7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. / T.A. No. As per sheet attached. 198

DATE OF DECISION 30-1-1987.

As per sheet attached. Petitioner

As per sheet attached. Advocate for the Petitioner(s)

Versus

As per sheet attached. Respondent

As per sheet attached. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

1.	OA/1/86	Jivi Chaku v/s Union of India & Ors	J J Yajnik R P Bhatt
2.	OA/38/86	Mohan Premji v/s Union of India & Ors	P H Pathak R M Vin
3.	OA/41/86	Ahmed Noor Mohmad & Ors v/s Union of India & Ors	P H Pathak R P Bhatt
4.	OA/203/86	Ahmed Noor Mohmad & Ors v/s Union of India & Ors	P H Pathak R P Bhatt
5.	OA/274/86	Bharatsingh G v/s Union of India & Ors	T R Mishra R P Bhatt
6.	OA/297/86	Jayaben Bhojabhai & Ors v/s Union of India & Ors	P H Pathak R P Bhatt
7.	OA/306/86	Govindswamy S & Ors v/s Union of India & Ors	Y V Shah R P Bhatt
8.	OA/308/86	Jalaram R & Ors v/s Union of India & Ors	J J Yajnik R P Bhatt
9.	OA/309/86	Karujaisingh & Ors v/s Union of India	P H Pathak R P Bhatt
10	OA/336/86	Karshanbhai & Ors v/s Union of India & Ors	Y V Shah R.P. Bhatt
11.	OA/339/86	Kantibhai B & Ors v/s Union of India & Ors	P H Pathak R P Bhatt
12.	OA/344/86	Jiwa Kawa v/s Union of India & Ors	P H Pathak R P Bhatt
13.	OA/348/86	Nakethrao & & Ors v/s Union of India & Ors	P H Pathak R P BHATT

.....2..

9

14.	OA/362/86	Rameshchandra R & Ors v/s Union of India & Ors	P H Pathak R P Bhatt
15.	OA/370/86	Bhimji Tapoo & Ors v/s Union of India & Ors	Y V Shah R P Bhatt
16.	OA/375/86	Madhuba H & Ors v/s Union of India & Ors	Y V Shah R P Bhatt
17.	OA/392/86	D V Kariya v/s Union of India & Ors	K K Shah R P Bhatt
18.	OA/397/86	Bhikha Premji & Ors v/s Union of India & Ors	P H Pathak R P Bhatt
19.	OA/447/86	Chatur Mohan v/s Union of India & Ors	K K Shah R P Bhatt
20.	OA/448/86	D K Khuhwah & Ors v/s Union of India & Ors	K K Shah R P Bhatt
21.	OA/466/86	Popatgiri R v/s Union of India & Ors	D M Thakkar R P Bhatt
22.	OA/440/86	Vikram Sinh P v/s Union of India & Ors	P H Pathak R P Bhatt
23.	OA/441/86	Mayavan A & Ors v/s Union of India & Ors	Y V Shah R P Bhatt
24.	OA/442/86	Bhagwati Mohan & Ors v/s Union of India & Ors	R N Shah R P Bhatt
25.	TA/185/86	Mohan Roopa & Ors v/s Ex. Engineer & Ors	T R Mishra R P Bhatt

DA/1/86, DA/38/86, DA/41/86, DA/203/86, DA/274/86,
DA/297/86, DA/306/86, DA/308/86, DA/309/86, DA/336/86,
DA/339/86, DA/344/86, DA/348/86, DA/362/86, DA/370/86,
DA/375/86, DA/392/86, DA/397/86, DA/447/86, DA/448/86,
DA/466/86, DA/440/86, DA/441/86, DA/442/86, TA/185/86.

JUDGMENT

Date: 30-1-1987.

Per: Hon'ble Mr. P.H. Trivedi, Vice Chairman.

1. We heard a batch of cases together in which Casual Labourers have been transferred by one way or another by the respondents. As common questions of law and facts are involved, learned advocates made joint submissions on such questions. While in some cases learned advocates made submissions regarding individual cases, in a number of other cases learned advocates from both sides stated that, their case was set out in the respective applications replies and in some cases rejoinders and needed no further arguments to be made by them.

