

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.865 OF 2016

New Delhi, this the 27th day of March, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

.....

Nagender Prasad

Age 42 years, S/o Shri Dwarka Prasad

R/o Village Etwa, Post Vijhara

District Pratapgarh, UP.

Applicant

(By Advocate: Shri R.K. Shukla)

Versus

Union of India through the

General Manager,

Northern Railway,

Baroda House,

New Delhi

Respondent

(By Advocate: Mr.Shailendra Tiwary)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have carefully perused the record, and have heard Mr.R.K.Shukla, learned counsel appearing for the applicant, and Mr.Shailendra Tiwary, learned counsel appearing for the respondent.

2. Brief facts of the applicant's case are that in the year 1987 he was engaged by the Contractor to work as coal handling porter in the Northern Railway. Due to shutting down of the local coal steam and locomotives, he was disengaged by the Contractor during 1993-94. In view of the assurance given by the then Railway Minister to absorb and to accord

alternative employment to all coal handling contract labourers, a Committee on Government Assurances was constituted by the Railways during 1994. The said Committee recommended permanent absorption of 634 contract labourers, like the applicant, in respective Zones of the Railways. The respondent also reiterated the said recommendation in his letter dated 11.12.1996. In compliance of the Tribunal's order dated 6.4.2004 in OA Nos.1156 and 2729 of 1997, and order dated 22.3.2005 passed in MA Nos. 1808 and 1809 of 2004 (arising out of OA Nos. 1156 and 2729 of 1997) **(Steam Loco Contract Workers Association and others vs. The Secretary Ministry of Railways and others)**, an enquiry was conducted and a report dated 1.8.2008 was submitted by the Regional Labour Commissioner (Central), Lucknow, finding that the applicant and 102 others had worked as coal handling contract workers at Roza and Bareilly Loco Sheds through the Society, Bareilly Railway Sahkari Shram Samvida Samiti Ltd. When no action was taken by the respondent-Railways on the said report dated 1.8.2008 of the Regional Labour Commissioner, the applicant made a representation dated 17.5.2014 and served a legal notice on the respondent to permanently absorb him in Railway service. There being no response, the applicant filed OA No.3171 of 2014. The Tribunal, by order dated 15.5.2015, disposed of O.A.No.3171 of 2014, and directed the respondent to consider his representation and take appropriate decision in the matter within a period of two months from the date of receipt of copy of the said order. When no decision on his representation was communicated

to him by the respondent, he filed CP No. 540 of 2015. The Tribunal, by order dated 24.11.2015, closed the said C.P.No.540 of 2015 when the learned counsel appearing for the respondent-Railways submitted that the applicant's representation was considered and a speaking order was passed by the respondent. However, the Tribunal observed that the applicant was at liberty to question the said order passed by the respondent, if he still felt aggrieved thereby, in accordance with law. By the speaking order dated 16.11.2015, the respondent having turned down the applicant's request for absorption in Railway service, the applicant has filed the present O.A. seeking the following reliefs:

- “a. To quash and set aside the impugned order dated 16.11.2015 directing the respondent to consider the absorption of the applicant in Railways against any suitable post, implementing the judgment dated 22.3.2015 followed by the enquiry report dated 01.08.2008 conducted by Assistant Labour Commissioner read with judgment of All India Parcel Porter Union and subsequent judgment passed in writ petitions.
- b. To direct the respondent to absorb the applicant permanently as per the assurances of the then Hon'ble Railway Minister, decided by assurance committee to absorption of Coal handling contract workers after shutting down the loco shed with all consequential benefits.
- c. to pass any other and further order or relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.”

3. It has been contended by the applicant that as the contract between the contractor and the respondent was only a sham or camouflage, there existed an effective control of the Railways over the contractor, and, therefore, there existed relationship of master and servant between the

Railways and the applicant. When the competent authority, i.e., the Regional Labour Commissioner clearly found that the applicant had worked as a coal handling porter, and he being similarly placed as contractual parcel & goods porters who have been permanently absorbed by the Railways by way of implementation of the judgment passed in the case of **All India Railway Parcel & Goods Porters Union vs. Union of India and others**, 2003(6) SCALE 773, the respondent ought to have permanently absorbed him in Railway service. Therefore, the impugned order dated 16.11.2015 is bad, illegal and liable to be quashed, and appropriate direction should be issued to the respondent to permanently absorb him in Railway service and grant him all consequential benefits.

