



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, CALCUTTA

O. A. No.350/00 1017 of 2015

In the matter of :

1. **JOY HIND PRASAD**, son of

Late Harkaran Prasad, aged about

52 years, residing at 34/35, Bijoy

Kumar Mukherjee Road, P.O. Salkia,

P.S. Golabari, Howrah, Pin-711006.

2. **TIRATH PRASAD**, son of Late

Muneshwar Prasad, aged about 55

years, residing at 49, Bijay Kumar

Mukherjee Road, P.O. Salkia, P.S.

Golabari, Howrah, Pin-711106.

3. **ANIL SAHA**, son of Late Akhil

Saha, aged about 54 years, residing

at Village Gobra, P.O. Chanditala,

P.S. Dankuni, District : Hooghly,

Pin-712702.

4. **ASHOK NASKAR**, son of Upen

Naskar, aged about years, residing

at Village Naskar Para Ula, P.O. Ula,

P.S. Sankrail, Howrah, Pin-711310.

5. **SUBHAS SHAW**, son of Suraj Shaw, aged about 38 years, residing at 50/1, G.T. Road, Pilkhana, P.O. Howrah, P.S. Golabari, Howrah, Pin-711101.

6. **BECHA RAM MAN**, son of Late Jivan Krishna Man, aged about 52 years, residing at Village Kalirampur, P.S. & P.O. Baruipur, District Hooghly, Pin- 712205.

7. **HIRA LAL RAM**, son of Kowleswar Ram, aged about years, residing at 103, Foreshore Road, Bichali Ghat, P.S. & P.O. Shibpur, Howrah, Pin-711102.

8. **BIJLI YADAV**, son of Chalaku Yadav, aged about 41 years, residing at 61/4, F. Road, No.2 Kunja Para, P.O. Netaji Garh, P.S. Liluah, Howrah, Pin-711108.

All the applicants worked as Parcel Porter at Howrah Railway Station under Chief Parcel Luggage Inspector, Eastern Railway, Howrah.

... **APPLICANTS**

VERSUS**1. UNION OF INDIA, service**

through the General Manager,
Eastern Railway, 17, N.S. Road,
Fairly Place, Kolkata-700 001.

2. THE CHAIRMAN, Railway

Board, Rail Bhaban, New Delhi, Pin-
110001.

3. THE CHIEF PERSONNEL

OFFICER, Eastern Railway, 17, N.S.
Road, Fairly Place, Kolkata-700001.

4. THE CHIEF COMMERCIAL

MANAGER, Eastern Railway, 103,
Kalighat Street, Kolkata-700001.

5. THE DIVISIONAL RAILWAY

MANAGER, Eastern Railway,
Howrah Division, Howrah, Pin-
711101.

