the workers have completed more than 240 days at a stretch working under the contractor for the service of the railway.

7. That your humble applicant begs to state that the workers thus working under the contractors for the purpose of railway have completed more than 240 days of service and the services are treated essential service and most of the workers have completed their continuous duties for more than 240 days in a year and thus they acquired a right for their regular absorption under the railway as per the Scheme framed by the railway authority as per various decisions of the Hon'ble Apex Court.

8. That your humble applicant begs to state that most of the workers have completed their working days for more than 240 days in the year 1977-78 and they have applied for their regular absorption in

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the railway as per the Scheme framed by the Railway. It may be mentioned herein that in some railways, labourers who have completed more than 240 days in a year are gradually absorbed against permanent vacancies in Group- D post in the Railway and as such, your applicant and the labourers who are working under the Applicant's Society are also entitled for their regular absorption in Group-D post as per the Scheme framed by the Railway.

9. That your humble applicant begs to state that as the applicants were not absorbed regularly by the N.F. Railway, although they have acquired a right for permanent absorption in the N.F. Railway and the individual applicants have submitted their applications for their regular absorption, but their cases were not considered by the railway authority and as such, they have filed a Writ petition before the Hon'ble Gauhati High Court for redressal of their genuine grievances. The Hon'ble High Court was pleased to admit their petition ~~before~~ which was registered as W.P.(C) NO. 5069/2000 and the same was pending for disposal before the Hon'ble High Court.

10. That your humble applicant begs to state that while your applicants have filed a Writ petition before the Hon'ble High Court, they have categorically mentioned about their grievances that the workers have acquired a right to be absorbed against the regular Group- D post as per Scheme framed by the

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railway and in their Writ petition they have mentioned about various ~~demands~~ judgments of the Hon'ble High Courts as well as the Apex Court in connection with the above subject.

11. That your humble applicant begs to state that the Writ petition No. 5069/2000 was listed for hearing before the Hon'ble High Court on 23.9.2002. The Hon'ble High Court was pleased to pass an order on 23.9.2002 directing the applicants to file a petition before the Hon'ble Central Administrative Tribunal for appropriate relief and accordingly the Hon'ble High Court was pleased to dispose of the Writ petition No. 5069/2000.

A copy of the order passed by the Hon'ble High Court is annexed hereto and marked as Annexure- 2.

12. That your humble applicants beg to state that the grievances of the applicants is that the workers who were working under the Secretary of the Cooperative Society have completed more than 240 days continuously and as such, they are entitled for regularisation of their services. But due to abolition of the Loco Shed and Steam engine all the workers have become jobless after completion of more than one year service under the railway through the contractors and as contract labourers they are entitled for their regular absorption under Group-D vacancies of the railway. Under the same Scheme of regularisation the railway authority have

already regularised the services of licence porters working under the Contractors for the loading and unloading of parcel and goods-office and the bearers and vendors of the Catering Department are regularly absorbed by the railway authority as against Group-D post under the same scheme and your applicant and workers under their Cooperative Society/ Association are also entitled for their regular absorption like that of other similarly situated contract labourers under the contractors in the railway.

13. That your humble applicant begs to state that the National Federation of Railway Porters Vendors and Bearers have filed a Writ petition before the Hon'ble Supreme Court in connection with regular absorption of the contract labourers and the Hon'ble Supreme Court by its judgment reported in 1995 Supplementary 3 SCC page 152(National Federation of Railway Porters, ~~and~~ Vendors and Bearers- Vs-The Union of India and others decided the case in favour of the petitioners for their regular absorption as per the Scheme under the Contract Labour (Regulations & Abolition) Act, 1972.

14. That your humble applicant begs to state that in connection with the same and identical matter the Apex Court has passed various judgments with directions to the respondents- authority to regularise the contract labourers services in a phased manner against Group-D vacancies as per

IX
Jagan Mohan

the Scheme framed by the Railway. Your applicant is also entitled for such a direction as per scheme framed by the Railway and the direction may be issued to the N.F. Railway authority to consider the case of your applicant- association to absorb the contract labourers who have acquired the right to be permanently absorbed after completion of 240 days continuously working under the Railway.

15. That your humble applicant begs to state that they have submitted their individual applications before the railway authorities, Lumding Division for their regular absorption and the applications are pending in the office of the Divisional Railway Manager, Lumding for consideration of their grievances.

16. That your humble applicant- association begs to state that the applications were submitted by the applicants are still pending for disposal. On the other hand, the railway authority have adopted a policy to fill up all those posts of Group D through open market without considering the contract labourers working under the Railway through the contractors.

17. That your humble applicant- association begs to submit that the members of the Association of the applicant has completed more than 240 days of continuous service under the railway, and, as such, the members who have completed more than 240 days' service continuously under the railway have already submitted their applications to the authority for

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Japan Mapunder

their regular absorption against the Group-D vacancies like that of other railways. But till today their cases have not yet been considered by the N.F. Railway though the other railways have already considered the ~~case~~ of the contract labourers and gradually in a phased manner the contract labourers are absorbed in other railways.

18. That your applicant-Association demanded justice which is denied to them and as such, the applicants have filed this application for a similar direction from this Hon'ble Tribunal to the respondents to consider the case of your humble applicant- association and its members as per the scheme framed by the railway.

V. LEGAL GROUNDS FOR RELIEF:-

a) For that your applicant and its members are entitled to be considered for permanent absorption in the railway as per the scheme of 240 days framed by the railway against the Group-D post.

b) For that all the members of the Association and Society are entitled for regular absorption as they have completed more than 240 days in regular service working in the various Loco Sheds and railway stations and thus they have acquired a right to be considered for their absorption in the railway.

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Japan Memorandum

c) For that all the members of the Association who have completed for more than 240 days continuous service are entitled for permanent absorption in the railway and they have submitted their applications before the Divisional Railway Manager, Lunding for their permanent absorption and the applications are still pending with the respondents -authority.

d) For that your humble applicants registered under the Association and are working under the Secretary of the Association, are entitled for their regular absorption as per the scheme framed by the Railway Board and implemented in other railways and have regularised the services of the contract labourers in those railways.

e) For that in any view of the matter the applicants and its Association are entitled for their regular absorption against the vacancies of Group -D post in the railway as per the scheme framed by the railway.

VI. DETAILS OF THE REMEDY EXHAUSTED:

There is no remedy except filing this application before this Hon'ble Tribunal as your humble applicant exhausted all the remedies available to him.

VII. MATTERS NOT PENDING IN ANY OTHER COURT/TRIBUNAL

The applicant declares that he has not filed any other application before any Court/Tribunal.

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Japan Majumdar

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VIII. RELIEF PRAYED FOR:-

The applicant prayed for before the Tribunal that a direction may be issued to the respondents to implement the Scheme framed by the Railway Board to regularly absorb the contract labourers who have completed for more than 240 days of continuous service and are entitled for regular absorption and to consider the case of the applicant and the members of its Society for their regular absorption in the railway like that of other similarly situated persons.