2/-. Our attention was pointedly drawn to the decision in 1985 SCC (L & S) 526 in which the Supreme Court after examining the scheme prepared for absorbing casual labour had directed as follows:-

"To avoid violation of Article, 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle

/Contd...2/

11

well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on. In other words, the principle of last come first go or to reverse it first come last go as enunciated in Section 25-G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly".

This was further clarified by the Court's order on 11th August, 1986 as follows:

"We are of the view that the Scheme prepared by the Railways setting out the list of project casual labour with reference to each department in each Division and also in regard to each category, namely, skilled, semi-skilled and unskilled, is incompliance with the judgment and order dated 18-4-'85 given by this Court and that absorption of these with the longest service be made in accordance with such list. Mr. Krishnamurthy Iyer states that this process will be completed within two months from today. The matter is disposed of in these terms".

In a case OA/41/86 it was represented by the respondent that such list are being prepared and will be finalised by the end of October, 1986. We, however, were informed that this was proving a difficult exercise and was not yet completed, although, the respondents had issued instructions to their offices to proceed with the task vigourasly.

/Contd....3/

3/-. The cases before us involve transfer of Casual Labours from one division to another. In some cases viz. OA/440/86, OA/306/86, TA/185/86 in SCA/515/82, OA/309/86, OA/308/86, OA/274/86, OA/203/86, OA/442/86, OA/348/86, OA/38/86, OA/441/86 on which reply has been filed, there are simple relieving orders alongwith transfer with the issue of Railway Pass.

In some other cases in which reply has been filed viz. OA/36/86, OA/41/86 transfer have been ordered without issue of Railway pass.

In one case OA/362/86 the applicant is went on transfer to Jaipur Division from Bhavnagar Division, but he has produced a letter from Executive Engineer, Jaipur that there is no requirement of labour there and has been returned. In some other cases viz. OA/1/86 and OA/297/86 the applicants had to return from the Division to which they were transferred but they were not absorbed or given employment in the originating division. The applicants are aggrieved because in the case of Casual Labours, such transfers involve considerable hardship. In OA/1/86 and OA/297/86 spouses are separated as one of them is transferred and other is not. In a number of cases the originating division strike off their name, on transfer and they lose their claim regarding any offer of employment in the originating division as and when such work is likely to be available. Besides, some of them are further aggrieved because

/Contd....4/

13

while they lose their claims for such employment in the originating division in which they are sufficiently senior, they have to start from the bottom in the division in which they are transferred and a number of them become a floating labour force since after some time they are forced to leave that division when they are rendered surplus, they being at the bottom of the list. They have claimed that in effect this is termination of their service without payment of any retrenchment compensation or notice. On their part the respondents contend that Casual labour is not a regular employee and inspite of their best endeavours the respondents are not in a position to offer them employment in the original division when projects are completed. Instead of causing misery by simply terminating their services as the respondents are entitled to do, they offer them another employment in another division on humanitarian considerations and give them railway passes for travelling but they cannot protect the seniority in the new division nor guarantee that they will not have to further move from there when work is completed in that division also. So far as the preparation of the seniority list is concerned the respondents have pleaded that the unit with reference to which the seniority list is to be prepared is in doubt since their lists are projectwise and the division are not coterminus, some times the projects traverse more than one division and often more than a

/Contd...5/

14

number of projects have been taken up in a single division.

4/-. The first and formost question to be decided is whether casual labour is liable to transfer and if so under what conditions ? In rule 2501 of Indian Railway Establishment Manual it is provided as follows:-

Defination:-

> "Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour".

In Robert D'souza's case in Civil Appeal No:1613/1979 it has been held "The definition of casual labour extracted by us above clearly indicates that persons belonging to casual labour is not liable to transfer". As long as the petitioners are Casual labour, transfer does not become a incident or condition of their service and the respondents is not entitled to force such transfers on the petitioners.

