IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 02nd day of November, 2010

CORAM

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

1. **ORIGINAL APPLICATION NO. 451/2010**
WITH
MISC. APLICATION NO. 264/2010

1. Pooran Singh Meena son of Shri Girraj Singh Meena
2. Roop Singh Jatav son of Shri Tej Singh
3. Vinod Kumar son of Shri Madanlal
4. Bharat Lal Meena son of Shri Sukhdev Meena

.....Applicants

(By Advocate: None)

VERSUS

1. Union of India through General Manager, North Central Railway, Head Office, Allahabad (U.P.).
2. The Divisional Railway manager, DRM Office (Northern Central Railway, Agra Cant.
3. The Senior Divisional Commercial Superintendent (NCR), Agra.
4. The Station Superintendent, Nadbai Railway Station (Northern Central Railway) Nadbai, District Bharatpur (Rajasthan).

.....Respondents

(By Advocate: ----------)

2. **ORIGINAL APPLICATION NO. 452/2010**
WITH
MISC. APLICATION NO. 265/2010

1. Ram Narain Bairwa son of Shri Bhola Ram Bairwa
2. Ram Singh Saini son of Shri Rajpal Saini
3. Manohar Lal Saini son of Shri Bhoriya Saini

.....Applicants

(By Advocate: None)

VERSUS

1. Union of India through General Manager, North Central Railway, Head Office, Allahabad (U.P.)
2. The Divisional Railway manager, DRM Office (Northern Central Railway, Agra Cant.
3. The Senior Divisional Commercial Superintendent (NCR), Agra.
4. The Station Superintendent, Mandawar Railway Station (Northern Central Railway) Mandawar, District Dausa (Rajasthan).

.....Respondents

(By Advocate: ----------)

3. **ORIGINAL APPLICATION NO. 453/2010**
WITH
MISC. APLICATION NO. 266/2010

1. Gajendra Singh son of Shri Shivdayal Singh
2. Yaduveer Singh son of Shri Balram Singh

.....Applicants

(By Advocate: None)

VERSUS

1. Union of India through General Manager, North Central Railway, Head Office, Allahabad (U.P.).
2. The Divisional Railway Manager, DRM Office (Northern Central Railway, Agra Cant.
3. The Senior Divisional Commercial Superintendent (NCR), Agra.
4, The Station Superintendent, Nadbai Railway Station (Northern Central Railway) Nadbai, District Bharatpur (Rajasthan).

.....Respondents

(By Advocate: ----------)

4. **ORIGINAL APPLICATION NO. 454/2010**
WITH
MISC. APLICATION NO. 267/2010

1. Pappu Singh Meena son of Shri Jagannath Meena
2. Leeladhar Meena son of Shri Jagannath Meena
3. Rajendra Saini son of Shri Babulal Saini

.....Applicants

(By Advocate: None)

VERSUS

1. Union of India through General Manager, North Central Railway, Head Office, Allahabad (U.P.).
2. The Divisional Railway Manager, DRM Office (Northern Central Railway, Agra Cant.
3. The Senior Divisional Commercial Superintendent (NCR), Agra.
4. The Station Superintendent, Kherli Railway Station (Northern Central Railway) Kherli, District Alwar (Rajasthan).

.....Respondents

(By Advocate: ----------)

ORDER (ORAL)

By this common order, I propose to dispose of all these OA as common question of facts & law is involved.

2. Briefly stated, facts of the case, as alleged by the applicants, are that they were appointed on different dates as Parcel Porter through Contractor Societies. It is further stated that the period of contract was initially for three years with effect from 01.06.2002 to 31.05.2005. It is further stated that the work on the post was of regular nature and the applicants had worked on the said post satisfactorily. The prayer of the applicants in these OAs is that directions may be given to the respondents to absorb them in Group 'D' services on regular basis.

3. When the matter was listed on 21.10.2010, none appeared on behalf of the applicants. This Tribunal passed the following order:-

"Let the matter be listed for admission on 02.11.2010. It is made clear that in case none appeared on behalf of the applicant on the next date, this Tribunal will dispose of the matter on merit on the basis of averments made in the OA."

4. I have decided to dispose of these matters on merit on the basis of averments made in the OA in view of Rule 15 of CAT (Procedure) Rules, 1987 instead of dismissing the same in default.

5. Alongwith the aforesaid OAs, the applicants have also filed MAs Nos. 264/2010, 265/2010, 266/2010 and 267/2010 for filing joint petition. In view of the averments made in these MAs, all these MAs are allowed and the applicants are permitted to file joint petition.

6. As already stated above, the applicants are claiming relief regarding their regularization against Group 'D' posts on the premise that they were engaged by the contractor on contract basis. According to me, the applicants are not entitled to any relief for more than one reason. Firstly, as per their own showing, the applicants were engaged on contract basis by the Contractor and not by the Railway Department. Since the applicants are not engaged by the Railway Department, as such, they have got no legal right to compel the respondents to regularize their services against Group 'D' post.

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.

9. That apart, the Apex court in the case of **C. Jacob vs. Director of Geology and Mining and Another,** 2008 (2) SCC (L&S) 961, has held that no directions should be given in respect of stale/dead issue. As already stated above, in the instant case, the applicants had worked on contract basis upto 31.05.2005. The present OA has been filed after a lapse of about 5 years, that too without any application for condonation of delay. In Para No. 3 of the OA, the applicants have stated that notice of a demand of justice was sent to the respondents on 12.04.2010 (OA No. 454/2010), as such the present OA is within period of limitation as prescribed under Rule 21 of the Administrative Tribunal's Act, 1985. According to me, sending of notice to the respondents will not extent the period of limitation and cause of action, if any, has arisen to the applicants in the year 2005 when their contract period was not extended and also that their services were not regularized.

10. Thus viewing the matter from any angle, I am of the view that the present OAs are bereft of merit, which are dismissed at admission stage itself with no order as to costs.

(M.L. CHAUHAN)
MEMBER (J)

AHQ

दिनांक 6/11/12 के आदेशानुसार मेरे उपस्थिति में दिनांक 15/11/12 को भाग-II व III जष्ट किये गये।

Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, Jaipur

copy given vide
No. 1064
3/11/16