IX. INTERIM RELIEF PRAYED FOR:-

NIL

X. PARTICULARS OF THE POSTAL ORDER:

1. Postal Order No. 76 575904
2. Date of issue:- 07/11/2002
3. Issued from: G.P.O. Guwahati.
4. Payable at Guwahati.

XI. DETAILS OF INDEX:-

An index showing the particulars of the document is enclosed.

XII. LIST OF ENCLOSURES:-

As per index.

VERIFICATION

I, Shri Tapan Majumdar, son of late Rabindra Kumar Majumdar, resident of Lumding, District -Nagaon, Assam aged about 39 years, working as Secretary of M/S Lumding Youth Labourers Cooperative Society Ltd. (Railway Contractor) Lumding Coad & Ash Handling & Cinder Packing under the Lumding Zone, Jhulonpol Road, Lumding Distt- Nagaon, do hereby solemnly affirm and state as follows:-

1. That I am the applicant in the above application and as such, I am acquainted with the facts and circumstances of the case.
2. That I am fully competent to verify this application and I do hereby verify this application as true to my knowledge and belief and I have not suppressed any material facts.

And I sign this verification on this the 14 th day of November, 2002 at Guwahati.

Tapan Majumdar
Deponent

Place:-Guwahati

Date:- 14. 11. 2002

ANNEXURE- 1

Form- VI

(See Rule 25(I))

GOVERNMENT OF INDIA
Office of the Licensing Officer,
Assistant Labour Commissioner (C),
Gauhati.

Licence No. L/6/78 dtd. 25.1.78

Fees paid Rs. 25/-

LICENCE

Licence is hereby granted to M/s Lunding Youth Labour Co-operative Society Ltd, Railway Contractor Lunding(Coal , ash handling and cinder packing under the Lunding Zone under Section 12(I) of the Contract Labour (Regulation and Abolition) Act, 1970, subject to the conditions specified in Annexutre.

The Licence shall remain in force till 24.1.1979.

Sd/-

date 25.1.78

25.1.78

Signature and Seal of the
Licencing Officer.

RENEWAL

(See Rule 29)

Date of renewal	Fees paid for renewal	Date of expiry.
1.		
2.		
3.		

Date:-

Signature & Seal of the Licencing Officer.

ANNEXURE

The licence is subject to the following conditions:-

- (1) The licence shall be non transferable.
- (2) The number of workmen employed as contract labour in the establishment shall not on any day, exceeds One fifty

Attested
Ali Mostafa Ahmed,
Advocate

seven only (157).

(3) Except as provided in the rules the fees ~~shall~~ paid for the grant, or as the case may be, for renewal of the licence shall be non-refundable.

4. The rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed for the Schedule of employment under the Minimum Wages Act, 1948, where applicable, and where the rates have been fixed any agreement settlement or award, not less than the rates fixed.

5. In case where the workmen employed by the contractor performed the same or similar kind of work as the workmen directly employed by the principal employer of the establishment the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work;; provided that in the case of any disagreement with regard to the type of work shall be decided by the Chief Labour Commissioner (Central), whose decision shall be final.

(6) In other cases the wage rates, holidays hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the Chief Labour Commissioner (Central).

(7) In every establishment where twenty or more women are ordinarily employed as contract labour there shall

be provided two rooms of reasonable dimensions for the use of their children under the age of six years. One of such rooms would be used as a play room for the children and the other as bed room for the children. For this purpose the contractor shall supply adequate number of toys and games in the play-room and sufficient number of cots and beddings in the sleeping room. The standard of construction and maintenance of the creches may be such as may be specified in this behalf the Chief Labour Commissioner (Central).

(8) The licensee shall notify any change in the number of workmen or the conditions of work to the licensing officer.

Sd/- Illegible,

25. 1. 78

Asstt. Labour Commissioner,
Gauhati.

Attested
Ali Mostafa Ahmed,
Advocate.

ANNEXURE- 2.

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR
TRIPURA: MIZORAM & ARUNACHAL PRADESH)

Civil Appellate Side.

W.P.(C) NO. 5069/ 2000

M/s Lumding Youth Labours Co-op.
Society Ltd and ors.

Petitioner.

Vs.

The Union of India and ors.

Respondents.

For the petitioner:-

Mr. B. Ahmed, Mr .R. Islam,
Mr. M. Haque, Ms A. Begum,
Mr. S. Rahman.

For the respondents:-

Standing Counsel , Railway.

In the matter of:-

1. M/s Lumding Youth Labourer Co-Operative Society Ltd(Railway Contractor) Lumding, Coal & Ash Handling & Cinder Packing under Lumding Zone, N.F. Railway, having its office at Lumding, PO Lumding, Distt Nagaon, Assam .
2. Shri Niru Gopal Nag,
S/o Late Makhan Lal Nag.
The Agent of M/s Lumding Youth Labour Cooperative Society Ltd
(Railway Contractor) Lumding Coal and Ash Handling & Cinder Packing under Lumding Zone, having its office at

Attested
Ali Mustafa Ahmed,
Advocate.

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Lumding, PO Lumding, Distt- Nagaon,
Assam.

3. Shri Tapan Mazumdar,
S/o late Rabindra Kumar Mazumdar,
Secretary of M/s Lumding Youth
Labourer Cooperative Society Ltd.
(Railway Contractor) Lumding
Coal & Ash Handling & Cinder Packing
under Lumding Zone, Jhulonpaol
Road, PO Lumding, Distt- Nagaon,
Assam.

..... Petitioners

- Versus -

1. Union of India, service through the
Secretary, Ministry of Railways, Railway Board,
Railway Bhawan, New Delhi.
2. The General Manager, North Eastern
Frontier Railway, Maligaon,
Gauhati- 11.
3. The Chief Personnel Officer,
N.F. Railway, Maligan, Gauhati- 11.
4. The Divisional Railway Manager,
NF Railway, Lumding, PO Lumding,
Distt. Nagaon, Assam.
5. The Chief Mechanical Engineer,
NF Railway, Maligaon, Guwahati.
6. The Senior Divisional Mechanical
Engineer(Power), NF Railway,
Lumding. Distt- Nagaon.

..... Respondents.

BEFORE
THE HON'BLE MR. JUSTICE RANJAN GOGOI.

23.9.2002. After hearing the learned counsels for the parties and having regard to the provisions of the Central Administrative Tribunal Act, 1985 and the law laid down by the Apex Court in the case of L. Chandra Kumar Vs. Union of India, reported in (1997) 3 SCC 261, this Court is of the considered view that the petitioners should approach the learned Central Administrative Tribunal, Guwahati Bench by filing an appropriate application before the learned Tribunal in respect of the grievances highlighted in the present Writ application.

This Writ petition, stands accordingly, closed by giving a liberty to the Writ petitioners to approach the learned Central Administrative Tribunal in accordance with law.

Sd/- Ranjan Gogoi,
Judge.

Attested
Ali Mostafa Ahmed,
Advocate.

