

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.100/3441/2014

New Delhi this the 28th day of November, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. P. K. Basu, Member (A)

1. Paramjeet Singh
Son of Darshan Singh,
Resident of House No.8,
Gali No.1 B, Krishna Colony,
Chandra Nagar, District- Moradabad,
Uttar Pradesh. Applicant No.1
2. Kapil Kumar
Son of Late Virender Kumar,
Resident of Railway Harthala Colony,
Near Shivji Mandir, Patel Nagar,
District-Morabad,
Uttar Pradesh. Applicant No.2
3. Harswarup
Son of Jiva Ram,
Resident of Chaue Ki Basti,
Lane Par, District-Moradabad,
Uttar Pradesh. Applicant No.3
4. Umesh Chandra Goswami
Son of Rajendra Prasad Goswami,
Resident of House No.8,
Gali No.1 B, Krishna Colony,
Chandra Nagar, District- Moradabad,
Uttar Pradesh. Applicant No.4
5. Mukesh Kumar
Son of Kesav Dev Goswami,
Resident of Railway House No.
T-32F, Near Disioe Dharamshala
Lane Par, District- Moradabad,
Uttar Pradesh. Applicant No.5
6. Rajbir
Son of Ratanlal,
Resident of Unchakanhi,
District- Moradabad,
Uttar Pradesh. Applicant No.6
7. Arun Kumar
Son of Ram Sureman,
Resident of Village & Post-
Gali No.1 B, Krishna Colony,
Tikar Mafi, District- Sultanpur,
Uttar Pradesh. Applicant No.7

8. Dindayal Singh
Son of Bihari Singh,
Resident of Village & Post-
Chakki, District-Buxar
Bihar. Applicant No.8
9. Ram Sagar Singh
Son of Bihari Singh,
Resident of Village & Post-
Chakki, Laxman Dera,District-
Buxar, Bihar. Applicant No.9
10. Sanjay Kumar
Son of Vijayanand,
Resident of M-2A, Railway Harthala Colony,
District- Moradabad,
Uttar Pradesh. Applicant No.10
11. Chander Sen
Son of Late Mohan Lal,
Resident of Chaue Ki Basti,
Lane Par, District- Moradabad,
Uttar Pradesh. Applicant No.11
12. Binod Kumar Singh
Son of Banwari Singh,
Resident of Village & Post-
Chakki, Laxman Dera,District- Buxar,
Bihar. Applicant No.12
13. Har Kishore
Son of Shankar Lal,
Resident of Kasma Kundarki,
Tehsir Bilari, Jaidpur Road,
District- Moradabad,
Uttar Pradesh. Applicant No.13
14. Shital Prasad
Son of Shankar Lal,
Resident of Kasma Kundarki,
Tehsir Bilari, Jaidpur Road,
District- Moradabad,
Uttar Pradesh. Applicant No.14
15. MD. Shahid Qureshi
Son of Sharafat Hussain,
Resident of Bhoor Sirgoi,
Bhola Singh Ki Milak Road,
Near Muskaan Studio,District- Moradabad,
Uttar Pradesh. Applicant No.15
16. MD Arif
Son of Sharafat Hussain,
Resident of Bhoor Sirgoi,
Bhola Singh Ki Milak Road,
Near Muskaan Studio,District- Moradabad,
Uttar Pradesh. Applicant No.16

17. MD Vajid
 Son of Md. Vafati,
 Resident of Bar Wali Masjid,
 Kaji Tola, Diwan Ka Bazar,
 District- Moradabad,
 Uttar Pradesh. Applicant No.17

18. MD Majid
 Son of Md. Vafati,
 Resident of Bar Wali Masjid,
 Kaji Tola, Diwan Ka Bazar,
 District- Moradabad,
 Uttar Pradesh. Applicant No.18

(Argued by: Shri M.S. Reen, Advocate)

Versus

1. Union of India
 Through the Chairman,
 Railway Board, Rail Bhawan, New Delhi.
2. The General Manager
 Northern Railway, Baroda House,
 New Delhi.
3. The Divisional Railway Manager,
 Northern Railway, Divisional Officer,
 Moradabad, Uttar Pradesh.
4. The Deputy Chief Commercial
 Manager/FM-1,
 Northern Railway, Baroda House,
 New Delhi. ..Respondents

(By Advocate : Shri V.S.R. Krishna)

ORDER (ORAL)

Justice M. S. Sullar, Member (J):

The challenge in this Original Application (OA), instituted by the applicants, Paramjeet Singh & Others, is to the impugned orders dated 10.03.2014 and 28.02.2014 (Annexure P-18 Colly), whereby their claim of regularisation of their services, in Group 'D' Posts has been rejected by the competent authority.

