

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1438/90
T.A. No.

199

DATE OF DECISION 12.10.1990.Shri Dukhan & Others~~Petitioner~~ ApplicantShri M.C. DhingraAdvocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through

Respondent

Divisional Rly. Manager, Delhi Dvn. & Anr.Shri B.K. Aggarwal

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */ no*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicants, who have worked as Gangmen in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned letter dated 15.6.1990 issued by respondent No.2, whereby the applicants have been transferred from D.S.E./Land, Delhi to DEN, Meerut, and to direct the respondents to absorb them in permanent vacancies.

2. The applicants filed MP-2093/90 wherein they sought for a direction to the respondents not to give effect to the letter dated 23.8.1990 whereby the applicants were relieved by PWI/Special, Tilak Bridge, New Delhi, on 19.6.1990 for transfer under PWI, Khatauli. It was added therein that if they failed to join duty under PWI, Khatauli within two days of receipt of the letter, action would be taken against them

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under the Discipline & Appeal Rules.

3. On 30.8.1990, the Tribunal directed that notice be issued to the respondents on MP-2093/90 and ordered that the impugned order dated 23.8.1990 shall not be given effect to, if not already implemented. The interim order has been extended thereafter till the case was finally heard on 5.10.1990.

4. The case of the applicants in brief is as follows. The applicants were engaged as Casual Labourers between 1978 and 1980 in the Railways in Delhi. They have also been given temporary status in accordance with the provisions of the Indian Railways Establishment Manual. They are working under the administrative control of Divisional Engineer/Spl., Northern Railway, New Delhi, and are rendering services as per the directions of PWI/Spl., Northern Railway, Tilak Bridge, New Delhi on Open Line as Gangmen. They have not been absorbed in permanent vacancies after screening them and subjecting them to medical fitness test.

5. The applicants have alleged that the respondents have regularised 53 persons in 1988 and 50 persons in 1989, some of whom are their juniors.

6. The grievance of the applicants is that the respondents have transferred them from Delhi to Meerut by the impugned order dated 15.6.1990. This has been challenged in the present application.

7. The respondents have stated in their counter-affidavit that the applicants were engaged in project work and on account of the work being over and not extended further, they have been rendered surplus. In this situation, there were two options before the respondents, viz., either to

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retrench the surplus staff in accordance with the provisions of the Industrial Disputes Act, 1947, or to give them alternative job somewhere else. Since there was no work in Delhi for the applicants and they have been rendered surplus, the impugned order has been passed. They have been asked to report for duty at Khatauli, where work is available. Khatauli is not outside the Delhi Division.

8. We have carefully gone through the records of the case and have considered the rival contentions. The learned counsel for both the parties relied upon the definition of 'Casual Labour' in the Indian Railways Establishment Manual in support of their respective contentions. The learned counsel for the applicants emphasised the fact that Casual Labourers are not liable to transfer. The learned counsel for the respondents contended that while the Casual Labourers are not normally liable to transfer, their engagement at a particular place or station, would depend upon the availability of work. The applicants have not been regularised as yet and they continue to be Casual Labourers. As there is no work for them in Delhi and as work is available at Meerut, the respondents have issued the impugned order.

9. In a batch of applications decided on 22.9.1989 (OA-218/88 and connected matters - Shri Bhagwana & 41 Others Vs. Union of India & Others) to which one of us (P.K. Kartha) was a party, this Tribunal had considered a similar contention. The Tribunal had expressed the view that it would not be appropriate to issue any directions to the respondents restraining them from transferring the employees concerned from Karnal to Ghaziabad on the ground that the work at Karnal had been completed and that they had been rendered

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surplus at Karnal. It was observed that while it was true that Casual Labourers are not ordinarily liable to transfer as per Rule 2501 of the Indian Railways Establishment Manual, in case they are rendered surplus in one place and are deputed elsewhere, depending on the availability of work, the same cannot be faulted. The Supreme Court has held in a batch of writ petitions disposed of on 9.11.1987 (vide Writ Petition No.1288 with Writ Petition Nos.1249 and 1250/87 - Malkhan Singh & Others Vs. Union of India & Others, and Dhanna & Others Vs. Union of India & Others) that it would be reasonable to shift the staff working in the Construction Division from places where they have been rendered surplus to places where the work was available. The Supreme Court had also directed that the employees concerned should be absorbed into permanent service in accordance with their seniority.

10. In the conspectus of the facts and circumstances of the case, the application is disposed of by the following orders and directions:-

- (i) The respondents are directed to consider the cases of the applicants for appointment on a permanent basis after screening them in accordance with their seniority/length of service as Casual Labourers and appoint them in the permanent vacancies wherever available.
- (ii) As the impugned order dated 15.6.1990 has been issued by the respondents transferring the applicants from Delhi to Meerut on the ground that there is no work at Delhi and there is work at Meerut, the same cannot be faulted. The applicants may be given reasonable time to join duty at Meerut, pursuant to the impugned

order dated 15.6.1990. The applicants may prefer representations to the respondents to consider their retransfer to Delhi in case vacancies ~~are~~ ^{become} available. The respondents shall consider such representations sympathetically.

(iii) The interim orders passed on 30.8.1990 are hereby vacated.

(iv) The parties will bear their own costs.

D. K. Chakravorty
(D.K. Chakravorty)
Administrative Member

12/10/90

P. K. Kartha
12/10/90
(P.K. Kartha)
Vice-Chairman (Judl.)