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10 MAR 2003

Before the Central Administrative Tribunal, Guwahati Bench

OA No. 369/2002

Filed by
Advocate
3/3/03.

Soumitra Nayan Ray

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Personnel Officer
N. P. Luning

Before the Central Administrative Tribunal, Guwahati Bench

Tapen Majumdar Applicant
-Vs-
Union of India & Ors. Respondents

Written Statement filed by the Respondents

- i) That the respondents have received a copy of the OA and have gone through the same. Save and accept the statement which, specifically admitted herein below, rests may be treated as total denial. The statements, which are borne on records, the applicant is put to the strictest proof thereof.
- ii) That with regard to the statement made in para-I, II & III of the OA, the answering respondents deny the contentions which are not based on records and which are inconsistent.
- iii) That with regard to the statement made in para-I of the OA it is categorically denied that they are all citizens of India. That statement made in the OA is totally vague and hence denied.
- iv) That with regard to the statement made in para-2 of the OA, the answering respondents while denying the contentions made therein beg to state that the applicant has no locus standi to espouse cause of its members and under the relevant Rules they can not be treated as ex-Casual Labour.
- v) That with regard to the statement made in para-3 of the OA, the answering respondents while denying the contentions made therein beg to state that the certificate issued to the society can not attach any enforceable right and hence it is denied.
- vi) That with regard to the statement made in para-4 of the OA, the answering respondents beg to state that no contract work was provided by the Railways to the present petitioner as alleged. The claim made by the applicant is pertaining to the period w.e.f 01-01 78 to 31-12-78 and the Writ Petition was filed before the Hon'ble High Court after a lapse of 22 years. The said Writ

(Contd...P-2)

Petition now has been filed by the petitioner in the form of an OA and taking into consideration Rule-21(2)(a) of the Administrative Tribunal Act, 1985, the present OA is barred by limitation, even taking into consideration Section 14 of the Limitation Act.

(vi) That with regard to the statement made in para-5 of the OA, the answering respondents categorically deny that the petitioner had even worked under Railway Authority.

(vii) That with regard to the statement made in para-6 of the OA, the answering respondents while denying the contentions made therein and beg to state that their engagement under the applicant is doubtful and vague as it does not disclose anything regarding registration etc.. The existence of the society and their very identity is doubtful and therefore the claim made by the petitioner is denied as there is no foundation of any such claim. It is noteworthy to mention here that the petitioner himself is not sure about the details of it's members and in fact he has got no locus stand to agitate the matter taking into consideration Rule-4(5)(b) of the CAT (Procedure) Rules, 1987.

(ix) That with regard to the statement made in para-7 of the OA, the answering respondents deny the correctness of the same and beg to say that the scheme referred to by the petitioner is only applicable to open line Casual Labour and project Casual Labour and the cut-off date for such consideration is on or before 31-03-87. As per the Railway Board's letter No.E(NG)II-78/CI/2 dated 04-03-87, the cut off date of such consideration is on or before 31-03-87 and widespread notices were issued by the Railways on 13-03-87 enclosing the format. It is reiterated again that the aforesaid notification covers only project Casual Labourers and open line Casual Labourers and this petitioner can not claim the benefits of the said circular.

(x) That with regard to the statement made in para-8 of the OA, the answering respondents while reiterating and reaffirming the statement made above beg

Project
Casual Labour (Contd...P-3)
&
Open line
Casual
Labour

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Sourindra Nayak by
प्रहलद कामिक अधिकारी
पु. सी. नं. २०६ अमरावती
Personnel Office
N. P. S. Lumang

to state that claim referred to by the petitioner in of 1977-78 and as such same are hopelessly barred by limitation.

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- Srinivas Narayana Ray
अधीक्षक
गो. रेल. सेवा
Div. Personnel Off.
N. P. S. Lumbini
- xi) That with regard to the statement made in para-9 of the OA, the answering respondents deny the corrections of the same and beg to state that taking into consideration Annexure-2 judgement and order dated 23-09-2002, the statement is misleading. In fact, the Hon'ble High Court was pleased to close the matter in presence of their counsel and taking clue from the said judgement the petitioner now has come before this Hon'ble Tribunal. It is stated that taking into consideration section-3(q) of the Administrative Tribunal Act, 1965, the Hon'ble Tribunal has got no jurisdiction to entertain this OA as the petitioner do not fall under the category of Central Govt. Civilian Employee.
- xii) That with regard to the statement made in para-10 & 11 of the OA, the answering respondents while denying the contentious made therein beg to state that a judgement can not give rise to a cause of action as stated by the petitioner. As stated above taking into consideration the factual aspect of the matter the petitioner has got no locus standi to agitate the matter before this Hon'ble Tribunal and in absence of any material disclosure, no relief can be granted.
- xiii) That with regard to the statement made in para-12, 13 & 14 of the OA, the answering respondents state that as per their own averment some workers worked under the secretary of the said society but there is not material to show that the aforesaid work was in relation to Railway Administration. In absence of any material particulars and non-disclosure of service particulars, the applicant is not entitled to any relief. It is also stated that the case laws cited by the petitioner does not cover his case.
- xiv) That with regard to the statement made in para-15 of the OA, the answering respondents while reiterating and reaffirming the statement made above beg

(Contd...P-4)

to state no such representation/ application has been received by the Railway Administration and hence the question of consideration does not arise.

- xv) That with regard to the statement made in para-16 of the OA, the answering respondents while denying the contentions made therein beg to state that no such representation was received by the authority and so such policy has been adopted for filling up of Group-D post from open market. The policy adopted by the Railway as stated above came to an end w.e.f 31-03-87.
- xvi) That with regard to the statement made in para-17 & 18 of the OA, the answering respondents while denying the contentions made therein beg to state that no such material particulars are available in the office of respondents to show their such service. It is also denied that no such representations have been received by the respondents and hence question of considering their cases does not arise.
- xvii) That the answering respondents beg to state that taking into consideration the statements made above it is clear that there is no good grounds to entertain this OA as alleged in para-V of the OA and as such he is entitled to any relief as claimed by the applicant in para-VIII of the OA and same is liable to be dismissed with course.
- xviii) That answering respondents beg to state that the present OA is liable to be dismissed on the ground of delay and laches also and so also on the ground of waiver, estoppel and acquiescence. Further the claim of the petitioner being for regularization is not at all maintainable on the ground of jurisdiction. It is further stated that the applicant in the application has not disclosed/explained the circumstances of delay and such same is hopelessly barred by limitation and as such no interference from this Hon'ble Tribunal is called for.
- xix) That in view of the aforesaid fact and circumstances, the OA deserved to be dismissed with course.

