

**Roop Chand Vs. Union of India Through the General Manager and Another**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Feb-28-2012

**Judge :** The Honourable Mr. G. George Paracken, Member (J) & the Honourable Dr. a.K. Mishra, Member (a)

**Appeal No. :** OA-1154 of 2011 & MA Nos. 3220 of 2011, 424 of 2012

**Appellant :** Roop Chand

**Respondent :** Union of India Through the General Manager and Another

**Advocate for Pet/Ap. :** For the Applicant: Ms. Jyoti Singh, Sr. Advocate with Yogesh Sharma, Advocate. For the Respondents: R.L. Dhawan, Advocate.

**Judgement :**

DR. A.K. MISHRA, MEMBER (A)

1. The applicant was engaged as Parcel Porter through Railway Contractor. He filed OA-28/1998 for absorption as regular Group-D railway employee, which was decided with a direction to consider the cases of Parcel Porters keeping in view the observations of Hon'ble Supreme Court on the subject. The Railway prepared seniority list of 285 Parcel Porters. The applicant's claim is that his name was placed at Serial No. 52. When he was not regularly appointed, he filed OA-256/2004, which was decided by the Principal Bench of this Tribunal on 03.02.2004 in which the respondents were directed to pass a speaking and reasoned order on the representation of the applicant. The respondents took the

stand that as and when a post falls vacant, the applicant's case would be considered for regularization according to Rules/Instructions. In compliance thereof, the respondents passed order dated 03.05.2004 and rejected the claim of the applicant. The applicant filed OA-874/2005, which was decided on 16.11.2005 with the direction to the respondents that in the event as out of 61 vacancies panel has been drawn for 60 candidates if a post is vacant, the applicant would be considered for regularization in accordance with Rules/Instructions. The applicant filed MA-1221/2006 for execution of the order passed in OA-874/2005 which was dismissed with a liberty to the applicant to challenge the order dated 14.08.2006 of the respondents. It was accordingly challenged in OA-1339/2007 but it was withdrawn with liberty to make representation to higher authorities. Accordingly, applicant submitted a detailed representation on 03.09.2007 but no reply has been received by him till now. He was given to understand that he did not have the educational qualification as prescribed under RRs for regularization. However, this issue was decided by the Hon'ble Supreme Court in Writ Petition No. 640/2007 on 17.11.2009 observing that prescription of an educational standard for Parcel Porters was not justified. When the applicant approached the respondent authority, he was given to understand that the Hon'ble Supreme Court judgment was in personam (not in rem) applicable only to the applicants whose cases were being considered by the Hon'ble Supreme Court.

2. It is further contended that others whose names appear below the applicant in the panel, which was earlier drawn up have been regularized. He has cited the names of Sh. Ashok Kumar, Sl. No. 62 and Sh. Ayub Ali who according to him had worked only for 3541 days as against the applicant who had worked for 4983 days. On being denied absorption, he filed one more OA-163/2010, which was decided on 15.01.2010 with a direction to the respondents to consider the O.A. as a representation and consider the claim of the applicant within two months. According to him, the respondents tentatively decided to regularize the applicant and asked him on 28.04.2010 to complete necessary formalities. Unfortunately, respondent No.2 instead of issuing the formal appointment order has passed the impugned order on 08.09.2010 rejecting the claim of the applicant by placing reliance on the decision of Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi and Ors., (Scale 2006(4) 197) and two other

judgments of this Tribunal in the case of Jagdish Singh and Ors. Vs. UOI, (OA-2825/2005 decided on 21.09.2006) and Shri Ram Singh Vs. UOI and Ors., (OA-167/2008 decided on 02.06.2009).

3. It is contended by learned counsel for the applicant that the case of the applicant is entirely different and the ruling of the Constitutional Bench in the case of Uma Devi (supra) is not applicable to the applicant in the present case. Similarly, the judgments relating to Jagdish Singh and Sh. Ram Singh (supra) are also not applicable inasmuch as they were not screened in the year 1990 and had not completed the minimum period of 10 years as stipulated in the Railway Board Scheme of 2005.