2. Although, this case has a chequered history, but the contour of the facts & material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant OA, and exposted from the record, is

that, applicants have been working as contract Parcel Porters since long under Divisional Office, Northern Railway, Moradabad, UP. They were members of All India Railway Parcel & Goods Porters' Union (for brevity the "Railway Union"). The Railway Union had earlier filed **Writ Petition (Civil)** bearing **No.433/1998** for permanent absorption of its members as regular employees under different Zonal Railways, which was decided, vide order dated 22.08.2003 (Annexure R-1 to the MA) by Hon'ble Apex Court reported in [**A.I. Railway Porters & Goods Porters Union Vs. U.O.I. & Others 2003 (11) SCC 590** (2003) 11 SCC 590].

3. Sequelly, in pursuance thereof, the Assistant Labour Commissioner, after holding an enquiry, and perusing the record, has verified that all the applicants have worked for a requisite number of years, as Parcel Porters in Northern Railway Division, Moradabad, vide report (Annexure P-1 Colly). Subsequently, the Ministry of Urban Affairs of Railways/Railway Board issued a Circular dated 25.04.2005, directing that all the Parcel Porters, who have continuous service of 10 years or more, shall be absorbed as regular employees of Railways, provided that they have requisite educational qualification as per Railway Recruitment Rules for Group 'D'.

4. According to the applicants, Railway Union again filed another **Writ Petition (Civil)** bearing **No.239/2008** as a large number of Parcel Porters, who were not having requisite qualification, had been absorbed as Group 'D' employees by granting exemption of requisite qualification by the Railway

authorities. The Writ Petition was disposed of and Railway authorities were directed to implement the earlier directions dated 22.08.2003, vide another order dated 17.11.2009 (Annexure P-2) by Hon'ble Apex Court. The order, in substance, reads as under:-

“In that view of the matter, as far as the Writ Petitioners are concerned, we allow the writ petitions and direct that in terms of the directions given in the case of A.I. Railway Parcel Porter & Goods Porters Union (Supra), the respondent shall take immediate steps to absorb the writ petitioners but taking into consideration only those conditions which have been indicated in paragraph 34 of the judgment. Such exercise be completed within three months from the date of communication of this order.....”.

5. In view of the **I.A. No.3** in **Writ Petition (C) No.640/2007** filed by the respondents, the period to implement the order was further extended for a period of 3 months, vide order dated 08.11.2010 (Annexure P-3) by Hon'ble Apex Court.

6. The case set-up by the applicants, in brief, insofar as relevant, is that, the respondents have not absorbed them on the pretext that there was no vacant post available in the Moradabad Division. However, large number of Group 'D' posts, i.e., 11439, including those of Porters of Moradabad Division, were advertised by public notice dated 17.12.2010 (Annexure P-4), by the Railways which is totally contrary to the directions of Hon'ble Supreme Court. It necessitated the applicants to file **I.A. No.29-30 of 2011** in **W.P. (C) No.433/1998** seeking the direction to absorb them on the post of Parcel Porters or any other Group 'D' post. The Hon'ble Apex Court, vide order dated 18.04.2011 (Annexure P-5), directed the respondents to consider the case of the applicants in Group 'D' posts. In compliance thereof, the Assistant Commercial Manager, Moradabad, issued letter dated

17.06.2011 to all the applicants for submitting their details. Applicants immediately submitted the entire necessary details to the respondents, vide reply dated 17.06.2011 (Annexure P-6). Even then, the respondents did not consider the case of the absorption of the applicants, although similarly situated persons were absorbed in Allahabad Division.