(Contd...P-5)

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Arjun Polen & 14 others

- VS -

- 1) Union of India, service through the General Manager, Eastern Railway, Cal-1.
- 2) Chief Personnel Officer, Eastern Railway, Fairlie Place, Calcutta-1.
- 3) General Manager, Eastern Railway, Fairlie Place, Calcutta-1.
- 4) Senior Superintendent, Printing & Stationery, Eastern Railway, Fairlie Place, Cal-1.
- 5) Assistant Superintendent of Printing & Stationery, Eastern Railway, F. Place, Cal-1.
- 6) The Assistant Manager, Printing & Stationery, Eastern Railway, Fairlie Place, Cal-1.
- 7) Bandal Handling Porters' Cooperative Society Ltd., P.O. & Vill. Naldanga, Bandal, Hooghly.
- 8) Young Bengal Cooperative Labour Contract Society Ltd., Calcutta-3.
- 9) Friend Cooperative Labour Contract & Construction Society Ltd., P.O. Garifa, Dist: 24-Parganas.

.... Respondents

For the Applicants : Mr. Samir Ghosh, Advocate

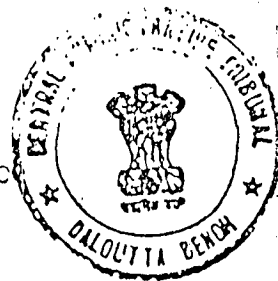
For the Respondents : Ms. U. Bhattacharya, Advocate.

Heard on : 24-8-2000

Date of Order : 24-8-2000

ORDER

D. PURKAYASTHA, JM



Heard Ld. Advocates of both the parties. Ld. Advocate Mr. Ghosh, appearing on behalf of the applicants, submits that this case can be disposed of in the light of the judgement passed by the Hon'ble Apex Court reported in JT 1998 (3) S.C. 540 (Union of India & Ors. -Vs- Subir Mukherji & Ors.) where the Hon'ble Apex Court held that - there is no denial on the part of the respondents Nos. 1 to 5 that the work which respondents have been doing is of perennial nature. even

Contd....

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otherwise the directions issued by the CAT in its order dated 13.3.1997 (CA.No.1045 of 1995) have given enough discretion to the Eastern Railways to absorb them as regular Group D employees bearing in mind the quantum of work available on perennial basis and subject to their fitness. In our opinion the directions contained in the order dated 13.3.1997 passed by the CAT are quite fair in the facts and circumstances of the case". It appears that the judgement has been passed by the Hon'ble Apex Court stating that similar issue, i.e. an SLP was filed by the Railway before the Hon'ble Supreme Court on 28.2.1997 against the order of the Hon'ble Tribunal. The said SLP has since been disposed of by the Hon'ble Supreme Court on 3.4.1997 ordering "It will be for the concerned Railway to take such measure as they may consider appropriate in this regard. The Hon'ble Supreme Court further ordered "Heard both sides. For the reasons stated above, leave is granted. The impugned order of the Tribunal is set aside and the appeal is allowed in the same terms". The respondents crave leave to produce the said judgement of the Hon'ble Supreme Court at the time of hearing through their ld. advocate. Therefore, we find that judgement of the Hon'ble Tribunal (Subir Mukherjee & Ors. -Vs- Union of India & Ors.) has been upheld by the Hon'ble Apex Court in a judgement passed in Civil Appeal No.1057 of 1996 (Union of India & Ors. -Vs- Subir Mukherjee & Ors.) reported in (JT 1997 (3) S.C. 540. So, we are of the view that if the applicants are similarly circumstanced and guided by such rules, that judgement can be applied to them and non-extension of benefit to the applicants amounts to violation of articles 14 and 16 of the Constitution. In view of the aforesaid circumstances, we dispose of the application with a direction upon the respondents to consider the same in the light of the judgement of the Hon'ble Apex Court i.e. U.C.I. & Ors. -Vs- Subir Mukherjee & Ors. and to grant them appropriate relief in accordance with the rules within three months from the date of communication of this order. No order as to costs.

(G.S. Meingi)
Member(A)



(D. P. Mishra)
Member (B)

Order of the Tribunal
Certified to be the original
Copy forwarded to the
Central Administrative Tribunal
Patna Bench

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 15535 OF 1996

(Arising out of SLP (C) No. 7417 OF 1992)

Air India Statutory Corporation ... Appellant

Versus .

United Labour Union & Ors. ... Respondents

W I T H

CIVIL APPEAL NOS. 15536-37, 15532-15534

OF 1996

(Arising out of SLPs (C) Nos. 7418-19/92 & 12353-55/95)

AND

J U D G M E N T

S. B. Majumdar. J. : (Concurring Judgment)

I have gone through the lucid and erudite
judgment prepared by learned Brother Ramaswamy, J.

I, wholly concur with what has been held therein. I endorse each and every conclusion to which my learned Brother Ramaswamy, J. has reached. However, as the fate of erstwhile contract labour on abolition of contract labour system under the provisions of Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 has always raised a vexed question before the High Courts and before this court, I have thought it fit to put my observations on this question. It is true that a Bench of two-Judges of this Court to which I was a party in the case of Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat vs. Hind Mazdoor Sabha & Ors. ((1995) 5 SSC 271) in the light of earlier judgment of two-Judges' Bench of this Court in the case of Dena Nath Vs. National Fertilizers Ltd. ((1992) 1 SCC 695) had to soften the rigour of the latter decision, by trying to evolve a locus coactus for contract labourers on abolition of their contract labour from the establishment. But on further consideration it is found, as rightly held by Brother Ramaswamy, J., that such a scheme would not be workable. Under the Contract Labour (Regulation and Abolition) Act, 1970 hereinafter referred to as 'the Act' twin

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methodology had been adopted by the legislature. In the first instance, it sought to regulate contract labour employed in any establishment wherein such labour was not of a perennial nature but has to be regulated so that the right to life available to workmen as per Article 21 would not be rendered illusory. Various welfare measures have been provided by the Act in connection with such regulations. The contract workers who are engaged by the contractor for the benefit of the principal employer are brought within the beneficial sweep of Chapter V of the Act. Section 15 deals with provision of canteens for such workmen. Section 17 deals with rest-rooms. Section 18 enjoins the contractor employing such contract labour in connection with work of such establishment to provide sufficient supply of wholesome drinking water as well as sufficient number of latrines and urinals of the prescribed types and washing facilities. Section 19 enables such contract labour to get first aid facilities to be provided in the establishment. Section 20 imposes on the principal employer liability to discharge the obligations regarding providing of amenities as laid down by Section 16, 17, 18 and 19 for the benefit of the contract labour employed in the establish-

ment, if the contractor defaults in his duties.

Section 21 enjoins the principal employer to see to it that proper wages are paid to such contract labour and to nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representatives to certify the amounts paid as wages as laid down by Section 21. Sub-Section (4) of Section 21 makes the principal employer liable to pay such wages to the contract labourers if the contractor fails to make payment of their wages, and then to recover the same from the contractor.

