

(2013) 04 AHC CK 0251

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 65108 of 2011

Union of India and Others

APPELLANT

Vs

Dayanand Gupta and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2013) 6 ADJ 498 : (2013) 5 ALJ 520 : (2013) 3 UPLBEC 2433

Hon'ble Judges : Vineet Saran, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : A.K. Gaur, for the Appellant; Vinod Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioners-Railway Administration challenging the order of the Central Administrative-Tribunal, Allahabad dated 16.5.2011 passed in Original Application No. 104 of 2010 and the order dated 16.8.2011 passed in the Review Application No. 56 of 2011. Briefly stated the facts of the case are that an original application was filed by the respondents being Original Application No. 104 of 2010 for a direction to the Union of India, Railway Administration to treat the applicants (respondents herein) as permanent Railway Parcel Porters with effect from their first day of joining as Substitute Parcel Porter with arrears of pay.

2. The case of the respondents before the Tribunal was that they were working on as contract workers in eight hourly shifts for loading and unloading of goods in the train for twenty four hours. It was also stated that a Writ Petition No. 277 of 1998 was filed before the Supreme Court under Article 32 of the Constitution of India by 166 Railway Parcel Porters as contract labour for a direction to the Union of India for their permanent absorption as Railway Parcel Porters. The Supreme Court by order dated 4.10.1989 directed the Labour Commissioner, Uttar Pradesh to enquire as to whether the writ petitioners were working as contract labour at the railway station and submit his report. The Labour

Commissioner, Uttar Pradesh submitted his report after conducting a detailed enquiry on 17.10.1990 and, thereafter, the writ petition was allowed by the Supreme Court by its judgment and order dated 15.4.1991 and a direction was issued to the Railway Administration to treat the respondents as Railway Parcel Porter and to give them regular salary. Thereafter, other writ petitions were filed being Writ Petition (Civil) No. 507 of 1992, Writ Petition No. 415 of 1992, Writ Petition No. 82 of 1993 and Writ Petition No. 838 of 1992 which all were decided by order dated 9.5.1995. Thereafter writ petitions being Writ Petition (Civil) No. 568 of 1995 and Writ Petition (Civil) No. 711 of 1995 were filed, which were ultimately decided by the Supreme Court on 8.7.1996.

3. According to the respondents, in compliance of the direction given by the Supreme Court in the aforesaid writ petitions, the Railway Administration issued letters of appointment to all the respondents. A copy of the letter dated 7.12.2008 has been filed alongwith the writ petition (page 72 of the present writ petition). According to the respondents, they are still being treated as Substitute Parcel Porter although the appointment letter does not say so and are being deprived of the benefits of Parcel Porter.

4. The case was contested by the Railway Administration before the Central Administration Tribunal and a counter-reply was also filed. The case of the Railway Administration in para 3 of the reply is that the North Central Railway, Head Quarter, Allahabad vide Memorandum dated 10.12.2010 have taken a decision for redesignating 284 Group "D" posts as Parcel Porters and thus 284 posts of Parcel Porters have been created and the process of absorption of the applicants (respondents herein) has been commenced through the Karmik Department.

5. In the present writ petition a supplementary affidavit has also been filed and in para-4 of the supplementary affidavit it has been stated that the posts of Parcel Porters were created with effect from 10.12.2010 and in these circumstances regularisation of the respondents w.e.f. 1997 is neither feasible nor possible. The reason for the same is that before 10.12.2010 the post of Parcel Porter was not available in Group-D category against which the respondents could be regularized. A rejoinder-affidavit has also been filed in which the facts stated in the writ petition have been reiterated. Thereafter, a supplementary rejoinder-affidavit has also been filed and reference has been made to the judgment of the Supreme Court in the case of Railway Parcel and Goods Handling Mazdoor Union and Others Vs. Union of India (UOI) and Others, . The Tribunal, however, by the impugned order dated 16.5.2011 has allowed the original application and has directed the Railway Administration to redesignate the applicants (respondents herein) as permanent Parcel Porter with effect from their first day of joining as "Substitute" Parcel Porter on the availability of post in pursuance of the direction of the Supreme Court.

6. Aggrieved by the order of the Tribunal dated 16.5.2011, the Railway Administration filed a review petition No. 56 of 2011, which too has been

dismissed. Hence the present writ petition.

