CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH
ALLAHABAD
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Original Application No.668 of 1993

Lal Bahadur & Others ... Applicants

Versus

Union of India & Others ... Respondents

AND

Original Application No.729 of 1993

Lal Mani & Others ... Applicants

Versus

Union of India & Others ... Respondents

AND

Original Application No.753 of 1993

Bholanath & Others ... Applicants

Versus

Union of India & Others ... Respondents

AND

Original Application No.874 of 1993

Brij Lal & Others ... Applicants

Versus

Union of India & Others ... Respondents

AND

Original Application No.919 of 1993

Prem Chand & Others ... Applicants

Versus

Union of India & Others ... Respondents

.../2.

HON'BLE MR. JUSTICE R.K.VARMA:- VICE CHAIRMAN
HON'BLE MISS USHA SEN:- MEMBER (A)

(By Hon'ble Miss Usha Sen- AM)

These O.As. have been filed against the order No.MP/11/92 dated 11-3-93 of the Divisional Superintending Engineer (Coord) Northern Railway, Allahabad Division, transferring the applicants from their present unit of PWI to the unit of PWI/PQRS/Panki.

2- The applicants were engaged as casual gangmen and have since acquired temporary status. Their length of service is around 10 years or longer. They have challenged the transfer order on the grounds that under para 2501 of the Indian Railway Establishment Manual (IREM)1968 edition, they are not liable to transfer; that the order is discriminatory and malafide in nature because some persons junior to them have been retained either in the same unit from which they have been transferred or in other units in the same division e.g.PWI, Meja Road, (as mentioned in para 4(ix) of O.A.No.729 of 1993); it is also malafide because 51 persons who were earlier transferred out to Tundla have been ordered to be retained and adjusted in the vacancies to be created by transferring the applicants; that the authority that passed the order is not competent to do so; that even though in the revised Indian Railway Establishment Manual 1990 edition the para 2001 corresponding to para 2501 in the previous edition has been amended to provide that casual labour are not "ordinarily" liable to transfer the service conditions of the applicants as applicable to them at the time of recruitment cannot be changed without their consent, that some gangmen with temporary status have been posted to PWI Allahabad from PWI/Construction, Allahabad or elsewhere after the passing of

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the impunged order even though the alleged ground of transfer is that there is no work in the units from which they have been transferred which shows that the order isbiased and discriminatory(this ground for challenging the impunged order has not been mentioned in the O.As/rejoinder but was advanced verbally during the course of hearing); that they would be losing their seniority for purposes of regularisation by their transfer to another seniority unit.

3- Before we come to the contentions of the respondents a brief mention may be made of an objection raised by them that the Union of India has been impleaded through the Divisional Railway Manager (DRM) rather than the General Manager, Northern Railway. They have relied on section-80 of the C.P.C. which lists the authorities for issue of a notice before filing a suit. To counter this the applicants have shown a copy of the order No.E(G)82LL 212(B), dated 4.5.92 of the Railway Board which lists the authorities competent to act for and on behalf of the Union of India in respect of any judicial proceedings relating to a Railway Administration. It is seen that Divisional Railway Manager is one of these authorities. In view of this, we are not inclined to put much weight on this objection of the respondents. We also feel that the impleadment of the Union of India through the General Manager rather than the Divisional Railway Manager would not have made any material difference to the consideration of these O.As on merits. As such we overrule the objection.

4- The respondents have contended in their arguments that the work has ceased to exist for the applicants in the seniority units in which they were working. As they have thus become surplus the

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alternative was either to discharge them or to transfer them to a unit where work existed. The transfer was thus in the interest of the applicants for otherwise they would have had to face retrenchment. We find that para-A (A) of the Railway Board letter No.E(NG)11-77/CL/46 dated 8-6-81 which purports to consolidate the service conditions of casual labour, defines casual labour as labour,whose employment is seasonal, intermittent, sporadic or extends over short periods. Note -3 below para (B) of this letter states as under :

> "Labour employed against regular vacancies whether permanent or temporary shall not be employed on casual labour terms. Casual labour should not be employed for work on construction of wagons and similar others work of a regular nature. Works of a regular nature cover workshops, locosheds, train lighting establishments, carriage and wagon depots, yards and stations but exclude labour employed for loading and unloading. As regards civil engineering, signal and bridge maintenance, casual labour will not be employed except for seasonal, fluctuating works, casual renewals and occassional renewals."