Chapter VI deals with penalties and the benefit of the contract labourers who are brought within the regulatory sweep of the Act. This is one facet of the Act. The other subject of the Act is to abolish the contract labour system. In cases where the contract labour is employed on a work which is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in the establishment of the principal employer. As per Section 10(2) of the Act, once conditions laid down therein are satisfied, the appropriate

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Government on the report of the Advisory Board has to abolish contract labour system from such process, operation or other work in an establishment. The conditions for undertaking such an exercise by such Government in connection with the establishment of principal employer are laid down by Section 10(2) clauses (a) to (d). These conditions clearly indicate that the work which the contract labourers are doing is of a perennial nature and is incidental to or necessary for the industry, trade, business, manufacture or occupation carried on in that establishment and it is otherwise done ordinarily through regular workmen in that establishment or an establishment similar thereto and it is sufficient to employ considerable number of whole time workmen. Once these conditions are established, on the basis of the report of the advisory board concerned, it is an obligation of the appropriate Government to abolish such contract labour system prevailing in the given process or operation in the establishment.

Now the moot question is as to what happens after such prohibition. It is obvious that prior to abolition, the contract

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labour doing work of perennial nature on the establishment of principal employer had the advantage of regulatory provisions found in Chapter V and these provisions were given teeth by the legislature in Chapter VI by providing for penalties and procedure for imposition of sanctions by prosecution. The question is whether after abolition of contract labour system, the contract labourers who were earlier having regulatory protections would be rendered persona non grata and would be thrown out from the establishment and told off the gates. Then in such a case the remedy of abolition of contract labour would be worse than the disease and it has to be held that the legislature while trying to improve the lot of erstwhile contract labourers who are doing work of perennial nature for the principal employer and are doing work which is otherwise to be done by regular workmen had really left them in the lurch by making them lose all the facilities available to contract labour on the establishment as per Chapter V and desired them to wash their hands off the establishment and get out and face starvation. It is axiomatic that if they continued to be contract labourers

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their wages would have been guaranteed under Section 21 of the Act with an obligation on the principal employer to pay them if the contractor failed to discharge his obligation in connection with payment of wages. Wages are the livelihood of workman and his large number of dependants. If on abolition of contract labour system, contract labour itself is to be abolished, it would cause economic ruin and economic death to contract labourer and his dependants for amelioration of whose lot order under Section 10 is to be passed. If it is held that on abolition of contract labour system, the erstwhile contract labourers are to be thrown out of the establishment lock, stock and barrel, it would amount to throwing the baby out with the bath water. That obviously cannot be the scope, ambit and purport of Section 10 of the Act. It has to be kept in view that contract labour system in an establishment is a tripartite system. In between contract workers and the principal employer is the intermediary contractor and because of this intermediary the employer is treated as principal employer with various statutory obligations flowing from the Act in connection with regulation of the working conditions of the contract labourers who are brought by the intermediary contractor on the principal's establishment for the benefit and for the purpose of the principal.

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employer and who do his work on his establishment through the agency of the contractor. When these contract workers carry out the work of the principal employer which is of a perennial nature and if provisions of Section 10 get attracted and such contract labour system in the establishment gets abolished on fulfillment of the conditions requisite for that purpose, it is obvious that the intermediary contractor vanishes and along with him vanishes the term 'principal employer'. Unless there is a contractor agent there is no principal. Once the contractor intermediary goes the term 'principal' also goes with it. Then remains out of this tripartite contractual scenario only two parties - the beneficiaries. After abolition of the erstwhile contract labour system i.e. the workmen on the one hand and the employer on the other who is no longer their principal employer but necessarily becomes a direct employer for these erstwhile contract labourers. It was urged that Section 10 nowhere provides for such a contingency in express term. It is obvious that no such express provision was required to be made as the very concept of abolition of a contract labour system wherein the work of the contract labour is of

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perennial nature for the establishment and which otherwise would have been done by regular workmen, would posit improvement of the lot of such workmen and not its worsening. Implicit in the provision of Section 10 is the legislative intent that on abolition of contract labour system, the erstwhile contract-workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities on that very establishment under Chapter V prior to the abolition of such contract labour system. Though the legislature has expressly not mentioned the consequences of such abolition, but the very scheme and ambit of Section 10 of the Act clearly indicates the inherent legislative intent of making the erstwhile contract labourers direct employees of the employer on abolition of the intermediary contractor. It was contended that contractor might have employed a number of workmen who may be in excess of the requirement and, therefore, the principal employer on abolition of the contract labour may be burdened with excess workmen. It is difficult to appreciate this contention. The very condition engrafted in Section 10(2) (d) shows that

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while abolishing contract labour from the given establishment; one of the relevant considerations for the appropriate Government is to ascertain whether it is sufficient to appoint considerable number of whole time workmen. Even otherwise there is an inbuilt, safety valve in Section 21 of the Act which enjoins the principal employer to make payment of wages to the given number of contract workmen whom he has permitted to be brought for the work of the establishment if the contractor fails to make payment to them. It is, therefore, obvious that the principal employer as a worldly businessman in his practical commercial wisdom would not allow contractor to bring larger number of contract labour which may be in excess of the requirement of the principal employer. On the contrary, the principal employer would see to it that the contractor brings only those number of workmen who are required to discharge their duties to carry out the work of the principal employer on his establishment through, of course, the agency of the contractor. In fact the scheme of the Act and regulations framed thereunder clearly indicate that even the number of the workmen required for the given contract work is to be specified in

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the licence given to the contractor. Consequently, the aforesaid apprehension projected on behalf of the principal employer is more imaginary than real. Even apart from that, after the absorption of the erstwhile contract workmen by the principal employer on abolition of contract labour system under Section 10, it is always open for the employer as an entrepreneur, in an appropriate case, if the excess working staff is not found to be required by him to retrench such excess staff in accordance with law by following the provisions of the Industrial Disputes Act, 1947. But that has nothing to do with the moot question as to what is the fate of erstwhile contract labour on abolition of contract labour system under the provisions of Section 10 of the Act. As rightly observed by Brother Ramaswamy, J. in his judgment, the scheme envisaged in the Gujarat Electricity Board's case is not workable as the existing workmen may not espouse the cause of erstwhile contract workmen who were aspiring to get employment on regular basis and even if they espouse their cause the litigation itself would be spread over a number of years and in the meantime the erstwhile contract labourers and their dependants would starve.

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I, therefore, wholly agree with Brother Ramaswamy, J. in his view that the scheme envisaged by Gujarat Electricity Board's case is not workable and to that extent the said judgment cannot be given effect to.

Before parting with this judgment, it has to be appreciated that engagement of contract labour has been found to be unjustified by a catena of decisions of this Court. When the work is of perennial nature and instead of engaging regular workmen, the system of contract labour is resorted to, it would only be for fulfilling the basic purpose of securing monetary advantage to the principal employer by reducing expenditure on work force. It would obviously be an unfair labour practice and is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. Such a system was tried to be put to an end by the legislature by enacting the Act but when it found there are certain activities of establishment where the work is not of perennial nature then the contract labour may not be abolished but still it would be required to be regulated so that the lot of the workmen

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is not rendered miserable. The real scope and ambit of the Act is to abolish contract labour system as far as possible from every establishment. Consequently, on abolition which is the ultimate goal, the erstwhile regulated contract labour cannot be thrown out of establishment as tried to be submitted on behalf of the management taking resort to the express language of Section 10 of the Act. Such a conclusion reached by the two-Member Bench in Dena Nath's case (supra), flies in the face of the very scope and ambit of the Act and frustrates the very scheme of abolition of contract labour envisaged by the Act. Such a conclusion, with respect, can not be countenanced, as it results in a situation where relatives of the patient are told by the operating surgeon that operation is successful but patient has died.