4. On the other hand, it has been contended by the respondent that the Hon'ble Supreme Court had directed to absorb only those parcel and goods porter-contract labour whose work became available on a perennial basis. The work of the coal handling porters, like the applicant, engaged by the contractors is not of perennial nature, as due to shutting down of the steam locomotives, no contract for the coal handling has been entered into by the Railways with any contractor since 1995. The Ministry of Labour, in its report dated 10.6.1993, laid down that in view of dieselization and electrification in the Railways, the unloading and loading of coal could not be considered as perennial nature of work. The Hon'ble High Court of Delhi in W.P. (C) No.9488-90 of 2005, **Union of India through General Manager, Northern Railway vs. Northern Railway SteamLoco Contract**

Workers Association, following the decision of the Hon'ble Supreme Court in **Secretary, State of Karnataka vs. Uma Devi and others**, (2006) 4 SCC 1, has rejected the claim of regularization of steam locomotive contract workers. Therefore, there is no infirmity or illegality in the impugned decision, and the applicant is not entitled to the reliefs claimed by him in the present O.A.

5. After having given our thoughtful consideration to the facts and circumstances of the case and to the rival contentions, we have found no substance in the contentions of the applicant.

6. The order dated 16.11.2015 (Annexure A/1), which has been impugned by the applicant in the present O.A., reads thus:

“NORTHERN RAILWAY
No.53FA/MB
Hd.Qrs.Baroda House
New Delhi.
Dated: 16.11.2015

SPEAKING ORDERS

Subject: Speaking order in compliance of the order dated 15.05.2015 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, in O.A.No.3171/2014 in the matter of Nagender Prasad vs. Secretary, Ministry of Railways & Ors.

The Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, in O.A.No.3171/2014 in the matter of Nagender Prasad Vs. Secretary, Ministry of Railways & Ors. has directed the General Manager, Northern Railway to consider the representation/legal notice of the applicant and to take appropriate decision in the matter. The operative part of the order is as under:

“It is seen that before approaching this tribunal, the applicant has made a representation to the respondents on 15.01.2013. As no action was taken by the respondents on the representation, he has also sent a legal notice through his counsel on 17.05.2014. Both the aforesaid representation as well as legal notice are on record of this case.

In view of the above position, we dispose of this OA by directing the General Manager, Northern Railway to

consider the aforesaid representation/legal notice of the applicant and to take appropriate decision in the matter within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.”

In compliance of the above cited directions of Hon’ble Tribunal, I have gone through the record of the O.A.No.3171/2014 and observe as under:-

1. I have gone through the representation and legal notice. In these two documents the applicant while referring to the enquiry report dated 01.08.2008 given by Regional Labour Commissioner (C), Lucknow in compliance of the order dated 22.03.2005 in OA Nos. 2729/1997 and 1156/97, has requested to consider his regularization in terms of judgment of Apex Court, in All India Railway Parcels & Goods Porters versus Union of India & Ors. [2003] (6) SCALE 773].
2. The Report dated 01.08.2008 of RLC (C), Lucknow is available at Annexure A-1 of the O.A. The name of the applicant is at S.No.17 of Annexure ‘A’ to the report. In the report the applicant has been verified to have worked as Coal Handling Porter at Roza loco shed through society/contractor for the period January 87 to December 94. The RLC (C), Lucknow in his Enquiry report while examining the present status of work has further observed that “I personally visited the stations for physical verification. But since the work is not in progress since 1994, the applicants were not found working.”
3. I have also gone through the judgment dated 22.08.2003 of the Apex Court in All India Railway Parcels & Goods Porters versus Union of India & ors. [2003(6) SCALE 774] which has been quoted by the applicant in his representation and has claimed for regularization in terms of the same. Hon’ble Supreme Court in the aforesaid judgment had directed that “persons to be so appointed being limited to the quantum of work available to them on perennial basis.”
4. The Coal and Ash Handling contract labourers were engaged in the loco sheds directly by the contractors and not by the Railways. Due to phasing out of steam locomotives in 1989 and 1990-s closure of the steam loco sheds due to consequent non-availability of coal and ash handling work the contract labourers were removed by the contractors and not by Railways. Closure of loco sheds has also been verified by RLC (C) Lucknow in his report.
5. Since steam, locomotives have been phased out and loco sheds have been closed years back perennial work as envisaged in Hon’ble Supreme Court’s judgment in the matter of All India Railway Parcels & Goods Porters versus Union of India & ors.

[2003(6) SCALE 774] relied upon by the applicant is not at all available for engagement of any labour.

