

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

XXXXXX XXXX XXXX

O.A. No. 361
TxXXX No.

1986

DATE OF DECISION 29/9/1989

Mrs.Gitaben Natwerlal Trivedi Petitioner

Shri Girish Patel Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N.S.Shevde 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?

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1. Mrs Gitaben Natwerlal Trivedi
Substitute Water Woman,
working under Station Superintendent
Sabarmati Metre Gauge Station,
Western Railway,
Sabarmati.

(Advocate:- Mr. Girish Patel

..... Petitioner

Versus

1. The Union of India to be served
through The General Manager,
Western Railway, Churchgate,
Bombay.

2. The Divisional Rly. Manager,
Western Railway, Pratapnagar,
Baroda.

3. The Station Superintendent,
Sabarmati Metre Gauge,
Western Railway, Sabarmati.

..... Respondents

(Advocate: - Mr. N.S. Shevde)

JUDGMENT

O. A. /361/86

Date:- 29/9/1989

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

This petition is made under section 19 of the Administrative Tribunals Act. The petitioner's case is as follows. She claims to be a railway employee working as casual labourer substitute water woman at Sabarmati metre Gauge Railway Station of Western Railway since 1976 and is continuing in service till the date of petition. She was directed for medical examination in C-1 category on being found eligible and within the age limit as per order dtd. 12-5-76 at Exhibit-A. The petitioner was found medically fit and claims that by letter dtd. 22-3-83 was granted temporary status from the date shown in that letter directed that all privileges enjoyed by temporary employees are granted to her. The said letter also asked that a leave file to be opened and temporary status was granted with effect from 1-8-78. The said letter is at Exhibit-B. However, the grievance of the petition is that the respondent authorities do not fully employ her but keep her as a spare one although her juniors are

employed fully. The petitioner, therefore, represented on 18-12-85 which is at Exhibit-C. As a result she has been threatened with consequences by local officers. She applied in 1986 before this Tribunal and on a statement having been made by the advocate on behalf of the respondent railways that the petitioner would be given work as per her seniority as stated at Exhibit-E dtd. 17-3-86. However, no relief was granted to the petitioner and no work has been offered. The petitioner is the senior most casual labourer and as such is entitled fully utilisation. She, therefore, has asked for the respondents flouting the statement made before the Tribunal and for a declaration that the petitioner is entitled to be fully utilised.

2. In reply the respondents have pleaded that the husband of the petitioner a Railway employee had expired during service and as per extent rules on compassionate ground the widow or one of the children of the deceased has to be normally offered employment. In this case the daughter of the applicant was appointed as a junior clerk 7-1-79 on the undertaking that she will look after her mother and minor children of the deceased railway servant. The applicant, therefore, is not eligible to be given an appointment on compassionate ground, as only one person from the family has to be allowed employment on much a ground. The applicant was however engaged as seasonal water woman when her husband expired and subsequently was granted temporary status. Under the rules she has to pass requisite medical test before she is engaged in railway service. She passed the medical examination in C-1 category according to the respondents. However, mere passing of the medical examination does not automatically entitle a person for regular employments in railway service. She has to pass screening test according to seniority and thereafter has to wait for her turn as per the select list. She will be considered when her turn

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per rules. The respondents denied that she is a senior most substitute casual labourer. The seniority of casual labourer is reckoned on the basis of total number of working days put in by them. The respondents have given the comparative position of the petitioner and some others as on 31-10-86 and brought out that from this comparative position the petitioner is junior to Lilaben, Dajiben and Shakuntalaben. Accordingly the petitioner is given seniority and there is no discrimination against her.

3. When the case was heard the learned advocate for the respondents was absent and had filed the sick note. On hearing the learned advocate Mr. Sharad Pandit for Mr. Girish Patel it was observed that there might be a typographical error and the original of Exhibit D should be produced. The respondents also were asked to clarify the position. However, on hearing the merits we were inclined to issue the following directions:

"On merits it appears that the following direction could be considered subject to the respondents' reply viz. that the respondents show the position of the petitioner in the seniority list and on the basis of the number of days worked as stated in their reply when the petitioner can expect to be called for screening and why the petitioner was not offered work when the persons named by her in her pleadings have been given work. "

4. The respondents were required to give a copy of their statement to the petitioner and to file written submissions within 10 days. The petitioner was given liberty to be heard with reference to the written submissions and the statement as indicated in the order.

5. No written submission or statement had been filed by the Respondents pursuant to the above order.

6. The first question to be decided is whether in this petition any decision is required regarding the plea of non compliance of the order dtd. 17-3-86 as alleged by the petitioner. The proper course of action for the petitioner would be

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to file a contempt petition. Our taking up this suo motu would not be proper because the respondents have denied that work had not been given to her according to seniority.

7. The basis of the respondents case is that the reckoning of the seniority of the petitioner is done on the criterian of number of working days put in and not the date of engagement as a substitute and that mere passing the medical test does not automatically entitle the petitioner for regular employment. The basis of the petitioner's case is that she has passed the medical test as shown by order dtd. 22-3-83. It is not understood how long she will have then to wait for regularisation. Even if the respondents' contention is correct there cannot but be considerable sympathy for the stand of the petitioner.

8. The respondents have dwelt at length on the entitlement of the petitioner in the background of the daughter of the deceased railway servant having been given employment on compassionate ground and that in addition the petitioner was allowed to work as casual labourer in a substitute capacity. This is really beside the point. The petitioner has not pressed her claim on the ground of her entitlement of a post on compassionate ground. Whatever may be the genesis of the employment of the petitioner it is not disputed that she has been granted temporary status after medical examination. In is in the context of the representation at Annexure-B that we have thought of issuing the directions as suggested in our order dtd. 27-7-89. We see no reason why such a direction should not be issued.

9. Accordingly it is held that the petitioner is entitled to the following directions. The respondent authorities viz Divisional Railway Manager, Baroda to pass a speaking order (a) furnishing the seniority list of the position of the petitioner and others above her awaiting regularisation after medical examination, (b) clarifying with supporting facts that

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no person junior to the petitioner has been regularised, (c) pointing out with the relevant extracts of the rules how the seniority of the petitioner as casual labourer substitute is reckoned on the basis of number of days put in and enclosing a comparative chart found in the second page of the counter and (d) indicating the approximate month in which the petitioner's case can come up for regularisation. Such a speaking order to be passed within three months of the date of this order. The petitioner is at liberty to approach this Tribunal by a fresh petition if she is left with any cause.

9. With the above directions the application is found to have merit to the extent stated above. No order as to costs.

P. H. Trivedi
(P. H. Trivedi)
Vice Chairman

P. M. Joshi
(P. M. Joshi)
Judicial Member