So far as the judgment of the three-Member Bench of this Court in R.K. Panda & Ors. vs. Steel Authority of India & Ors. [(1994) 5 SCC 304] is concerned, it is true that in para 6 of the Report in the last four lines it is observed while referring to Dena Nath's case (supra) that neither the Act nor the Rules framed by

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the Central Government or by any appropriate Government provide that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer, but that is not the ratio of the decision of the said three-Member Bench. It has only referred to what Dena Nath's case decided. It is also required to be noted that the question which has been posed for our consideration is as to what is the fate of the erstwhile contract labour on abolition of contract labour system in the establishment under Section 10 of the Act. Such a question had not come up for consideration before this Court in P.K. Panda's case (supra). Therefore, it could not be urged that the ratio of Dena Nath's case was approved by three-Member Bench in R.K. Panda's case (supra). In the latter case no abolition was directed by the appropriate Government under Section 10 of the Act. It was a case in which the contract labourers were claiming to be absorbed directly by the principal employer without there being any order under Section 10. Consequently, the question with which we are concerned in the present case did not fall for consideration of the Bench in R.K. Panda's case (supra), nor had the Bench decided that question one way or the other. I, there-

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fore, respectfully concur with the view taken by Brother Ramaswamy, J. on the scope and ambit of Section 10 of the Act and hold that on abolition of contract labour system from any establishment under Section 10 of the Act by the appropriate Government the logical and legitimate consequences thereof will be that the erstwhile regulated contract labour covered by the sweep of such abolition for the concerned activities would be entitled to be treated as direct employees of the employer on whose establishment they were earlier working and they would be entitled to be treated as regular employees at least from the day on which the contract labour system in the establishment for the work which they were doing gets abolished.

.....
(S.B. Majmudar)

New Delhi;
December 06, 1996.

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linkage of intermediary contractor is removed from the operational structure under the Act. It creates direct connection between the principal employer and the workmen. There is no escape route for the principal employer to avoid workmen because it needs their services and the workmen are not meant to be kept in the lurch. The words "principal employer" do indicate that the intermediary/contractor is merely a supplier of labour to the principal employer. On effacement of the contractor by abolition of the contract labour system, a direct relationship between the principal employer and the workmen stands knitted. Thereby the workman becomes an employee of the principal employer and it relates back to the date of engagement as a contract labour. The details of the workmen, the requirement of the work force, duration of the work etc. are regulated under the Act and the Rules. The Act, the Rules and statutory forms do furnish internal and unimpeachable evidence obviating the need to have industrial adjudication; much less there arises any dispute. There is no machinery for workmen under the ID Act to seek any industrial adjudication. If any industrial adjudication is to be sought, it would be only by a recognised union in the establishment of the appellants who are unlikely to

SC-SLR]

R.K. Panda v. Steel Authority of India

869

and pension granted—Petty employees—Supreme Court without deciding the question of law refused to interfere with the grant of pension.

[Para 2]

ORDER

By the Court.—Respondent No. 1 herein, was appointed as Chowkidar in the Work Charged Establishment of Government of Orissa on 1.7.1961. Respondent No. 2 was also appointed in the same capacity on 22.12.1965. Respondent No. 3 joined as Mechanic in the Work Charged Establishment in the Irrigation Department of Government of Orissa on 6.11.1961. Subsequently, they retired on different dates viz., Respondent 1 in the year 1978, Respondent No. 2 in the year 1985 and Respondent No. 3 in the year 1986. Subsequently, the aforesaid Respondents filed an Original Application before the Orissa State Administrative Tribunal with a prayer that they ought to have been absorbed in the regular service in view of the resolution dated 22.1.1965 and if they are notionally absorbed they will be entitled to pension. It appears that the Appellants neither contested the said application nor filed any counter affidavit. With the result, the Tribunal accepted the case of the Respondents and directed the Appellants to give pension. It is against the said judgment the Appellants are in appeal before us.

2. Learned counsel for the Appellants urged that the posts occupied by the Respondents were not brought over to the regular establishment as they were not of permanent nature and, therefore, they could not be granted pension. In the present case, the Appellants did not choose to file any counter affidavit before the Tribunal. The Respondents being very petty employees are not represented before us. Therefore, we are not in-

clined to interfere with the matter leaving the question of law open to be decided in an appropriate case. In view of the special facts and circumstances of the case, we dismiss the appeal. No costs. *Appeals dismissed.*

[2000 SC-SLR 869]

SUPREME COURT

S. RAJENDRA BABU &
D.P. MOHAPATRA, JJ.

Writ Petition (Civil) No. 617 of 1986,
decided on 13th September, 2000.

R.K. Panda and others Appellants

Versus

**Steel Authority of India
and others** Respondents

Service laws—Absorption and equal pay for equal work—Appellant to workout the remedies under relevant labour laws or rules—Relied earlier granted as those workman raised the Industrial Dispute (Contract Labour Regulation and Abolition) Act, 1970, Section 10). [Paras 3 and 4]

Counsel :

Shanti Bhushan, C.S. Vaidya nathan, Sr. Advocates, Prashant Bhushan, Sanjeev K. Kapoor, Narendra Kumar Verma, Sunil Kumar Jain, Vijay Hansaria, K.P.S. Chari, A.K. Shahi, P.K. Basu Mazumdar, K.C. Bajaj, K.J. John, S. Wasim A. Qadri, Bipul Kumar, C. Radhe Kishan, Ms. Sushma Suri, Ms. Madhu Moolchandani, Irshad Ahmad, A.K. Panda, Parijat Sinha and Ms. Indu Malhotra, Advocates, for the appearing parties.

