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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.2173/90

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Date of decision: 25-2-1992.

Shri Gopal & Another

...Applicants

Vs.

The General Manager,
Western Railway & Others

...Respondents

For the Applicants

...Shri V.P. Sharma,
Counsel

For the Respondents

...Shri Jagjit Singh,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S. GURUSANKARAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Shri S.
Gurusankaran, Administrative Member)

The grievance of the applicants, who have worked as casual labourers in the office of the respondents since 1982 is that they have not been allowed to continue as Gangmen and that they are being compelled to work as Coalmen in the office of loco shed in the Mechanical Department illegally. On 18.7.1991, the Tribunal passed an interim order directing the respondents to allow them to work as Coalmen without prejudice to the rights and contentions of both parties.

2. We have carefully considered the matter. The stand
- [Signature]*

(7)

of the learned counsel for the applicants is that being casual labourers, they are not liable ^{for} ~~to~~ transfer in view of the provisions of Rule 2501 of the Indian Railway Establishment Manual. The stand of the learned counsel of the respondents is that the applicants were not transferred to the post of Coalmen, but that they had applied for the same pursuant to a Circular dated 5.4.1990 issued by the respondents for filling up the vacancies of substitute Class IV posts in the Mechanical Department. The Circular called for options from substitutes working in other departments with minimum educational qualification of 8th standard pass and medical classification A-one. The applicants applied for the same vide their letter dated 9.5.1990 and that is how they came to be appointed as Coalmen in the Mechanical Department.

3. In view of the above, the contention of the learned counsel for the applicants that the applicants were transferred to the post of Coalmen in the Mechanical Department is not tenable.

4. According to the version of the learned counsel for the applicants, the applicants applied for the post of Coalmen under a misapprehension that they would be appointed on a regular basis in the Mechanical Department for which they were willing. The Circular dated 5.4.1990 does not hold out any such promise. They are presently working as Coalmen

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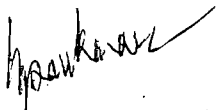
in the Mechanical Department pursuant to the interim order passed by the Tribunal, as mentioned above. The learned counsel for the respondents stated that since the applicants have given the option, it will not be possible for the respondents to allow them to go ^{back} to the Engineering Department, where they have worked since 1982. The first applicant is the seniormost casual labourer in that unit having worked for 2195 days, according to the seniority list dated 31.12.1988 (Annexure A-3 to the application).


5. After hearing both sides, we are of the opinion that the option letter did not specify any such condition that the option once exercised shall be final. Apart from this, he has been appointed as a substitute in the Mechanical Department and has not been confirmed. Even though, the principle of lien of holding a post would not apply to casual labourers, since they are not holders of posts, it would be in all fairness to the employees if the respondents consider their requests for reverting back to their previous unit in the Engineering Department. At the same time, we find that even though the applicants had exercised their options and as per the options, they were appointed in a substitute capacity in a Mechanical Department, they have not submitted any representations to the respondents expressing their unwillingness to work in the Mechanical Department as substitutes and to permit them to go back to their previous units.

6. In the result, the application is disposed of with the following orders and directions:-

- (i) The applicants shall make representations within a period of one month from the date of receipt of this order indicating that ~~he is~~ ^{they are} not willing to work in the Mechanical Department in the substitute capacity and they should be permitted to go back to work in their previous unit in the Engineering Department with full seniority, if they so desire.
- (ii) In case applicants make such representations, the respondents shall consider the same sympathically ~~and~~ ^{in accordance with law} dispose of the same taking into consideration the observation made hereinabove and pass appropriate orders on the representations, as expeditiously as possible, but preferably within 3 months from the date of receipt of this order.
- (iii) In case the applicants still feel aggrieved by the decision taken by the respondents, they will be at liberty to file a fresh application in accordance with law, if so advised.
- (iv) Till the respondents dispose of the representations, as directed above, the interim order already passed shall remain in force.

There will be no order as to costs.


(S. GURUSANKARAN)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN (J)