5/-. The second question is whether the respondent can terminate the services of the applicants by implication or verbally on the basis that they have offered employment in another division and the petitioners not having availed of the offer, no further obligation devolves upon him. It is true

/Contd...6/

that until they get their temporary status the Casual labour is daily rated and the respondent has therefore contended that there is no obligation on him even to offer to employment on the day following the date of his work and his contention is that he is therefore free to terminate employment if he is free not to offer it. This plea is not tenable. The respondent cannot pick and choose the casual labour to be terminated or transferred. Although seniority lists as are necessary for regular labour may not have been prepared for casual labour, the principle of the last come first go operates and a list of casual labour in the chronology in which they have been employed, is a requirement. It is true that they are paid on a daily wages and their employment could be seasonal or spordic and drawn only from local sources, but as long as there is any work in the project or in the division they have claim to it in the order of last come first go, and the respondent is not free to ignore their claim in preference to anyone junior to them. This is specially so because of the orders of the Supreme Court. The Scheme of absorption of casual labour was specifically discussed and noticed by the Supreme Court. The mechanism of a seniority list was directed by it in order to decide the merits interse of casual labour for their absorption and a specific time limit has been prescribed in the orders. The plea of the respondent therefore that the claim of the petitioners can be ignored or settled adversely

/Contd....7/

16

cannot be accepted unless they have come forward with the senierity list and shown that work is not possible to be offered and the petitioners are liable to be terminated on the basis of the seniority list prepared on the principle of 'last come first go'. The plea that there is some doubt regarding the unit with reference to which the seniority list is to be prepared also is not weighty. The directions of the Supreme Court specifically mentioned the Division and the respondent's minutes dated 28-7-1986 asking for seniority list which accordingly requires also seniority lists to be prepared divisionwise.

6/-. In order to render them liable to transfer casual labour should not only acquire temporary status by passage of time of 120 days or 180 days if in a project but should have been screened and empanneled and given regular employment. While the passage of time might entitle the casual labour to the benefits of temporary status, there is nothing to show they are rendered liable to transfer merely onthis account. Rule 2511 speaks of the entitlment of casual labour treated as temporary to rights and privileges admissible to temporary railway servants as laid down in chapter XXIII of the Indian Railway's Establishment Manual but there is nothing to show that such treatment as temporary railway servants renders them liable to transfer.

/Contd...8/

17

7/-. Rule 2514 of the Manual states that the casual labour comes within the perview of the term workman under Section 2(S) of the Industrial Disputes Act. Labour employed on purely construction work of projects on the railways should also be included by the provision of Section (2) of Section 25-FFF of the said Act in the term of work men. The fact that such work may generally be carried out on under a separate section on railways would make no difference as regards the labour employed on such work being governed by sub-section (2) of Section 25 of FFF.

8/-. The question involving difficult humanitarian considerations is the separation of families arising out of such transfers. The spirit of the Government policy is to keep the spouses together but this governs only those spouses who are in regular government service and can be urged only in matters of transfer. No spouse can make a claim for employment on the ground that the other spouse has been offered a job. Nor can a spouse urge that the adverse benefits in terms of seniority list can be avoided for this reason. If therefore termination takes place due to operation of 'last come first go' and spouses are at different positions in the seniority list or one spouse accepts employment in another division no claim can be entertained in favour of the other spouse for reasons of keeping them together.

/Contd...9/

9/-. We notice that in issuing railway passes the respondent has not pursued a uniform policy even though the applicants in different cases are all casual labour. In a number of cases travelling passes are allowed but in a number of them they have not been given but only an offer was made that employment will be available in another division.

Rule 2510 states that:-

(i) Casual labour are not entitled to passes and privilege ticket orders.

(ii) Passes to casual labour are admissible on recruitment and discharge in cases where such labour are not available at the site of the work and have to be recruited from places far away from the site of work in interests of the administration.

10/-. The respondents made much of the fact that casual labour was drawn from far off place like Kerala and prefer to go wherever work is offered to them and that the alleged hardship in going from one Division to another is imaginery, that they used to going from one State to another and in the circumstances they should be quite thankful to be given at least some employment some where on a secure basis. This could be true but we cannot ignore the fact that the Railway Establishment Manual itself defines the term casual labour and there is a specific reference that the employment offered is not only sporadic or seasonal but by its nature local. It is only when local labour is not available that casual labour from outside can be inducted and in such cases passes for free travel are allowed. The plea

/Contd....10/

therefore that casual labour is a kind of reserve labour force at the disposal of the railways which can be shifted at will, cannot be supported.