JUDGMENT

Rajendra Babu, J.—Writ Petition (C) No. 617 of 1986 was filed on the allegation that the petitioners were continuing in employment for periods ranging from 10 to 20 years under different contractors and they are contract labourers. The contractors,

though used to be charged, had to employ the workers of the predecessor contractors subject to the requirement of the job being a condition of the term of the contract and they were discharging jobs which are perennial in nature and identical to the jobs which are being done by the regular employees of the respondent. Therefore, it was urged that they were entitled to be paid the same wages as regular employees and ought to be treated similarly. It was only to defeat their claims and other labourers similarly situated that they were being designated as 'contract labourers'. These matters were examined by this Court at length and by an order made on May 12, 1994 the Court directed absorption in the employment of the respondent of labourers who have been initially engaged through contractors but have been continuously working with the respondent for the last 10 years on different jobs assigned to them in spite of replacement or change of contractors subject to their being found medically fit and they are below 58 of age with certain other incidental reliefs. It was made clear that this direction shall be operated only in respect of 142 jobs out of 246 jobs in view of the fact that contract labour for 104 jobs had been abolished. In the course of the said order this Court also noticed that normally it would not exercise its jurisdiction under Article 32 or Article 136 of the Constitution, but relegate the parties to remedies available under Industrial Disputes Act. However, certain extraordinary circumstances were noticed by this Court and, therefore, the aforesaid relief was granted. The aforesaid directions were given after noticing that contract labourers had been employed in 246 jobs in the steel plant, out of which 104 jobs have been identified in which contract labour has been abolished, while in 142 jobs the contract labour is

still continuing and the contract labourers who might have ceased to be working with the respondent are continuing by different interim orders of the Court and in respect of such employees an order was made by the Court on 6.8.1992 to the following effect :

"Mr. Harish Salve learned counsel appearing for the respondent states that there are 879 workmen holding notified jobs with the management. According to him the management is prepared to give options to all of them either to accept voluntary retirement on the terms offered by the management or agree to be absorbed on the regular basis in the employment of the respondent-management. The offer made by Mr. Salve is fair and is acceptable to the learned counsel for the petitioner. We, therefore, modify the interim orders passed by this Court till date to the extent that we permit the respondent-management to give the offered options to all the notified workmen."

2. Now in these proceedings an application is made to the Court by 104 workmen seeking a direction to take them back in regular employment with effect from 1.10.1992, or 1.4.1993, that is, the date from which other workmen were regularised pursuant to the order made on 6.8.1992 or on 31.12.1994. The applicants allege that :

- (a) 104 workmen who were employed through contractors in miscellaneous and petty jobs in the Fertilizer Plant and the guarding job in Steel Township who were continuously working since the 1970 have been thrown out of employment from 31.12.1996 and are on the streets since then awaiting justice.

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- (b) That this has been despite the fact that it was known to the Management that the contract labour in these jobs had been abolished vide notification dated 30.3.1989. Only there was some mistake in the nomenclature of these jobs though it was well known to the Management as to which workmen were identified.
- (c) That despite the undertaking of the Management to offer regular employment of the workmen involved in these 104 jobs, these 104 workmen worked in those jobs were not offered employment. Even after this Hon'ble Court's judgment that those workmen who have been working continuously for 10 years as contract labours will be absorbed, these workmen were not absorbed and have been retrenched on 31.12.1996 even though they have been working for more than 15 years.
- (d) That it has been found very clearly and categorically by the State Contract Labour Advisory Board that the Management had terminated the services of these workmen for *mala fide* reasons and has employed new workmen under different contractors for doing the same job. This was done even after the Management knew full well that this notification regarding the nomenclature of these jobs was going to be amended.
- (e) That the workmen have not been taken back despite the latest notification of 17.12.1998 amending the original nomenclature for these jobs and clearly identifying the jobs."

3. Their claim is that they are workmen in notified jobs Nos. 79, 80, 81 and 103 of the notification abolish-

ing the contract labour issued on 30.3.1989 and amended on 17.12.1998. In the notification dated 30.3.1989 jobs at serial Nos. 79, 80 and 81 were showed to be "Cleaning" and serial No. 103 "Survey Work". On the basis of the report made by the Deputy Labour Commissioner that there are no such jobs in existence during the relevant time of the issuance of the Government notification issued under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, an amendment was made by a notification issued on May 9, 1995 modifying the description of jobs as aforesaid. Thereafter on December 17, 1998 yet another notification was issued to the same effect pursuant to a report made by the State Advisory Contract Labour Court.

4. When the matter was pending before this Court, several directions have been given by this Court including the one made on 6.8.1992 to which we have adverted to wherein 879 workmen holding notified jobs were given the option either to take voluntary retirement or to get absorbed on regular basis. However, the matter was finally disposed of by making it clear that the direction issued in the case will be applicable only in respect of 142 jobs out of 246 jobs in view of the fact that contract labour has been abolished in respect of 104 jobs. Cause of action, if any, for the petitioner has arisen by their alleged retrenchment made on 31.12.1996. In the circumstances, particularly when in respect of certain employees, industrial dispute had also been raised and a settlement had been reached pursuant to which an award is made, if the applicants were aggrieved they should have adopted that course as indicated by this Court to be the normal course and what other employees have

adopted in the Industrial Dispute Case No. 16 of 1996. Therefore, we think that it would not be appropriate to allow this application, but it is made clear that it is appropriate for the applicants to work out their remedies if available under relevant labour enactments or otherwise, if any. The application stands accordingly rejected.

Order accordingly.

[2000 SC-SLR 872]

SUPREME COURT

D.P. MOHAPATRA & R.P. SETHI. JJ.

Crl. Appeal No. 106 of 1996, decided on 28th September, 2000.

Shivendra Kumar

Appellant

Versus

State of Maharashtra Respondent

Prevention of Corruption Act, 1947, Sections 6, 5(1)(d) and 5(2)—Sanction for prosecution—Lack of competency of the officer who passed the sanction order—Question of—Order passed by Secretary of Medical Education Department—Not the appointing authority, but competent to represent the State—Held, sanction order is valid.

From the discussions in the judgment of the High Court under challenge, it appears that this question was raised before the High Court. The challenge against the authority of the Sanction Officer was on two counts; firstly - want of application of mind to the relevant papers and secondly that Dr. Tripathi - PW 2, Secretary of the Medical Education Department being not the appointing authority, could not remove the appellant from service and, therefore, he was not competent to pass the order of sanction. The High Court, on a perusal of the deposition of the witness held, that the order of sanction was passed after due application of mind to the materials placed

before the authority (PW 2). On perusal of the Sanction Order the High Court held that the order was issued by PW 2 by the order and in the name of the Governor of Maharashtra and in the absence of any challenge in cross-examination that the witness was not competent to act on behalf of the Government in the matter of sanction, the High Court construed the Sanction Order to be one passed by or on behalf of the State Government and, therefore, valid in law. In our considered view, the finding of the High Court in the facts and circumstances of the case is justified. Therefore, the contention raised by the learned counsel for the appellant against the validity of the Sanction Order on the ground of lack of competence of the authority who passed the same has to be rejected. [Para 12].

IMPORTANT POINT

Sanction for prosecution—Object of.—The object of Section 6 or for that matter Section 197 of the Criminal Procedure Code, which is a *pari materia* provision, is that there should be no unnecessary harassment of a public servant; the idea is to save the public servant from the harassment which may be caused to him if each and every aggrieved or disgruntled person is allowed to institute a criminal complaint against him.

Counsel:

Ranjit Kumar, Advocate, for the appellant.

V.B. Joshi, S.S. Shinde, S.V. Deshpande, Advocates, for the respondent.

JUDGMENT

D.P. Mohapatra, J.—This appeal is directed against the judgment of the Bombay High Court, Nagpur Bench, in Criminal Appeal No. 426 of 1991 in which the judgment/order of conviction and sentence passed by the

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1057 OF 1998

(1998) 3 SCC

UOI V Subir

Mukherji.

