

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 09th day of December, 2010

ORIGINAL APPLICATION NO. 174/2010

With

MISC. APPLICATIONS NOS. 134/2010

294/2010, 259/2010, 329/2010

AND 330/2010

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

1. All Railway Mal Godam Majdoor Sangh, through Shri Ashok Saxena, aged about 50 years, General Secretary, having its Branch office, 2/10, Kumbha Marg, Pratap Nagar, Jaipur (Rajasthan).
2. Shiv Bhagwan Pareek son of Shri Sita Ram Pareek, aged about 47 years, resident of Village & Post Ghatwa, Via Kuchaman City, District Nagaur (Rajasthan).
3. Harlal Saini son of Shri Lalu Ram Saini, aged about 38 years, resident of 2/10, Kumbha Marg, Pratap Nagar, Jaipur.

.....Applicants

(By Advocate: Mr. S.S. Ola)

VERSUS

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Ganpati Nagar, Jaipur.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The Chief Personnel officer, North Western Railway, Hasanpura Road, Ganpati Nagar, Jaipur.

.....Respondents

By Advocate : Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) The respondents be directed to consider the regular absorption of the member of the applicant Union and the other two applicants against the existing available vacancies of the Group D cadre. This may be done either by relying on the surplus dated 30.12.2004 and 25.7.2007 or by directly relying on the directions contained in the judgment passed by the Hon'ble Supreme Court

in the case of All India Railways Porters Union dated 9.5.1995.

- (ii) The respondents may be directed to consider the claims of the applicants by passing a speaking and reasoned order and after making a proper inquiry in this regard. In alternate the representations of the applicants may be directed to be considered by way of speaking and reasoned order within a reasonable time frame taking into consideration the directions contained in the Hon'ble Supreme Court in case of All India Porters Union.
- (iii) The respondents may be directed to bring in the entire records and documents pertaining to the work performed by the members of the applicant Union as Porter Parcels and thereafter pass an appropriate order granting justice to them.
- (iv) The respondents may be directed to consider the cases of the applicant Union and the other applicants for regularization purely considering the perennial nature of the job and their long period of service in the railways.
- (v) To pass an appropriate order directing the respondents to frame a new scheme if at all this Hon'ble Tribunal reaches to the conclusion that for any reason the benefit of earlier schemes cannot be granted to the present applicants.
- (vi) Any other appropriate order or directions which are deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicants.
- (vii) The Original Application may kindly be allowed through out with costs.

2. As can be seen from the prayer clause, the grievance of the applicants is that the respondents may be directed to consider their cases for regular absorption against available vacancies of the Group D cadre. It has been averred that members of the Union are working continuously as Porters for a period of ten years or more but the respondents are not considering their case for regularization despite the fact that general directions have been issued by the Hon'ble Apex Court and various Benches of the Central Administrative Tribunal, which directions are applicable in the instant case also.

3. Notice of this application was given to the respondents. Although the respondents have not filed reply to the OA but they have move an MA No. 329/2010. The stand taken by the respondents in this MA is that although the applicants had sought absorption of its members against the available vacancies of Group D and sought regularization of their services but in the pleadings, they have failed to disclose their Union's registration although they have enclosed the list of their Members. It is further stated that the applicants have failed to prove the fact of their members being contract labour of the respondents. It is further stated that the applicant have also failed to disclose the name of the contractor and even no proof payment by the Railway to its members or to the contract had been submitted before the Tribunal. Thus according to the respondents, any submission to the fact that they are contract labour of the respondents cannot be admitted.

4. In Para No. 4 of the MA, the respondents have stated that the members of the applicants' Union had never remained on the rolls of the respondents. Even there is no contractor engaged by the respondents in loading/unloading of the parcels. As per the policy, it is the duty of the consignee/consignor to get wagon loaded/unloaded. It is he who can engage its own employees or give contract to the contractor. There is no role of railways in getting the wagon loaded/unloaded. Thus there is no requirement of parcel porters in the Railway Mal Godams with the respondents. It is clearly stated that the Railway is not even principal employer of the Porters. Thus according to the respondents, any request for the relief against the same is without any substance.

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5. The respondents have further stated that reliance placed by the applicant to the Hon'ble Supreme Court's judgment in the case of **All India Parcel & Goods Porters Union vs. Union of India & Others** (Writ Petition (Civil) NO. 433/1998) and other connected matters decided on 22.08.2003, copy of the judgment has been placed on record as Annexure A/9, is not applicable in the instant case as Hon'ble Supreme Court had come to the conclusion because of inquiry report submitted by the Assistant Commission in view of the direction of the Court. Thus the directions given by the Apex Court cannot be implemented in the instant case.

6. I have heard the learned counsel for the parties and have gone through the material placed on record. I am of the view that the applicants are not entitled to any relief in view of the decision rendered by this Tribunal in the case of **Jitendra Soni vs. Union of India** (OA No. 481/2010), **Pooran Singh Meena & Others vs. Union of India** (OA No. 451/2010) and other connected matters decided on 02.11.2010 whereby in Para No. 7 & 8, this Tribunal has made the following observations:-

7. That apart, as per the averment made in the OAs, the contract was between the Railway Department and the contractor. In case there is dispute to the fact that the Railway Department is a principal employer and contract between the Railway Department and the contractor is only a camouflage to deny employment benefits to the applicants, in that eventuality, this matter can be govern by the Industrial Tribunal in view of the provisions contained in Industrial Disputes Act, 1947. Even on this ground, no relief can be granted to the applicants and the remedy to the applicants is to approach Industrial Adjudicator which can grant relief sought if it finds that contract between principal employer and contractor is a sham, nominal and merely a camouflage to deny employment

benefits to the employees. This is what the Apex Court has held in the case of **International Airport Authority of India vs. International Air Cargo Workers Union**, 2010(1) SCC (L&S) 257.

8. The matter can also be looked into from another angle. The applicants are claiming regularization of their services against Group 'D' post. Even for arguments sake, it is assumed that Principal employer of the applicants is the Railway Department; even then no relief can be granted to the applicants as they were engaged on contract basis for a period of three years i.e. 01.06.2002 to 31.05.2005. Thereafter, the applicants have not worked. The Constitutional Bench in the case of **State of Karnataka vs. Uma Devi (3)**, 2006(3) SLR 1, has categorically held that appointment to public posts in State can only be made after proper advertisement has been made by inviting applications from eligible candidates and holding a selection by a body of expert strictly in conformity with mandate of Articles 14, 16 and 309 of the Constitution of India and Courts should desist from issuing orders pertaining to regularization of service to those who have not secured regular appointment as per procedure establishment.

7. The reasoning given by this Tribunal in the case of Pooran Singh Meena (supra) is also attracted in the facts & circumstances of this case. I am of the view that the applicants cannot be granted any relief in view of the law laid by the Apex Court in the case of International Airport Authority of India (supra) and also in view of the decision of the Constitution Bench in the case of State of Karnataka (supra), which is also applicable in the facts & circumstances of this case.

8. For the foregoing reasons, I am of the view that the applicants have not made out any case and the OA is dismissed with no order as to costs. Needless to add that in case the applicants want to resort to any remedy under the Industrial Disputes Act, 1947 ~~and~~ in view of the law laid down by the Apex Court in the case of International Airport Authority of India (supra), the dismissal of this OA shall not come in the way of the applicants to pursue their remedy before that forum.

9. In view of the order passed in the OA, no order is required to be passed in MAs Nos. 134/2010, 294/2010, 259/2010, 329/2010 and 330/2010 which shall stand disposed of accordingly.



(M.L. CHAUHAN)
MEMBER (J)

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