



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.993/ 2012

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

1. Beyash Singh,
Aged about 54 years,
Son of Adalat Singh,
Residing at 2/3, Rajkishore
Roychowdhury Lane,
Post Office B. Garden Shibpur,
Howrah – 711103.
2. Y. Srinivas Rao,
Aged about 46 years,
Son of Venkat Rao,
Residing at 5, Foreshore Road,
Post Office – Shibpur,
Howrah – 711102.
3. Md. Musim,
Aged about 51 years,
Son of Md. Selim,
Residing at 2, Foreshore Road,
Post Office – Shibpur,
Howrah – 711103.
4. Sri Bhagwan Singh,
Aged about 52 years,
Son of Kewal Singh,
Residing at 2/3, Rajkishore
Roychowdhury Lane,
Post Office B. Garden Shibpur,
Howrah – 711103.
5. Ashok Kumar Singh,
Aged about 51 years,
Son of Bijoy Singh,
Residing at 2/3, Rajkishore
Roychowdhury Lane,
Post Office B. Garden Shibpur,
Howrah – 711103.

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6. Tapas Purakait,
Aged about 46 years,
Son of Sachindra Nath Purkait,
Residing at Village – Bagdah,
Post Office – Durgapur,
P.S. – Baruipur,
District – 24 Parganas (South);
7. Ajit Kumar Singh,
Aged about 50 years,
Son of Bijoy Singh,
Residing at 2/3, Rajkishore
Roychowdhury Lane,
Post Office B. Garden Shibpur,
Howrah – 711103.
8. Subhas Thakur,
Aged about 46 years,
Son of Achhe Lal Thakur,
Residing at 2/3, Rajkishore
Roychowdhury Lane,
Post Office B. Garden Shibpur,
Howrah – 711103.
9. Debasis Purakait,
Aged about 48 years,
Son of Sachindra Nath Purkait,
Residing at Village – Bagdah,
Post Office - Durgapur,
Police Station Baruipur,
District – 24 Parganas South.
10. Sanjoy Singh,
Aged about 35 years,
Son of Swaliya Singh,
Residing at 2/3, Rajkishore
Roychowdhury Lane,
Post Office B. Garden Shibpur,
Howrah – 711103.
11. Munna Prasad Shah,
Aged about 35 years,
Son of Ujagir Shah,
Residing at 41, Bharpara Road,
Post Office B. Garden Shibpur,
Howrah – 711103.
12. Tarakeshwar Sah,
Aged about 36 years,
Son of Lalbabu Sah,

Residing at 41, Bharpara Road,
Post Office B. Garden Shibpur,
Howrah - 711103.

13. Avik Bhattacharjee,
Aged about 24 years,
Son of Biswanath Bhattacharjee,
Residing at 14/7/4/2, Olabibitala Lane,
Post Office - Shibpur,
Howrah - 711 102.
14. Shakindra Ram,
Aged about 46 years,
Son of Puram Ram,
Residing at 3/4, Foreshore Road,
(Shib Mandir),
Post Office B. Garden,
Howrah - 711 103.
15. Umesh Prasad,
Aged about 41 years,
Son of Gharbharan Prasad,
13, Foreshore Road,
Shibpur, Narsingh Bhavan,
Howrah - 711 102.
16. Raj Kumar Majhi,
Aged about 39 years,
Son of Jukhu Majhi,
Residing at 26, Jagat Banerjee Ghat Road,
Shibpur, Howrah - 711102.
17. Mahesh Kumar Singh,
Aged about 34 years,
Son of Shiunandan Singh,
Residing at 5/6, Foreshore Road,
Post Office B. Garden Shibpur,
Howrah - 711103.
18. Shrinath Yadab,
Aged about 53 years,
Son of Kailash Yadab,
Residing at 29, Foreshore Road,
Post Office B. Garden Shibpur,
Howrah - 711103.
19. Arup Ghosal,
Aged about 37 years,
Son of Gaur Ghosal,
Residing at Bejpara,

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G.P. Belun Dhamasin,
Police Station Pandua,
District – Hoogly.