7. Heard Sri A.K. Gaur, learned counsel for the petitioners and Sri Vinod Kumar, learned counsel for the contesting respondents.

8. It is stated that the North Central Railway, Head Quarter, Allahabad by memorandum dated 10.12.2010 had redesignated 284 group-D posts as Parcel Porter and thus 284 posts of Parcel Porter had been created. His submission, therefore, is that prior to redesignation of the said post the respondents could not have been treated as Parcel Porter.

9. Reliance has been placed on the decision of the Supreme Court in the case in National Federation of Railways Porters, Vendors and Bearers Vs. Union of India and others, .

10. Learned counsel has also referred to the later judgment of the Supreme Court in the case of All India Railway Parcel & Goods Handling v. Union of India and others, (2000) 1 LLJ 1050 (SC). The submission is that the Supreme Court has clarified its earlier judgment in the case of National Federation of Railway Porters, Vendors & Bearers and, therefore, the respondents cannot be treated as Parcel Porter from the date of initial appointment as on that date they were only substitutes.

11. Per contra Sri Vinod Kumar, learned counsel for the respondents has drawn attention of the Court to the order of the appointment of one of the respondents dated 7.12.2008 (page 72 of the writ petition), which was also filed before the Tribunal wherein it has been clearly stated that Daya Nand Gupta, respondent No. 1 alongwith other applicants (respondents herein) were screened, paneled and appointed as Group-D Railway Employee during the month of July, 1997 in compliance of the Supreme Court orders passed in writ petition No. 771 of 1995 and writ petition (civil) No. 568 of 1995. Para 2 of the appointment letter further states that all the respondents are entitled for availing of the privileges viz. Medical facilities, Passes & PTOs, Leaves and annual increments etc. Para-3 of the said letter further states that all the respondents were "initially" appointed as Substitute Parcel Porter, but after screening they are enjoying all the facilities, as mentioned above in para-2. Para-4 of the letter further mentions that as regards change of status from Substitute Parcel Porter, necessary action is being taken. Thus, the submission is that the respondents were appointed as regular Group-D railway employee during the month of July, 1997 after screening and empanelment in compliance of the directions given by the Supreme Court.

12. Sri A.K. Gaur, learned counsel for the petitioners-Railway Administration, however, submitted that by order dated 10.12.2010, 284 posts in group-D were redesignated as Parcel Porter and, therefore, it is only from this date that the respondents can be treated to be Parcel Porter and not from 1997. He has again placed considerable stress upon the judgment of the Supreme Court in the case of National Federation of Railway Porters, Vendors & Bearers (supra).

13. From a perusal of the judgment of the Supreme Court in the case of National Federation of Railway Porters, Vendors & Bearers it will be seen that the Supreme Court in para 6 of the said judgment had given the following directions:

6. However, when in the course of the arguments addressed before us in the present writ petitions we questioned the learned counsel for the petitioners whether the petitioners in the writ petitions would be satisfied by regularisation a few of them only if the Railway Administration concerned is not able to absorb all of them on regular basis having regard to the insufficiency of parcel handling work in a Railway Station concerned, the learned counsel for the writ petitioners, told us in categorical and unequivocal terms that the petitioners are ready and willing for absorption only a few of them as Railway Parcel Porters on a permanent basis at the cost of others losing their employment, whenever the Railway Administration comes to the conclusion that all the Railway Parcel Porters working in the particular Railway Station on contract basis will not have sufficient work for employing them on a permanent basis and the decision of the Railway Administration made in that behalf will not be questioned. The claim of the writ petitioners for absorption as Railway Parcel Porters on a Permanent basis by the concerned railway administration, being considered as above and regard being given to the fact that the railway Administration concerned has in most of the Railway Stations of the country employed Railway Parcel Porters on regular and permanent basis, and Railway Stations left out without such porters are hardly a few, we have thought it most just and appropriate to issue the following directions to the respondent-Union of India and its Railway Administration. Units:

(1) That the Unit of the Railway Administration having control over the Railway Stations where the petitioners in the present writ petitions are doing the work of Railway Parcel Porters on contract labour should be absorbed permanently as regular Railway Parcel porters of those Stations, the number to be so appointed being limited to the quantum of work which may become available to them on a personal basis.