Union of India & Ors.

... Appellants

VS.

Subir Mukherji & Ors.

... Respondents

J U D G M E N TS.P. KURDUKAR, J.

This appeal by Special Leave is filed by the appellants challenging the correctness of the judgment and order dated 13.3.1997 passed in G.A. NO.1045 of 1995 by the Central Administrative Tribunal (for short 'CAT') at Calcutta.

(2) The respondents who are 20 in number filed

G.A. NO.1043 of 1995 before the Central Administrative Tribunal, Calcutta alleging inter alia that they have been working as labourers since 1955 till date continuously, and uninterruptedly in the printing press of the Eastern Railway at Calcutta. They were engaged as labourers through a contractor viz., M/s Sangel Handling Porters Cooperative Society Ltd. Several

labourers were also engaged by different organizations/contractors for doing the work on several development projects undertaken by the Eastern Railway on contract basis. The contracts were entered into between the said co-operative societies and the authorities of the Eastern Railway. The respondents have been performing their duties and the functions to the satisfaction of the appellants and no complaint of whatsoever nature was made against their work. They were initially paid daily wages @ Rs.14/- per day which came to be enhanced to Rs.31/- per day. It is then alleged that since they have been working for all these years uninterruptedly and continuously, they are entitled to be absorbed and regularised in Group D category in terms of the Rules and Regulations framed by the Railway Authorities. Respondents further averred that by reason of continuous and uninterrupted service for all these years, they have acquired the temporary status and they are entitled to be absorbed in Group D in the pay scale attached thereto. It is then alleged that the Contract Labour (Regulation and Abolition) Act, Rules were enacted in the year 1971 for the purpose of ameliorating the grievances of the contract labourers who have been engaged by the contractors. In the instant case though these respondents discharge their duties and functions under the principal employer through the agency of the said society but the principal

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employer, namely, the Eastern Railway is now denying the legitimate right to them for being absorbed and regularized in the Railway services. The respondents have annexed with their O.A. various documents to indicate their service record. They have also referred to various correspondence ensued between the Railway Authority and the said society. The respondents, therefore, prayed that suitable directions be issued to the appellants to absorb and regularize the services of these respondents in Group D in the pay-scale attached thereto and the appellants be restrained from terminating the services of any of these respondents.

(3) The appellant Nos. 1 to 5 have filed their reply denying the claim made by the respondents. According to them they were employees of the society and they are not in any way liable either to absorb and/or regularize them in Group D. They are also not entitled to claim the pay-scale of Group D employees. The CAT on appraisal of evidence on record by its order dated 13.3.1997 upheld the claims set up by the respondents and issued the following directions:-

"The application is, therefore, disposed of with a direction upon the respondents to absorb the petitioners as regular Group D employees or such of them who may be required to do the quantum of work which may be available on a crendial basis. If they are otherwise found fit, their pay or

wages being fixed at the minimum of the appropriate scale, provided they are still working as contract labourers. This exercise shall be completed within 8 weeks from the date of communication of this order.

It is this order which is the subject matter of challenge in this appeal.

(4) Mr. N.N. Goswami, Learned Senior Counsel appearing in support of this appeal urged that the respondents being the employees of the society, the appellants are not their employers. Notwithstanding the fact that the work allotted to the society was carried out by the respondents who were labourers of the said society, there was no relationship of employer and employee between them. He also drew our attention to some of the clauses of the agreement dated 22.11.1994 entered into between the said society and the CMH (SI), Eastern Railway, Calcutta. He, therefore, urged that the respondents have no right whatsoever to seek direction for absorption and regularisation as Group B employees of the Eastern Railway. During the course of arguments he urged that the CAT has no jurisdiction to entertain O.A. NO.1045 of 1995 filed by the respondents.

(5) The Learned counsel for the respondents supported the order and urged that in the facts and circumstances of the case the directions contained in

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the order dated 13.3.1997 are quite fair and do not call for any interference in exercise of the jurisdiction under Article 136 of the Constitution.

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(6) We heard learned counsel for the parties at great length and perused the pleadings of the parties and documents on record. In our opinion the affidavit in reply filed on behalf of appellant Nos. 1 to 5 is as vague as it could be. There is no specific denial to the averments in the D.A. filed by the respondents that they have been working continuously and uninterruptedly since 1982, that the nature of work which they have been doing is of perennial nature.

(7) Mr. Goswami strongly relied upon the judgment of this court in Civil Appeal No. 1350 of 1986 Biswanath Sana & Ors. vs. Union of India & Ors. with other connected civil appeals and Special Leave Petitions rendered on April 3, 1997.

(8) We have gone through this judgment and it appears to us that in the case of Biswanath Sana (supra) the contract labourers were requisitioned intermittently by the authority of the Eastern Railway as and when there was work and on such requisition the labour contractor used to supply the labourers. Moreover the said order appears to be a consent order as is clear from the following observation:-

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.....since the contractor's labour cannot be considered as employed by the Railway. The Eastern Railway however, in the affidavit filed on its behalf by Sri S. Maji, Chief Mechanical Engineer (Planning) Eastern Railway, Calcutta dated 13th April, 1993 has offered, on humanitarian grounds, that the contractor's labourers can form their co-operative societies and participate in handling and other contracts issued by the Railway from time to time. The appellants/petitioners state that they will accept the scheme. It is directed accordingly".

It is in these circumstances this Court held that the CAT has no jurisdiction to entertain the application filed on behalf of the Railway Contractor's labourers.

(9) There is a distinguishing feature in the case before us. In the present case admittedly the respondents who were labourers of M/s Bandel Handling Porters Co-operative Society Ltd., were given the work under agreement No. 8/489/91/CONTRACT/HANDLING/NH/94 dated 22.11.94. Therefore, there was already a society of which the respondents happened to be members and being the members and M/s Bandel Handling Porters Co-operative Society Ltd., the contractor supplied them for doing the work of Eastern Railway. As indicated earlier there is no denial on the part of the appellant Nos. 1 to 5 that the work which respondents have been

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being is of perennial nature. Even otherwise, the directions issued by the CAT in its order dated 13.3.1997 have given enough discretion to the Eastern Railways to absorb them as regular Group D employees bearing in mind the quantum of work available on perennial basis and subject to their fitness. In our opinion the directions contained in the order dated 13.3.1997 passed by the CAT are quite fair in the facts and circumstances of the case and it is for this reason we are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution.

(10) This order is being passed in the peculiar facts and circumstances of the case and leaving the question of law open.

(11) For the aforesaid conclusions we do not find any reason to interfere with the order dated 13.3.1997 passed in S.A. NO.1043 of 1997 by the CAT. We accordingly dismiss this appeal but however there will be no order as to costs.

.....J
(B.T. NANAVATI)

NEW DELHI.
APRIL 29, 1998

.....J
(S.P. KURDIKAR)

21/5/98