6. As per judgment dated 10.04.2006 delivered by the Constitution Bench of the Hon'ble Supreme Court in the matter of **Secretary, State of Karnataka vs. Umadevi & others**, reiterated by the Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training), vide Office Memorandum No. 49019/1/2006-Estt. (C) dated 11.12.2006 and further by Railway Board vide letter No.2013/E(LL)/CNR/27 dated 21.02.2014, that "any public appointment has to be in terms of the constitutional scheme. It has inter alia been directed that the Union of India, the State Governments and their instrumentalities should take steps to regularize, as a one-time measure, the services of such irregularly appointed, who were duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under the cover of orders of courts or Tribunals. The apex court has clarified that if their appointment itself is infructuous or in violation of the provisions of the constitution, the illegality cannot be regularized. There should be n further bypassing of the constitutional requirement and regularizing or making permanent those duly not appointed as per the constitutional scheme. There is no fundamental right for those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service."
7. Keeping the aforementioned aspects in view, since the applicant was not engaged any sanctioned posts on he Railways, it is not possible to regularize/absorb him as it would be in contravention of the above mentioned orders of the Hon'ble Supreme Court. Also, there is no provision under the Contract Labour (R&A) At, 1970 for automatic absorption of contract labourers.

Applicant may be informed accordingly."

7. It is trite law that Courts/Tribunals are not invested with the power, authority and jurisdiction to sit in appeal over the decisions taken by the departmental authorities. Courts/Tribunals, in exercise of power of judicial review, can only examine whether the decision taken by the departmental authorities is vitiated on account of any legal flaw in the

decision making process warranting their interference. Courts/Tribunals can interfere with the decision of the departmental authorities, if it is found that the authorities have failed to take all relevant factors into consideration, or have taken irrelevant factors into consideration while making the decision, and that the conclusion arrived at by the departmental authorities is perverse, or irrational, or in contravention of any rules. Admittedly, in the instant case, the applicant was engaged by the contractor to work as a coal handling porter at loco sheds of the Northern Railway during 1987 to 1994, and in December 1994 he was disengaged by the contractor due to shutting down of the loco sheds. Referring to some assurance given by the then Railway Minister, and recommendation of a Committee and of the General Manager of the Northern Railway, the applicant has claimed his absorption in Railway service. Copies of the report of the said Committee and of the letter issued by the respondent purportedly recommending permanent absorption in the Railway service of the coal handling contract workers engaged and disengaged by the contractors have not been produced before this Tribunal. The applicant has not produced before this Tribunal any decision of the Railways absorbing in service coal handling porters engaged by the contractors. The applicant has also not drawn the attention of the Tribunal to any provision in the Contract Labour (R&A) Act, 1970, stipulating absorption of contract labourers in the regular establishment of any organization, like the Railway, where they were engaged and disengaged by the contractors. Appointment to any post in any organization, like the

Railways, is made in accordance with the Recruitment Rules for the said post. In the absence of any provision in the Recruitment Rules prescribing appointment of any contract workers, by way of permanent absorption or regularization of service, to a post in any organization, like the Railways, the engagement of the applicant by the contractor to work as a coal handling porter in the Railways does not clothe the applicant with a right, much less any enforceable right, to claim permanent absorption or regular appointment to any post in the Railways, especially when there is no coal handling work due to dieselization and electrification in the Railways since 1995. In **All India Railway Parcel & Goods Porters Union vs. Union of India and others** (supra) and in **Steam Loco Contract Workers Association and others vs. The Secretary Ministry of Railways and others** (supra), which have been relied upon by the applicant in support of his case, it has nowhere been laid down that coal handling porters engaged by the contractors in the loco sheds of the Railways are entitled to absorption in Railway service. In **All India Railway Parcel & Goods Porters Union vs. Union of India and others** (supra), the Hon'ble Supreme Court directed absorption/regularization of contractual parcel and goods porters, engaged by the contractors in the Railways, being limited 'to the quantum of work which may become available them on a perennial basis'. Therefore, the applicant cannot be said to be similarly placed as contractual parcel and goods porters engaged by the contractor. When the loco sheds have been completely closed down by the Railways since 1995, and when there has

been no requirement of coal and ash handing work in the Railways, the applicant or, for that matter, any other coal handing porters cannot claim any benefit of the judgment of the Hon'ble Supreme Court in **All India Railway Parcel & Goods Porters Union vs. Union of India and others** (supra). Furthermore, in **Union of India through General Manager, Northern Railway vs. Northern Railway Steam Loco Contract Workers Association** (supra), the Hon'ble High Court of Delhi has also rejected the similar claim as raised by the applicant in the present O.A. We have found that the respondent has taken all relevant factors into consideration while passing the impugned order dated 16.11.2015 and the conclusion arrived at by the respondent cannot be said to be perverse, or irrational, or in contravention of any rules. In the above view of the matter, we have found no infirmity or illegality in the impugned order dated 16.11.2015.

8. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

