

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2052 OF 2017

1. Mrs. Maya Chakradhar Gajbhiye,
Aged 56 years, working as Trackman
in South East Central Railway, Nagpur,
R/o Motibagh Railway Quarter No. T-7/14,
Bezonbagh, Nagpur – 440 004.
2. Mrs. Asha Deepak Raut,
Aged 48 years, working as Trackman
in South East Central Railway, Nagpur,
R/o Bailley Shop Quarter No.GL-85/2,
Bezonbagh, Nagpur – 440 004. **PETITIONERS**

..V E R S U S..

1. Union of India, through General Manager,
South East Central Railway, Bilaspur (CG)-495 004.
2. Divisional Railway Manager,
South East Central Railway,
Near Railway Station, Nagpur 440 001.
3. Senior Divisional Personal Manager,
South East Central Railway,
Near Railway Station,
Nagpur 440 001. **RESPONDENTS**

Mr. B. Lahiri, Advocate for Petitioners.
Mr. Nandesh S Deshpande, ASGI for Respondents.

CORAM: **ROHIT B. DEO AND ANIL L. PANSARE, JJ.**
DATE: **10th AUGUST, 2022.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard.

2. **Rule.**

3. With consent, the petition is finally heard.

4. The challenge is to the judgment dated 05.12.2016 rendered by the learned Central Administrative Tribunal, Mumbai Bench, (Tribunal) in Original Application 2140/2014, whereby the application preferred by the petitioners challenging the refusal of the respondents to grant them seniority in the cadre of 'Trackman' (earlier known as 'Gangman') from 26.02.2008, is dismissed.

5. The learned Tribunal proceeded on the premise that the petitioners are claiming retrospective appointment in the cadre of 'Trackman' from 26.02.2008, and that as on 26.02.2008 the Porter License issued in favour of her deceased husband was not even assigned or transferred in her favour. The learned Tribunal then notes that there are certain court proceedings and judicial orders. The learned Tribunal however, observes that it is obvious that the petitioners entered the cadre of 'Gangman' on 30.09.2021, and therefore, the service rules do not permit conferment of deemed date for the purpose of seniority.

6. It would be apposite to briefly note the factual matrix.

7. The husband of petitioner 1 Mr. Chakradhar Mohan Gajbhiye and husband of petitioner 2 Mr. Deepak Raut were working as Parcel Porter – Hamal with the South East Central Railway, Nagpur since 1994 and both unfortunately expired in harness.

8. In terms of the circular issued by respondent 1 in the year 1998 the petitioners applied for assignment of the Porter License in their name. The application did not evoke the expected response and the petitioners raised an industrial dispute before the Assistant Labour Commissioner (Central), Nagpur through the Union. During the course of conciliation, an agreement dated 27.01.2006 was arrived at where under the respondents agreed to offer the petitioners the position of License Porter.

9. The next relevant development is the issuance of circular dated 01.04.2008 which conferred right on License Porters who are below the age of 50 years as on 26.02.2008 for appointment as ‘Gangman’.

10. Notwithstanding the terms and conditions of settlement dated 27.01.2006 no effective steps were taken by the respondents to assign the Porter License in favour of the

petitioners and Writ Petitions 408/2009 and Writ Petition 425/2009 were filed which were disposed of by order dated 25.02.2010 with direction to the respondents to implement the terms and conditions of the settlement dated 27.01.2006 and to assign the license within six weeks.

11. In view of the directions issued by the High Court the respondent 2 transferred the Porter License in the name of the petitioners w.e.f. 27.01.2006.

12. In the context of the circular dated 01.04.2008 the petitioners requested the respondents to appoint them as 'Gangman'. In response, the respondents informed the petitioners that since the petitioners were not physically working as License Porter on 26.02.2008, they are not entitled to appointment in the cadre of 'Gangman'.

13. Aggrieved by such communication refusing their request for appointment as 'Gangman', the petitioners approached this Court in Writ Petitions 1333/2011 and Writ Petition 1344/2011 which were disposed of by separate and identical orders dated 20.06.2011 and 23.06.2011.

14. The order in Writ Petitions 1333/2011 and 1340/2011 have significant bearing on the issue involved and the relevant observations therein may be noted. The Coordinate Bench held that since the petitioners have been conferred the status or license as Porter w.e.f. 27.01.2006, the policy decision dated 01.04.2008 is squarely attracted and the respondents will have to take appropriate decision and decide whether the petitioners are eligible for the post of 'Gangman'. Paragraphs 7, 8 and 9 in the order dated 23.06.2011 in Writ Petition 1340/2011 read thus:

7. Division Bench of this Court accepted date of settlement as the date on which transfer should have been given effect to and accordingly direction has been issued. This direction issued on 25.2.2010 has attained finality. It is, therefore, obvious that respondents have to treat the present petitioner as Licensed Porter from 27.1.2006.

8. The moment she becomes licensed porter on 27.1.2006 policy decision dated 1.4.2008 is squarely attracted and hence respondents have to take appropriate decision and decide whether she is eligible for the post of Gangman or not. If arguments of respondents are to be accepted for not conferring status of Licensed Porter upon the petitioner within reasonable time which is found to be incorrect by this Court, they will stand to benefit and the prejudice will cause to the petitioner. The respondents, therefore, cannot be permitted to take advantage of their own wrong.

9. In the circumstances, the petition is

allowed, impugned communication dated 28.9.2010 is hereby quashed and set aside. The respondents shall treat petitioner as Licensed Porter from 27.1.2006 and consider her entitlement to the post of Gangman in accordance with law as early as possible and in any case within a period of 12 weeks from the date of communication of this order to them.

15. It would thus be seen that the Coordinate Bench unambiguously articulated that the moment the petitioners are treated as License Porter w.e.f. 27.01.2006, the policy decision dated 01.04.2008 is squarely attracted. In this view of the matter, it was not open for the respondents to deny the petitioners the benefit of the policy decision dated 01.04.2008 on the premise that physically the petitioners were not working as License Porter as on 01.04.2008. While the petitioners may not be entitled to any monetary benefit as such, the petitioners are certainly entitled to be treated as 'Trackman' w.e.f. 26.02.2008 for the purpose of seniority and pensionary benefit. The petitioners are, however, not entitled to claim any arrears.

16. We note that it is not even the case of the respondents that other than the fact that the petitioners were not physically working as License Porter as on 26.02.2008, there was any other impediment in appointing the petitioners as 'Trackman' w.e.f. the

said date. We have already noted the observations and directions issued by the Coordinate Bench and considering that the petitioners were held entitled to the benefit of the policy decision dated 01.04.2008 in the earlier round of litigation, we are not inclined to agree with the findings recorded by the learned Tribunal on the basis of the normal service rules.

17. The judgment impugned is set aside.

18. The petition is allowed in terms of prayer clause (ii) except that the petitioners shall not be entitled to any arrears.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)

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