11/-. In the context of the discussions regarding the rules and Supreme Court's direction and judgments the following conclusions emerge:-

(i) Casual labour cannot be transferred as a liability condition or incident of their service,

(ii) Seniority lists on the basis of the last come first go have to be prepared on a divisionwise basis. Until so prepared, the mere fact that in a place or a project there is no more work will not entitle the respondent to terminate the service of the applicants. If the respondent can atleast show that the applicants are junior to those who have been retained and there is no work that can be offered to the applicant in the whole division, he could be in a position to terminate the service.

(iii) Termination of casual labour requires the procedure under Section 25-F to be observed as they are workmen under that Act. Compensation accordingly and notice have to be given.

(iv) 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 inthe originating division, the

/Contd....11/

20

casual labour accepting the transfer on a provisional basis retains his right to come back to the originating division.

(v) The casual labour accepting transfer to another division on a provisional basis as stated above will have to be furnished with railway pass and on his joining will have been seniority reckoned in that division on the basis of his appointment in that division. Such a "transfer" is actually an offer for provisional employment in another division.

12/-. The cases before us have to be therefore decided, on the basis of these conclusions. Even if the plea of the projects on whichthe applicants were employed being completed is accepted and even if the respondents show that there is no more work for them, in the absence of the seniority lists, it is not possible for them to force the transfer on the applicants. The grievance that they would lose not only the employment in the originating division but would also lose their seniority as their name may be struck off is rightly agitating them. Even the assurance held out as has been done in some cases, that their seniority will be protected in the originating division, is not credible. There would be an apprehension that if the respondent has not been able to prepare the seniority list after so many months though directed by the Supreme Court, how they will be able to keep their relative position in the seniority list for determining their claims for either absorption or offer of another employment ?

/Contd....12/

21

We are not impressed bythe plea that it is impossible to ascertain the relative position of the applicants in seniority lists. Even if the exact position of the applicants the seniority is not possible to be ascertained at this stage the Respondents could ascertain the date on which the junior most casual labour is proposed to be retained in the division and show that the applicants have been appointed thereafter. The applicants then will have no grievance vis-a-vis the junior most person retained. It is of course open to the applicants to accept the employment offered in another division. Such an offer could be made by the Respondent but, in order to be effective there should be no administrative muddle so that the applicant finds that the division to which he is asked to go is not ready to receive him or takes the plea that there is no work available. In such an event such an offer cannot be regarded as bonafide and if the applicant accepts it and is not offered employment thereafter in the other division he will have a cause to pursue. His claim for seniority in the originating division will have to be upheld. In the case of such casual labour the Respondent may have to devise a number of seniority lists, one applicable in the originating division where he should be retained in his correct position which should not suffer on account of his so called transfer. He has to be shown in the new division at the bottom as he obviously he cannot ~~be~~ claim preference on the basis of his seniority in the originating division.

/Contd....13/

22

13/-. We therefore hold that the transfer of the applicants in the batch of cases before us is bad unauthorised and where there are orders, they have to be quashed and set aside. We direct that the respondent prepares seniority lists divisionwise as directed by the Supreme Court on the basis of last come first go and this exercise which they have not yet ~~been~~ completed should be completed very early pending conclusion of which atleast the date of appointment of the junior most casual labour in each division proposed to be retained should be ascertained and with reference to it the fate of the applicants should be made known to them. It will be then open to the applicants to consider the offer of employment elsewhere and without this information it would be Hobson's choice for them which they are right to resist. We further observe that it is necessary that employment should be given at the place where it is actually required and it is not in public interest to retain large numbers without useful work at the places where they are not needed only because procedural steps have not been effectively or expeditiously taken.