7. According to the applicants, the Hon'ble Supreme Court in subsequent order dated 13.02.2012 (Annexure P-7), in contempt matter, permitted the applicants to file representation and respondents were directed to decide the same within a period of 3 weeks. Consequently, they filed representations dated 21.02.2012 (Annexure P-8). However, the respondents rejected the representations of the applicants, vide order dated 07.03.2012 (Annexure P-9). They again approached Hon'ble Supreme Court, seeking direction to the respondents to absorb them on the post of Parcel Porters or any other Group 'D' posts on the parity of similarly situated porters who were absorbed and appointed to the Group 'D' posts as per information received from RTI (Annexure P-10). The ***I.A. Nos.1 & 2 in I.A. Nos.29-30 in W.P. (C) No.433/1998*** (Annexure P-11) filed by the applicants were disposed of and respondents were directed to appoint an officer in each zones to consider the cases of regularization of the applicants by Hon'ble Supreme Court, vide order dated 15.02.2013 (Annexure P-12). Similar orders dated 13.11.2013 (Annexure P-14) were passed by Hon'ble Apex Court in ***I.A. No.1 & 2 in I.A. No.33-34 in Writ Petition (Civil) No. 433/1998***.

8. Meanwhile, applicants had sought information under RTI and came to know that the respondents have absorbed similarly situated Parcel Porters in the Group 'D' posts. They moved another representation dated 26.02.2013 (Annexure P-16), seeking regularization of their services in the light of various orders of Hon'ble Apex Court and on the principle of parity. The applicants finally came to know that their representations/claims have been rejected vide impugned order dated 28.02.2014 (Annexure P-18 Colly) by the Northern Railway Headquarters. It was conveyed to the applicants vide memo dated 10.03.2014 (Annexure P-18 Colly).

9. Aggrieved thereby, the applicants have preferred the instant O.A., challenging the impugned orders (Annexure P-18 Colly) on the following grounds:-

“(a) That the impugned orders passed by the respondent authorities are arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India.

(b) That the respondents have acted in breach of Articles 14 and 16 of the Constitution of India inasmuch as the services of several other similarly situated parcel porters have been regularized in compliance of the judgment of the Hon'ble Supreme Court dated 22.08.2003 but the applicants have been left out even though they fall within the parameters laid down in the said judgment.

(c) That unfortunately the respondents have rejected the claim for regularization of the applicants only by the covering letter dated 10.03.2014 even though, in the main order dated 28.02.2014, the case of the applicants has not even been considered. Therefore the situation which exists is that the claim of the applicants has been rejected without even being considered.

(d) That by not even considering the case of the applicants for regularization, the respondents have acted in breach of the repeated orders of the Hon'ble Supreme Court.

(e) That the primary condition for regularization of services, as directed by the Hon'ble Supreme Court, was that the past services of the employee concerned should be verified by the Assistant Labour Commissioner. Although the services of all the applicants stands verified, that too way back in 2004 & 2005, the respondents have chosen to ignore the same, rather incorrectly stated that the services of the applicants has not been verified.

(f) That the other grounds sought to be taken in the order dated 28.02.2014 is that lack of adequate work in the Moradabad division. It is submitted that this is nothing but a bogey to somehow defeat the genuine claims of the applicants. The respondents had advertised more than 11000 vacancies in 2010 and even in February 2014 have advertised 5679 vacancies, which shows beyond doubt that posts are available.

(g) That the other contention of the respondents that the applicants cannot be considered against other Group D vacancies is completely untenable because they have themselves regularized several parcel porters against Group D posts, the judgment dated 22.08.2003 permitted the applicants to be posted on other posts and the order of the Hon'ble Supreme Court dated 18.04.2011 specifically directed the respondents to consider the case of the applicants against the Group D vacancies advertised.

(h) That it is apparent on the face of record that the services of the applicants stand verified and posts are also available and therefore there is absolutely no justification for the respondent authorities to keep them out.

(i) That the respondents have refused to address the grievances of the applicant despite repeated representation."

10. Levelling a variety of allegations, narrating the sequence of events and orders of Hon'ble Apex Court, the applicants claimed, that their services are liable to be regularised in Group 'D' posts, which was illegally rejected by the respondents. On the strength of the aforesaid grounds, the applicants seeks to quash the impugned orders in the manner indicated hereinabove.