20. Vinod Kumar Singh,
Aged about 40 years,
Son of Prashu Ram Singh,
Residing at 10/1, Sri Moni Bagan Lane,
1st Floor, Salkia,
Howrah – 711101.
21. Raju Yadav,
Aged about 33 years,
Son of Naurang Yadav,
Residing at 2/3, Rajkishore
Roychowdhury Lane,
Post Office B. Garden Shibpur,
Howrah – 711103.
22. Krishna Singh,
Aged about 57 years,
Son of Kapildev Singh,
Residing at 41, Bharpara Road,
Post Office B. Garden Shibpur,
Howrah – 711103.
23. Sunil Kumar Tiwari,
Aged about 35 years,
Son of Hirday Anand Tiwari,
Residing at 36, Foreshore Road,
Post Office B. Garden Shibpur,
Howrah – 711103.

... Applicants.

Versus

1. Union of India
Service through the General Manager,
South Eastern Railway,
G.R.C., 11 Garden Reach Road,
Kolkata – 700 043.
2. Chief Commercial Manager,
South Eastern Railway,
14, Strand Road,
Kolkata – 700 001.
3. Divisional Railway Manager,
South Eastern Railway,

Kharagpur,
District – Midnapore.

4. Area Manager,
South Eastern Railway,
Shalimar, Howrah,
District – Howrah.

5. Senior Divisional Personnel Officer,
South Eastern Railway,
11, Garden Reach Road,
Kolkata – 700 043.

... Respondents.

For the applicant : Mr.H. Bandyopadhyay, counsel
Mr. P.P. Mukherjee, counsel

For the respondents : Mr. M.K. Bandyopadhyay, counsel

Heard on : 31.08.2018

Order On : 17.9.18

ORDER

Bidisha Banerjee, Judicial Member

This application has been filed by 23 applicants in order to seek the following reliefs:-

- "8.(a) Delay, in moving this application may be condoned, if there be any;
- (b) A direction may be passed upon the Respondents to pay the outstanding dues of the applicants in respect of the work already undertaken by the applicants;
- (c) A declaration that the applicants are entitled to be considered for permanent absorption in the various establishments of the Respondents with declaration that the applicants are Railway servants with declaration that they shall be deemed to be Railway servants;
- (d) A further direction directing the Respondents to take all possible steps for being considered for regularisation/absorption of the applicants and to give benefit of the Supreme Court's judgment by absorbing all the applicants permanently as Railway servants by considering the representations already made in this regard;

(e) Liberty may be given to the applicants to move this application jointly under Rule 4(5)(c) of the Central Administrative Tribunal Procedure Rules 1987

(f) To pass such other order or orders as to Your Honour may deem fit and proper."

2. Having claimed to have completed more than 240 days in a year and worked for more than 10-15 years consecutively the applicants have sought for regularisation. According to the applicants, similarly circumstanced persons have been regularised while the applicants languish. The applicants represented through representations which were not considered.

3. Ld. counsel for the applicants would submit that the applicants were engaged as Parcel Porters through contractors engaged by the Railways but the pervasive control, right to termination, administrative control rested with the Railways and, therefore, the contract entered into between the contractor and the railways was a ruse/camouflage. The applicants have enclosed a tabulation sheet to demonstrate the details of their engagement. It was argued that in case of Parcel Porters of Howrah it was held that parcel handling was a job of perennial nature, therefore, persons engaged for the purpose who had served the railways for a considerable period of time, deserve to be absorbed. Ld. counsel would submit that in view of the decision rendered by a Full Bench of Hon'ble High Court in **Awadesh Singh vs. Union of India & Ors.** reported in **(2013)2 CAT-597(HC)**, this Tribunal would have jurisdiction to entertain the application.

4. Ld. counsel for the applicants would invite our attention to the judgment of the Hon'ble Apex Court in case of **All India Railway Parcel and Goods Porters' Union vs. Union of India & Ors.** reported in **(2003)11 Supreme Court Cases-590** wherein the following directions were issued by the Hon'ble Apex Court:-

"34. 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 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 15.4.1991 made by this Court in similar Writ Petition No. 277 of 1988 particularly 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 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 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, 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 found medically unfit/unsuitable for such employment.
5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by Railway Administration as railway parcel porters does not disable Railway Administration from utilizing their services for any other manual work for 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 periods 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 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/jobwise on the basis of their continuous employment.
9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by 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 Railway Administration for premature termination of their contracts in respect of the contract labourers.
10. 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.

35. Several IAs were filed to modify the order dated 8.9.2000 passed by this Court in Writ Petitions Nos. 433 and 457 of 1998. Few IAs were filed seeking certain prayers pending writ petition. Few IAs were filed to implead the proposed parties as parties to the writ petition. Some IAs were filed for intervention.

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

37. In the result, the writ petitions and the civil appeals including the IAs filed in different writ petitions shall stand disposed of accordingly."