/Contd....14/

14/-. A large number of petitioners are involved and in respect of most of the cases interim relief has been granted. In some cases the petitioners have accepted the 'transfer' and moved to the next station. In a few cases at their request they have been allowed to return to their originating division but they have not been absorbed there, on the plea that their names have been struck off. In a few cases the petitioners have not been relieved and interim relief being allowed. A clear position about ~~the~~ each petitioner regarding the present state of his employment or otherwise does not emerge from either the petitions or the replies and it is not possible to ascertain it during the hearing. We have therefore decided that the claim of the petitioners regarding their seniority and continuation of employment in the originating division should be accepted. Further wherever interim relief has been granted the claim for back wages is also generally to be allowed if the petitioners have been relieved, on their satisfying the respondent - Railways that they have not been employed elsewhere. On this basis in OA/339/86, OA/375/86, OA/392/86, OA/370/86 and OA/336/86in which the petitioners have been granted interim relief and not relieved, they will continue in their present post and will have claims regarding their seniority ascertained and until then they will have protection regarding their termination of service. In OA/1/86, OA/297/86 the petitioners

/Contd....15/

24

who are women workers and spouses, having moved to Jaipur and worked there for several days will not be entitled to backwages but will be reabsorbed in the originating sub-division and their claim of seniority will be not adversely effected by virtue of their transfer and they will have the protection against termination until their seniority is ascertained onthe basis of 'last come first go'. In OA/41/86, interim relief was allowed on 30-4-'86 but was discontinued from 2-5-'86 and the petitioners were relieved on 1-3-1986. In this case the petitioner will be absorbed in the originating division and his service will not be terminated until seniority is ascertained and on 'last come first go' basis. He will be entitledto the back wages with effect from 2-5-'86. In TA/185/86, 25 petitioners who have been relieved on 4-2-'82 before interim relief granted on 9-2-'82 could be effected. In that case, therefore there has been no interim relief. The petitioners will have a claim to be reabsorbed and protect their seniority and will not be terminated except on 'last come first go' basis but they will not have any claim on back wages. In OA/38/86 no interim relief was granted, the petitioner were relieved on 24-8-'85 and they joined at Jaipur on16-9-'85. In that case they will be reabsorbed if they so desire in the originating division. Their claim for seniority will be protected and they will not be terminated except on 'last come first go' basis. Even if they continue at Jaipur this benefit will continue. In all other cases viz.

/Contd...16/

25

OA/397/86, OA/448/86, OA/446/86, OA/447/86, OA/362/86, OA/309/86, OA/308/86, OA/274/86, OA/203/86, OA/348/86, OA/442/86, OA/441/86, and OA/440/86 interim relief has been granted and the petitioners have been relieved on various dates. In these cases they will be reabsorbed intheir originating division and until their seniority is ascertained their services will not be terminated except on 'last come first go' basis and they will have a claim on back wages wherever they have not yet collected them under interim relief granted. In OA/306/86, 186 petitioners have already joined at Jaipur out of 282 petitioners. These who have joined at Jaipur will continue to have the benefit of seniority in originating division and these who have not joined will have to satisfy the respondent that they had not taken any other employment, and on so doing, shall be paid back wages from the date of their being relieved. In OA/344/86 the applicant has accepted the 'transfer', and gone to Jaipur and no interim relief was granted. The petitioner will have her seniority in the originating division protected and her service will not be terminated until it is ascertained and only on 'last come first go' basis. There is no question of back wages in her case being paid.

/Contd...17/

OA/~~TA~~/ 308/86

CORAM: HON'BLE MR.P.H.TRIVEDI : VICE CHAIRMAN.

HON'BLE MR. P.M. JOSHI : JUDICIAL MEMBER.

6-1-1987

Heard learned advocates for the applicant and respondent on general issues pertaining to matters connected with Casual Labour and also individual cases. Learned advocates stated that in view of the general arguments having been made they would adopt them. Learned advocate for the respondents Mr.R.P.Bhatt desires to furnish written arguments. Request allowed. Learned advocates may file their written submis-sions with copies to the opposite parties within 16th of January'87. The case is deferred for judgment until 30.1.87.

(P.H.TRIVEDI)
VICE CHAIRMAN

(P.M.JOSHI)
JUDICIAL MEMBER.