11. The respondents refuted the claim of the applicants and filed the reply, inter alia, pleading certain preliminary objection of maintainability of the OA, cause of action and locus standi of the applicants.

12. However, on merits, it was pleaded as under:-

"It is submitted that a number of writ petition/IAFs etc, were filed between 1988 and 1998 by contractual parcel handling labourers who had worked as parcel porter/Goods Porters for their

absorption/regularization by Indian Railway as Railway Parcel Porters on a regular basis railway employees of group 'D'.

It is submitted that all India Railway Parcel Goods Porters Union filed writ petition (c) No.433/1998. The order of which was given on 22.08.03 reported in 2003 (IISC590) in which Hon'ble Supreme Court gave directions in para 34 which have 11 directives and directed ALC (Assistant Labour Commissioner, Central Lucknow) to again scrutinize all the records and to submit its report of fresh inquiry in regard to genuineness and authenticity of each and every claimant for regularization of all previous petitioner and current petitioner. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis.

It is submitted that in compliance of the orders passed by Hon'ble Supreme Court on dt. 09.05.1995 in writ petition No.507/92 with WP No.415/92, 82/93 and 838/92, total 566 contractual labourers who had handled parcel work in MB division were absorbed as Parcel Porters on perennial basis and also in accordance of order/directions passed by Hon'ble Supreme Court in that matter. All contractual labourers were absorbed and no contractual labourer Parcel/Goods was working at any station of Moradabad division after 31.10.95 due to abolition of contract labour system for loading and unloading of parcel/goods in MB division of Northern Railway.

It is submitted that the above applicants of Moradabad Division also filed Contempt petition no.413/2011 on 15.09.2011 in Hon'ble Supreme and subsequently the contempt petition 413/2011 filed by these applicants had been dismissed by Hon'ble Supreme Court of India on 13.02.2012.

It is submitted that the quantum of work on perennial basis of Parcel Porters is not available over Moradabad Division of Northern Railway as Contract system of Parcel handing work has already been abolished in Moradabad Division and no contract labour Parcel/Goods is working at any station of Moradabad Division.

It is further submitted that in compliance of the Judgment and order of Hon'ble Supreme Court in WP (C) no.277/88, 416/92, 507/92, 711/96, total 566 parcel/goods Porters have been regularized in Moradabad Division of Northern Railway. The quantum of work has drastically reduced as the work of Parcel transportation has been leased out by leasing of SLR/Assistant Guard Cabin/Vehicular Parcel Unit, Parcel Cargo Trains".

13. Virtually acknowledging the factual matrix & reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations and grounds contained in the O.A., and prayed for its dismissal.

14. Controverting the allegations pleaded in the reply of the respondents, and reiterating the grounds contained in the

O.A, the applicants filed their rejoinder. This is how we are seized of the matter.

15. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OA deserves to be partly accepted, in the manner and for the reasons mentioned hereinbelow.

16. As is evident from the record, that in the wake of **Writ Petition (Civil) No.433/1998** decided on 22.08.2003 in the case of **A.I. Railway Porters & Goods Porters Union Vs. U.O.I. & Others 2003 (11) SCC 590**, the Hon'ble Apex Court issued the following directions:-

"We have carefully examined the report of the Assistant Labour Commissioner, the findings recorded therein and the counter affidavits, reply affidavits and rejoinder filed by the respective parties. The facts disclosed in the report and the findings recorded in regard to the perennial nature of work cannot be overruled. Though we have heard at length both the parties, the learned Additional Solicitor General appearing for the Railway Administration was not able to point out to us any valid reason as to why the present writ petitions should not be allowed in terms of the order dated 15.04.1991 made by this Court in similar Writ Petition No. 277 of 1988 particularly when in the matter of absorption of contract labour by a public undertaking on a permanent regular basis. We feel, therefore, it is just and appropriate to issue the following directions to the respondent Union of India and the Railway Administration Units:

1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and the railway administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six months from the date of receipt of this judgment.

2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, the Railway Administration should absorb them permanently and regularize their services. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are not found medically fit/unsuitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by the Railway Administration as Railway Parcel Porters does not disable the Railway Administration from utilizing their services for any other manual work of the Railways depending upon its needs.

6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period of work.