(2) When the petitioners in the writ petitions or any of them are appointed as Railway Parcel Porters on Permanent basis, they 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) working in the concerned Railway Stations on contract labour who have not completed the superannuation age of 58 years.

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

5. That the absorption of the 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 utilising their services for any other manual work of the Railway 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 are put in shorter period of work.

7. The report dated August 31, 1993 of the Assistant Labour Commissioner (Central) can be made the basis in deciding period of contract labour work done by them in the Railway stations. Further, as far as possible, the Railway Stations where the writ petitioners are working should be the places where they could be absorbed on permanent and regular basis and the information available in this regard in the report dated August 31, 1993 of the Assistant Labour Commissioner, could be utilised for the purpose.

8. The absorption and regularisation of the petitioners in the writ petitions, who could be appointed as permanent Railway Parcel Porters shall be done according to the terms indicated above and on such other terms to which they may be subjected to according to the rules or circulars of the railway Board as expeditiously as possible, not being later than six months from today, those who have put in longer periods of work as Railway Parcel Porters on contract labour getting preference in the matter of earlier appointment.

14. The directions given by the Supreme Court, if read carefully, would leave absolutely no doubt that in direction No. 1 the Supreme Court held that where the petitioners are doing the work of Railway Parcel Porters on contract labour they should be absorbed permanently as regular Railway Parcel Porter of those stations. In Direction No. 2 the Supreme Court clearly held that on appointment as Railway Parcel Porter on permanent basis the petitioners 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.

15. The appointment letter of the respondent No. 1 dated 7.12.2008 nowhere mentions that the respondents were being appointed as regular Group-D railway employee in the month of July, 1997 as "Substitute". Rather they were being appointed as regular, screened and empanelled Group-D railway employee in compliance of the orders of the Supreme Court after screening and empanelment with all benefits and privileges. The only question was with regard to change of their status from Substitute Parcel Porter for which it is stated that action is being taken. Thus, we have no doubt in our mind, that even as far back as 1997 when the respondents were appointed as Group-D railway employee, their appointment was against existing permanent posts as the appointment letter does not indicate otherwise and the only question which remained was with regard to their designation. Merely because the Railway Administration chose to declare them as Parcel Porters by letter dated 10.12.2010, it cannot be said that

the petitioners had not been appointed after screening and empanelment against permanent Group-D posts in 1997 itself. It is not the case of Railway Administration that the respondents were appointed against supernumerary posts. The petitioners-Railway Administration in their supplementary counter reply also, filed before the Tribunal, have only stated that the decision was taken for redesignation of 284 posts of Group-D as Parcel Porter on 10.12.2010 and, therefore, it is not correct to say that 284 posts of Parcel Porter have been created w.e.f. 10.12.2010. Posts in Group-D were always existing and the question was only one of redesignation of posts as Parcel Porter and once the respondents had been screened, empanelled and appointed against Group-D posts in 1997, the question of their further absorption on the post of Parcel Porter as stated in para-4 of the counter reply before the Tribunal, does not arise. This was only a case of redesignation of the posts and not one of creation of new post and, therefore, when the posts are redesignated, the respondents will be entitled to carry the designation from the date of their initial appointment i.e. July, 1997 as it is not disputed by the petitioners-Railway that prior to their appointment on regular basis after screening and empanelment in Group-D they were already working as Substitute Railway Parcel Porter.

16. It will also be relevant to mention here that today itself another writ petition was filed as a fresh case being Writ Petition No. 20801 of 2013, Union of India and others v. Karan Singh and others. This writ petition has also been filed by the North Central Railway, Allahabad. In para 9 of the said writ petition again it has been reiterated that there were 212 posts of Parcel Porter for Allahabad Division out of which services of 143 were regularised as per direction given by the Supreme Court in writ petition No. 711 of 1995 and 568 of 1995 in the year 1997 itself and 69 posts remained unfilled. It is also stated that 34 of those persons, however, could not be regularized due to paucity of posts.

17. These averments only confirm our findings noted above that the respondents had been regularised against existing Group-D posts after screening and empanelment with all benefits and privileges and therefore in a matter pertaining to the same Railway Division namely NCR, Allahabad, the petitioners-Railway Administration in the present writ petition cannot take a stand other than what has been taken by them in Writ petition No. 20801 of 2013. For reasons stated above, we do not find any merit in the writ petition and same is, accordingly, dismissed.