3.1 The only issue which stood in the way of regularization of the applicant was that he did not have the minimum educational qualification of 8th class pass, which was prescribed by RRs. Therefore, he could not be regularized when others who were placed below him in the panel were given regular appointments. This issue was taken to the Hon'ble Supreme Court and finally adjudicated in Writ Petition No. 640/2007 on 17.11.2009. The observations of the Hon'ble Supreme Court are as under:-

“9. We are unable to visualize 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.”

The impediment which stood in the way of the applicant having been removed by the decision of the Hon'ble Supreme Court, the respondents, in all fairness, having absorbed other similarly placed candidates should regularize the applicant who was otherwise eligible and whose name was included in the original panel. But, now the respondents have come up with the plea of Uma Devi's case (supra), which is not strictly applicable keeping in view the over all background of this case.

4. Learned counsel for the respondents submits that the Railways have switched over to a new system of handling Parcels. As such, there are no vacancies in the post of Parcel Porter against which the applicant could be absorbed. He drew our

attention to the decision of Hon'ble Supreme Court in Writ Petition (Civil) No. 433/1998 which was decided on 22.08.2003 in which the Railways were directed to conduct an exercise for preparation of panel of Parcel Porters and thereafter the Railways should consider regularizing such of the members in the panel as could be appointed strictly on the basis of the work load. The observations of the Hon'ble Supreme Court are as under:-

“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.”

It was in this context that the Railways prepared a Scheme for permanent absorption of candidates who satisfied the eligibility criteria as per RRs. Admittedly, the applicant and many others did not have the prescribed educational qualification. The Writ Petition No.-640/2007 was filed in the context of this decision and the Hon'ble Supreme Court did not hold non-passing of 8th standard as a justifiable impediment for regular absorption.

5. The judgment of the Hon'ble Supreme Court in Writ Petition No. 433/1998 was passed in pre Uma Devi's case period before the law on the subject was definitively laid down by the Constitutional Bench in Uma Devi case.

6. Learned counsel for the respondents placed reliance on the judgment of Calcutta Bench of this Tribunal in case of Shew Kr. Balmiki and Ors. Vs. U.O.I. and Ors., AISL 2011(3)(CAT) in which a view was taken that unless contract labour in the field of activity is abolished through a Notification under Section-10 of the Contract Labour (Abolition and Regulation) Act, no orders for regularization could be passed. Suffice it to say that this case is not applicable to the facts of the present application where the background has been discussed and the Railways themselves had come forward with the Scheme of regularization of contract Parcel Porters. Learned counsel also placed reliance on the judgment of this Tribunal in OA-354/2008, in which, following the decisions of this Tribunal passed in OA-319/2006 and OA-322/2006 it was held that the contract Parcel Porters were not

entitled to grant of any temporary status of appointment/absorption/regularization to the vacant posts in Group-D categories advertised by the Railways. While coming to the decision it had kept in view the decision of Hon'ble Supreme Court in the case of A.I. Railway Parcel and Goods Porters Union Vs. U.O.I., 2003 SCC(11) 590 and Uma Devi's case (supra).

7. From the aforesaid discussion, it is clear that a specific Scheme for regularization of Railway Parcel Porters was formulated pursuant to the decision of the Hon'ble Supreme Court in the case of A.I. Railway Parcel and Goods Porters Union (supra). The applicant is entitled to absorption in terms of that Scheme only. He cannot seek absorption against any other Group-D post. He could not be regularized originally on account of his not fulfilling the educational qualification. However, this issue is now been finally adjudicated. But the respondents have taken a stand that there is no vacancy on the post of regular railway Parcel Porters due to change in policy. Such being the case, it would not be appropriate for us to issue any direction for absorption of the applicant against a non-existent vacancy. However, as and when a vacancy arises in the rank of Railway Parcel Porters, the applicant should be considered as his name occurs in the original panel drawn up by the Railways and regard being had to the latest judgment of the Hon'ble Supreme Court dated 17.11.2009, there is no difficulty in giving such regularization. The O.A. is accordingly disposed of in terms of the aforesaid direction. No costs.

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