Ld. counsel would further draw our attention to a decision rendered in case of **Howrah Parcel (EAS Rly.) L.C.M. Panch & Others vs. Union of India** in **W.P.(C) 640 of 2007** in the light of the decision of the Hon'ble Apex Court in **All India Railway Parcel and Goods Porters' Union vs. Union of India & Ors.** reported in **(2003)11 Supreme Court Cases-590** and a decision of Hon'ble Apex Court in **National Federation of Railway Parcel Porters Union vs. Union of India** reported in **2003(11) SCC 604** where a direction was given to absorb Railway Parcel Porters in accordance with the existing rules. Having taken notice of the previous judgments the Hon'ble Apex Court observed and ordered as under:-

"9. We are unable to visualise or appreciate the basis of the decision taken to insist that in order to be absorbed, a Railway Parcel Porter should have passed the Class-8 examination, inasmuch as, in our view, the ability to read and write is not dependent on whether a person had passed the class-8 examination or not.

10. 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 the A. I. Railway Parcel & Goods Porters' Union (supra), the respondents 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 should be completed within three months from the date of communication of this order.

11. *The writ petitions are disposed of."*

Ld. counsel would argue that since the present applicants stand on the same footing, they deserve identical reliefs, if not before the administration, at least before a Court of law.

Ld. counsel would draw our attention to para 4.3 and 4.4 of the application wherein the applicants had detailed the manner of engagement and their engagement details.

5. The respondents have emphatically admitted that the applicants were purely private contractors' labours and worked in the Shalimar railway yard and that if it was assumed that they were the staff of Allahabad Labour Supply Agency which was a purely private agency, they were in no way connected with the Railways.

However, the respondents have stated that the applicants were not entitled to permanent absorption as they were staff of Allahabad Labour Supply Agency which was purely a private agency. The respondents have disputed their certificates issued to them by Goods Supervisor as not acceptable. They have denied of having paid to the applicants any remuneration upto August, 2009 and stated that after expiry of the contract period, no fresh agreement was executed between the Contractors and the respondents.

6. In order to refute such contentions ld. counsel for the applicants would once again invite us to the tabulation sheet facts whereof have not been denied or controverted by the authorities.

Ld. counsel would then place the agreement that was entered into by the Contractor with the Railways and specifically mentioned the nature of work which

according to the Id. counsel indicated perennial type of job under the respondent authorities.

Ld. counsel would rely upon para 20 of the said agreement which said that labour to be paid by Railway Administration, if not paid by the Contractor. Para 30 thereof which stipulated as under:-

"30. RAILWAY RESERVES THE RIGHT TO TERMINATE THE CONTRACT IN CASE CONTRACTOR BECOMES INSOLVENT OR CONVICTED IN THE COURT OF LAW.

- (a) *If at any time the contractor becomes insolvent or files application for insolvency or any creditor of his moves the court for adjudicating him as an insolvent or if he is convicted in any court of law the railway administration will have the absolute option of terminating this agreement forthwith and the contractor shall have no right for damage or compensation on this account.*
- (b) *Any merchant or consignor/consignee or his agent shall be permitted to load/unload his consignments from leased SLRs/VPs or otherwise by handling contractor-labour cooperative or otherwise – shall not hinder any such handling by consignor/ Consignee themselves through their labour in any overt, covert or any other means. Any coercion or force by contractor will result in heavy penalty.*
- (c) *On a future date, the Rlys may engage a mechanical handling agent, either in addition or in replacement of existing manual handling contractor. The labour Co-Operative should commit in writing about the acceptability of any such move by Rly administration and not to litigate unnecessarily.*
- (d) *On a future date, Rly may also allow a mechanical handling agent or a group of such agents to register themselves with Rlys – so as to offer their services to Rly customers in loading/unloading of their consignment as a private arrangement between such agent or group of agents and consignor/consignee.*
- (e) *Forecast of placement of VPs/SLRs/Millennium etc. shall be given 4 hours in advance and contractor shall have to arrange adequate labour.*
- (f) *Unloading/Loading of SLR/VPs or other wagons will have to be done as and when supplied by rly for the purpose and the contractor will be bound to undertake the work on 4 hours notice with adequate labours to complete the work within given time. Any VP/SLR detained for Loading/Unloading beyond given time will attract levy of D/C as admissible at Shalimar against the contractor which will be recovered*

from monthly bill. Similarly uneven loading or overloading if detected the contractor will be responsible to adjust or unload the consignment free of cost."