One of the contentions of the applicants is that they were employed against vacancies of regular posts for maintenance work in open line. They have not however produced any evidence in support of this contention. In view of the aforesaid provision in the Railway Board letter of 8.6.81 casual labour cannot be engaged against regular establishment but only against requirement of sporadic nature and as no evidence has been produced by the applicant in support of their contention we are not in a position to accept this contention of the applicants. As such if the work had finished for the applicants in their units they would have had to be disengaged. Instead of disengaging them they were transferred to a unit where

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work existed. We also observe that in O.A.No.1 of 1986 decided by the Ahmedabad Bench of Central Administrative Tribunal. [(1967)3 ATC 413] it was held as follows in para-16 (iv) thereof :-

> "It is open to the respondents to offer a transfer to another division to casual labour as an alternative to resorting to termination of services and it is open to such casual labour to accept such transfer. This should, however, be done only on the basis of the seniority position of the casual labour in the originating division being first ascertained and then it has to be retained so that as and when work is available in the originating division, the casual labour accepting the transfer on a provisional basis retains his right to come back to the originating division."

5- Though in the above mentioned case the transfer involved was from one division to another, we feel that the principle upheld therein can be equally applicable to the present cases before us. If the respondents have not made such an offer of choosing between transfer and retrenchment to the applicants they can even now do so and take action as per their choice. We have taken note of the contention of the respondents that while para-2501 of Indian Railway Establishment Manual(1968 edition) provided that casual labour (CL) are not liable to transfer the later edition of 1990 provides in para-2001 thereof that such labour are not "ordinarily" liable to transfer. This implies that in special circumstances Casual Labour can be transferred. We also see from para 4(A) of the Railway Board Letter of 8-6-81(supra) which provides the conditions of service of casual labour that the words that "they are not ordinarily liable to transfer" have been used there. The respondents have stated that the A.T,C.cases quoted by the

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applicants in support of their contention that they are not liable to transfer were based on the provision of para-2501 of the Indian Railway Establishment Manual(1968 edition) and there is no reference in those cases to the provision of para-2001 of the later edition of 1990 which permits transfer in special circumstances. This contention appears to be correct. In any case even if we were to argue that they are not liable to transfer the choice for them would be between retrenchment and transfer.

6- The respondents have denied the contention of the applicants that they would lose their seniority for purposes of regularisation if they are transferred as per the impunged order of 11.3.1993. They state that the seniority for purposes of regularisation is division wise and not unit wise while for purposes of disengagement and reengagement it is unit wise. In support thereof they have quoted the provision in para-2 of Railway Board circular of23.7.86(CA-I). We also see that para 3 of the General Manager, Northern Railway letter of 14.8.87(CA-II) provides as under:-

> "At present seniority units of Casual labour on open line for the purposes of engagement and retrenchment is Inspector wise and for screenign it is the Division. For project casual labour the seniority unit is a Division, as per recent Supreme Court judgment."

7- In view of these provisions the apprehension of the applicants that they would lose their seniority for purposes of regularisation in Class IV posts if they are transferred to Panki which is within the same Allahabad Division appears to be ill founded. It would be relevant here to mention that in the case of Tarun Kanti Ghosh and others Vs. Union of India [II (1988) ATLT(CAT)(SN) 62] decided on 5.7.88 the

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Guwahati Bench of the Central Administrative Tribunal held"that in consideration of the facts mentioned above we do not find any infirmity in the order transferring the applicants from Maligaon to Lumding. After taking into account the assurance given by Mr. Sharma and the apprehension expressed by Mr. Sen, we order that seniority and the benefits that the applicants were enjoying at Maligaon including the benefits of past service of the applicants will be protected on their transfer to Lumding." To allay any fear of the applicants in this regard the respondents should provide some document to each of them, if they have not already done that, showing their total length of service in no. of days upto the time of their transfer. The applicants could then personally check whenever ... seniority lists of casual labour screened for absorption in regular posts are notified that nobody with shorter length of service has been screened for absorption. We hereby direct the respondents to provide such a document if they have not already done it.