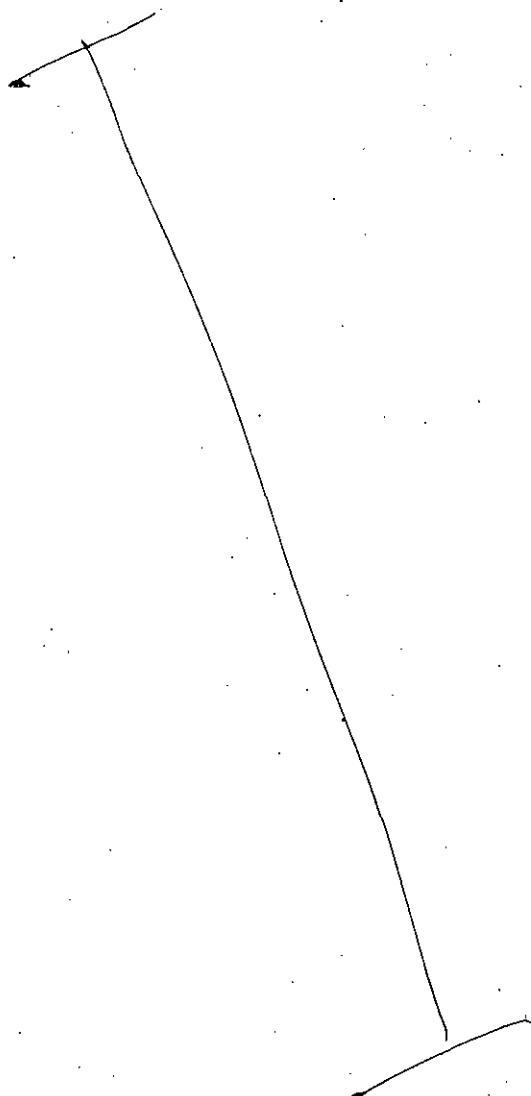
6. THE SENIOR DIVISIONAL

COMMERCIAL MANAGER, Eastern
Railway, Howrah Division, Howrah,
Pin-711101.

7. THE SENIOR DIVISIONAL
PERSONNEL MANAGER, Eastern
Railway, Howrah Division, Howrah,
Pin-711101.

8. THE ASSISTANT PERSONNEL
OFFICER (2), Eastern Railway,
Howrah Division, Howrah, Pin-
711101.

... RESPONDENTS



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/1017/2015

Date of Order: 13.1.2018

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

Joy Hind Prasad & Ors. Vs. UOI & Ors.

For the Applicant(s): Mr. B.Chatterjee, Counsel

For the Respondent(s): Mr. M.K.Bandyopadhyay, Counsel

Bidisha Banerjee, Member (J):

In a sequel to an earlier O.A. being O.A.No. 671/2013, disposed of on 14.11.2014, this O.A. has been preferred to challenge the memo dated 12.01.2014 issued by Sr. Divisional Commercial Manager, Eastern Railway, Howrah in purported compliance of the directions of this Tribunal in O.A.No. 671/2013.

2. We heard Ld. Counsel for both the parties and perused the materials on record.

3. O.A. 671/2013 was disposed of with the following orders:

" Heard Ld. Counsel for both sides.

2. The Ld. Counsel for the respondents fairly concedes that the applicants who have been found unfit in C1 category and have not been absorbed as Parcel Porters, can be considered against alternative posts and adjusted against other avenues in view of the fact that similarly circumstanced Parcel Porters have been adjusted as Bedding Porters etc. in the Railways in consideration of their prayer for absorption where medical fitness lesser than C1 category is required.

3. In such view of the matter, the O.A. is disposed of with a direction upon the concerned respondent authority to consider the case of the applicants against available vacancies of Porters in other categories commensurate with their medical fitness less than C1 category which shall make them eligible to be considered in accordance with law and pass appropriate order within three months from the date of receipt of a copy of this order.

4. The O.A. is accordingly, disposed of. No order as to costs."

It appears from a bare perusal of the order, since the Respondents Counsel appearing in the said matter had fairly conceded that the applicants of the said O.A., Joyhind Prasad & others, who have been found unfit in C-I category and were not absorbed as Parcel Porters can be considered against alternative post and adjusted against other avenues as similarly circumstanced Parcel Porters have been adjusted at Bedding Porters etc, this Tribunal had issued mandatory direction upon the Respondents to consider the present applicants against available vacancy of Porters in other categories commensurate with their medical fitness of less than C-I category, which would make them eligible for such post. But, with their memo dated 12.01.2014, Sr.

DCM in an attempt to sit over the directions of this Tribunal and thereby to scuttle the power of judiciary has opined as under:

"Since for the absorption as Parcel Porters the requirement was for fitness in medical category C-1 and the petitioners in the present case were not found fit in medical category C-1. The Railway Administration being duty bound to implement the Hon'ble APEX Courts' orders, it was not possible to provide employment as parcel porters, to the petitioners in WP(C) no. 433 of 1998, WP (C) no. 121 of 2000 WP(C) 640 of 2007.

Since the Hon'ble APEX Court's order are in the following unambiguous terms in WP(C) 433 of 1998, para-34 "the units of railway administration are not required to absorb on permanent basis such the contractor labour railway parcel porters who are found medically unfit/ unsuitable for such employment" which has again been reiterated in Para 24 of the order of Hon'ble Court in WP(C) 640 of 2007, considering the present petitioners for employment despite their medically unfit in C-1 category would tantamount to a violation of the Hon'ble Court's order.