7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the railway stations. The report shall be finalized and submitted after discussions and deliberations with the railway administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

8. While absorbing them as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continuous employment.

9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the railway administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the railway administration for premature termination of their contracts in respect of the contract labourers.

10. The railway administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment.

11. This judgment does not relate to the persons who have already been absorbed.

Several I.As were filed to modify the order dated 08.09.2000 passed by this Court in Writ Petition No. 433 of 1998 and 457 of 1998. Few I.As were filed seeking certain prayers pending writ petition. Few I.As were filed to implead the proposed parties as parties to the writ petition. Some I.As were filed for intervention.

In view of the disposal of the main matters, no separate direction is necessary in these I.As.

In the result, the writ petitions and the civil appeals including the I.As filed in different writ petitions shall stand disposed of accordingly.

However, there will be no order as to costs".

17. In pursuance thereof, the applicants moved representations for redressal of their grievances, but the claim of the applicants for their regularisation of their services was stated to have been negated by the Railway authorities, on the ground of non-availability of the posts, which necessitated

them to file **I.A. Nos.29-30** in **Writ Petition (Civil)** bearing **No.433/1998**, which came to be disposed of, vide order dated 18.04.2011 (Annexure P-5) in the following manner:-

“Learned counsel for the applicants submits that there are 11439 vacancies of Grade ‘D’ employees. We direct that the petitioners may also be considered for those vacancies in accordance with law in view of this order, nothing further survives in these IAs, which are disposed of accordingly”.

18. What cannot possibly be disputed here is that, the Assistant Labour Commissioner, Central, has duly verified the period of working and claim of the applicants, vide reports dated 17.12.2004 (Annexure A-1 Colly), 14.1.2005 (Annexure P-1 Colly) and schedule attached to order dated 14.1.2005, prepared by the Assistant Labour Commissioner (Central) (page 45-47).

19. Surprisingly enough, the respondents have still rejected the claim for regularisation of services of the applicants mainly on the ground, that the services of similarly situated 566 Parcel/Goods Porters, have been regularised in Moradabad Division, according to quantum of work on perennial basis to them. Be that as it may, the fact remains is, that the case of the applicants, for regularisation of their services, was not at all considered in other Group ‘D’ posts, as ordered by Hon’ble Apex Court.

20. There is yet another aspect of the matter, which can be viewed entirely from a different angle. It is not a matter of dispute that the respondents have subsequently advertised 11439 in Group ‘D’ posts. They have also regularised the

services of the similarly situated Parcel Porters in Group 'D' posts. In this manner, the applicants are also entitled to the same treatment and same benefit and relief on the principle of parity in view of the ratio of law laid down by Hon'ble Apex Court in cases ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481*** and ***Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120*** wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

21. Therefore, once the Hon'ble Apex Court has directed the Railway authorities to consider the case of regularisation of the applicants on the posts of Parcel Porters, or in any other Group 'D' posts, subject to the terms and conditions mentioned therein, in that eventuality, it cannot be said & respondents cannot be heard to say, that the services of the applicants are not liable to be regularised in Group 'D' posts

in the garb of impugned order dated 28.02.2014 conveyed to the applicants, vide order dated 10.03.2014 (AnnexureP-18 Colly), particularly when their claim was duly verified by the Assistant Labour Commissioner (Central), vide reports dated 17.12.2004 (Annexure A-1 Colly), 14.1.2005 (Annexure P-1 Colly) and schedule attached to order dated 14.1.2005 (page 45-47).

22. Meaning thereby, the respondents have just ignored the specific direction with impunity to regularise the services of the applicants in 11439 vacancies of Group 'D' employees, subject to the terms and conditions mentioned in the initial order (Annexure R-1 in MA), by Hon'ble Apex Court. Therefore, if the impugned orders are allowed to stand, then it will inculcate and perpetuate great injustice to the applicants, which is not legally permissible.

23. In the light of the aforesaid reasons, the instant OA is partly accepted. The impugned orders dated 28.02.2014 and dated 10.03.2014 (AnnexureP-18 Colly) are hereby set aside. The matter is remitted back to the competent authority, to reconsider the case of regularisation of services of the applicants on the post of Parcel Porters or in any Group 'D' posts, within a period of 3 months from the date of receipt of a

certified copy of this order. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
28.11.2016

Rakesh