8- The arguments of the applicants that the Divisional Superintending Engineer(Coord) (DSE/Coord) was not competent to pass the transfer order does not appear to be correct in view of the fact that in accordance with the Northern Railway letter No.523-W/79 dated 18-4-91 the DSE/Coord. would be overall incharge of the Engineering Deptt. and is competent to transfer them as stated by the respondents.

9- Now we take up the argument of the applicants that the transfer order is malafide in nature since juniors to them have been ignored and also some others have been posted in their place. They have stated that some juniors under PWI Meja Road have not been touched at all. We do not think that it is relevant to compare the casual labour working under

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another seniority unit viz. PWI Meja Road, with those working under different PWIs. It is possible that the work for the casual labour of PWI Meja Road, has not ceased to exist as in the case in the units of PWIs where the applicants are working. That is a separate seniority unit for the purposes of retrenchment and reengagement. As regards the 51 persons alleged to have been posted in the vacancies to be created as a consequence of the transfer of the applicants the respondents have stated that all the 51 persons have already been screened for absorption and they have been posted against regular posts and not against vacancies of casual labour to be created by transferring the applicants. This statement appears to be correct since the notice No.WP/11/92 annexed to the rejoinder reads as under:

> "A list of 51 decasualised gangmen under PWI/Ald enclosed herewith who were under transfer to work under PWI/Ballast/TOL vide Sr.DEN/I/ALD letter No.CA/Sr.DEN/I/Steel/92 of 20.7.1992 is hereby cancelled."

The applicants have also stated that after the transfer order was passed on 11.3.1993 some amongst the applicants have been allowed to continue in their existing unit while others who were senior to them have not been so allowed. Hence the respondents have adopted a discriminatory policy.

10- In this regard we consider it just and fair that the transfer which is alleged to have been made to avoid retrenchment should be made on the some principle as followed for retrenchment, viz. the junior-most persons should be first transferred out. While making this observation we have kept in our minds the following provision in the Note below para 2004 of the Indian Railway Establishment Manual(1990 edition):

> "Where casual labourers have to be terminated due to non-availability of work for them the unit for their retrenchment

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will be that of an Inspector and Supervisor(as the case may be) in the case of casual labour on the open line. For project casual labour on Zonal Railways, the unit for this purpose will be the Division-wise and Department wise as per instructions issued by the Railway Board. Casual Labour directed from one unit to another will rank junior-most in the new unit."

As such it is fair that for transfer on the ground of being surplus the junior-most in the seniority list of the PWI i.e. Inspector should be first transferred out. Further the transfer should not also be made in order to accomodate some others who are brought in from another seniority unit whether such a unit is within or outside the Division. In case the applicants are able to show to the respondents or if the respondent themselves find any cases where juniors to them in the same unit of PWI as they are working (and who are also working as Casual Labour and figure in the same seniority list as this) have been allowed to continue or others from a different seniority unit are transferred in to fill-up the posts occupied by them(no such comparison to be made with decasualised gangmen) then to the extent of the number of juniors so retained or so brought in the transfer order of an equivalent number of the senior most from amongst the applicants who have not been allowed to continue their duty in their existing unit will be deemed to be quashed and such of the applicants would be deemed to be continuing in service from the date these juniors have been allowed to continue in the same unit in preference to them or the date from which any outsiders are brought in by transfer. The respondents are directed hereby to follow the observations made in this paragraph. They shall also follow the directions made in the last sentence of para-7.

11. In O.A. No.668/1993 the applicants have also sought the relief that they should be screened and regularised. They have alleged that juniors to them have been screened and regularised. In case this allega-

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tion is correct and if any amongst the applicants of all the O.As. being considered herein would have been due for screening and regularisation as per the seniority list for such purpose rather than their juniors then such of the applicants who would have been so due should be screened and regularised and also given seniority from the date such juniors were regularised. This should be done within a period of three months from the date of receipt of this order. The respondents are directed accordingly.

12- With the directions contained in paras No.10 and 11 above these O.As. are disposed of. There will be no order as to costs.

Sd/ — Sd/

MEMBER (A) VICE CHAIRMAN 13-5

DATED: Allahabad May 13, 1994.

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Prepared by. 18/5/94

etc.
18-5-94

V. K. SRIVASTAVA
Section Officer
Central Administrative Tribunal
ALLAHABAD