In the above background, railway administration has no option to consider the case of the present applicants for employment, in terms of the Hon'ble Supreme Court's order which have been made the basis by the applicants seeking employment in terms of present OA filled before the Ld. Tribunal.

Thus the case is disposed off as per order of Central Administrative Tribunal dtd. 14.11.14 passed in OA no. 671 of 2013."

Bare perusal of the decision referred to by the Respondents would show that the Hon'ble Apex Court in A.I. Railway Parcel and Goods Porters' Union

Vs. UOI & Ors. [2003 (11) SCC 590] at Para 5 of the judgement, had succinctly held as under:

“5. The absorption of the eligible petitioner's in the writ petitions on a regular ad 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.”

Therefore, it was the bounden duty of the Respondents to explore other avenues to adjust the said Parcel Porters against appropriate posts depending upon its needs. Instead of following the said direction of the Hon'ble Apex Court, the Sr. Divisional Commercial Manager in his own wisdom, without consulting the officers in higher form, has rejected the case of the present applicants, who have been found unfit for absorption as Parcel Porter but fit for various other jobs with comparatively lower fitness level, a list whereof runs thus:

“Category C-2

(1) Commercial:-

1. Commercial Superintendent
2. Chief Cash Witness / Cash Witness
3. Clock Inspector / Winder
4. Warden and Instructor of Training Schools
5. Lady Inspector (Refreshment Rooms)
6. Superintendent (Lost Property Office)
7. Inspector of Dispatches
8. Office clerk / enquiry clerk
9. Packer / Sorter
10. Polisher
11. Syrup Maker
12. Filler
13. Checker

16. Chief Catering Inspector / Catering Inspector
17. Weighment Inspector
18. Masalchi /Bearer
19. Sail Maker (Otherwise known as Tarpaulin-repairer)

(2) Engineering :-

1. Office Clerk
2. Jamadar peon / Daftary / peon / Faraş
3. File Lifter / Book Binder
4. Sweeper / Bhisly
5. Office chowkidar / Office Waterman / waterwoman
6. Material Checker (Signal Workshops)
7. Assistant Watch and Ward Inspector
8. Workshop Clerk
9. Workshop Time-keeper
10. Office Draftsmen
11. Khalasi other than Shop Khalasi
12. Rest House caretaker

xxx xxx xxx

(4) Operating :-

1. Loco Instructor
2. Signaler (except [those shown in class A⁽²⁾])
3. Office clerk
4. All other Office staff not mentioned elsewhere
5. Water man
6. Running Room Staff
7. Box Porter / Call Man / Messenger / Chowkidar
8. Bhisly (not engaged in watering stock, passenger or goods)
9. Bar setter / Telephone Attendant
10. Traveling Porter / luggage Porter
11. I.C. Van Porter
12. Waiting Room Staff
13. Safaiwala / Safaiwali / Dhoby
14. Saloon Attendant
15. Punkha Khalasi
16. Washout Jamadar
17. Phone Clerk
18. Telegraph Peon

xxx xxx xxx

(6) Stores :-

1. Depot Material Supdt. I, II & III
2. Time-keeper
3. Messenger
4. Water man / Khalasi / Safaiwala / Safaiwali
5. Daftary / Jamadar peon

xxx xxx xxx"

The above list is extracted from an Advance Correction Slip to para 510

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of IRMM, 2000 as contained in Annexure-A/9 to the O.A.

4. Having failed to consider the matter properly in terms of the direction of the Hon'ble Apex Court and order passed by this Tribunal, which was a consent order, the said officer, being the Sr. Divisional Commercial Manager, Eastern Railway, Howrah, has misdirected himself and erroneously rejected the case of the present applicants. Accordingly, the memo dated 12.01.2014, as contained in Annexure-A/14 to the O.A., is quashed. Matter is remanded back to the authorities for appropriate direction in accordance with the decision extracted (supra) and the direction of this Tribunal in the earlier round. Let an appropriate order be issued within two months.

5. O.A. is, accordingly, disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

RK/PS