Ld. counsel would refer to the following paras of Agreement in order to show that the railway respondents has administrative and pervasive control over the labourers employed by the Contractors.

- (i) Para 3.1 of the Agreement laid down the following terms of termination of service of labours, at the instance of Railways:-

"3.1 (i) The contractor shall be responsible for the proper and orderly conduct of the labours while performing their duties at the sheds and premises and shall employ only such men whose character has been verified, by the police and declared to be suitable for employment. He shall also on demand of the railway administration forthwith terminate the service of any labour who in the opinion of the railway administration is in different disobedient insubordinate or is considered unsuitable for employment. Any such labour whose services are so terminated will not without the previous consent in writing of the railway administration be reemployed by the contractor."

- (ii) Para 4.1 of the Agreement which provides as under:-

4. (i) The remuneration of the contractor shall be as follows:-

Xxx

(ii) All the other handing work not specified in the attached schedule shall be performed by the contractor at the rates to be mutually agreed upon by the Railway Administration and the contractor shall be deemed to have effect as it provided for in this contract. The work should be carried out by the contractor immediately on demand by the local Railway authorities/officials not below the rank of ACM pending settlement of rates. The rates of remuneration shall be binding on both the parties to this agreement until the termination of this agreement in the manner herein provided.."

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Further Para 14 of the Agreement would be placed which provides the manner in which fair wage was regulated by the Railways and para 20 of the Agreement that laid down the following :-

"20. LABOUR TO BE PAID BY THE RAILWAY ADMINISTRATION IF NOT PAID BY THE CONTRACTOR(s)

The Railway administration shall have the right to deduct from the money due to the contractor or from his security deposit referred to in clause 8 above, any sum required or estimated to be required for making good the loss suffered by the labourer(s) or any other person in his employment by reason of non fulfilment of the conditions for the benefit of the labourers, non-payment of wages or deductions made from him or their wages which are unjustified or illegal."

Citing the aforesaid, the Id. counsel would submit that since the control lay with the Railways, the contract was a mere ruse or camouflage and that the railways having the full-fledged control over the labourers was bound to absorb them.

Further, Id. counsel would submit that on 23.06.2016 when the matter was heard out, this Tribunal had recorded its satisfaction in regard to the status of the applicants as contract labourers.

Daily order dated 23.06.2016 reads as under:-

"The applicants claimed to be the Parcel Porters under the Railways engaged on contract basis by different contractors. The applicants' counsel pointed out that the applicants are working as contractors inspite of the clear directives of the Hon'ble Apex Court to abolish the contract system in the Railways. The respondents alleged that all these applicants are purely private contract labourers who worked at Shalimar Railway Yard and such type of labourers are not entitled for permanent absorption in the Railways as per the extant rules. This reveals that the status of the applicants as a contract labourers has not been denied. However, the details of when they were initially appointed or since when they are working as contract labourers have not been brought on record. Therefore, we direct the applicants' counsel to give tabulation charts of each and every applicant

indicating therein the dates from which they started working as contract labourers to the dates they worked as such under different contractors and mentioning the specific dates they worked under each contractor, within a period of one month under copy to the counsel for the respondents. Thereafter appropriate order would be passed in the matter. List on 25.07.2016."

As directed by the bench, they have furnished the tabulation chart, as detailed supra, which ought to be acted upon.

7. Per contra, Id. counsel for the respondents would reiterate that the applicants were not entitled to any relief as they were not railway employees and were engaged by private contractors. The agreement was between the private contractors and the Railways and the private contractors engaged the applicants for loading and unloading jobs on the basis of agreement entered into between the private contractor and the Railways. Id. counsel would refer to the identity cards issued to the applicants wherefrom it appeared that the format was supplied by the Railways, but the certificates were issued by individual contractors.

8. We have heard Id. counsels and considered the materials on record.

9. In view of the admitted position that emerged, that the applicants served the railways on being engaged through contractors against jobs of perennial nature, for a long time while overall control rested with the Railways as enumerated supra, and in view of the fact that contract system in parcel handling work has been abolished in various railways, we direct the respondents to consider the case of each and every applicant in the light of the decision in **All India Railway Parcel and Goods Porters' Union vs. Union of India & Ors. (supra)**, if required, upon referring the matter to the appropriate Labour Commissioner

and pass appropriate orders for their absorption in the light of such judgment within a reasonable time, preferably within six months.

10. This O.A. is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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