

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

A H M E D A B A D B E N C H

O.A. No. 394 1986
~~TAXON.~~

DATE OF DECISION 26/10/1988

Smt. Ratan Thobhan Petitioner

Mr. D.P. Padhya Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. R.P. Bhatt 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?

Smt. Ratan Thobhan
C/o.Valji Ravji Gang. Chawal,
Old Loco Colony,
Near Police Station,
Surendranagar.

.. Applicant

Versus

1. The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Chief Engineer,
Western Railway,
Bombay.
3. The Executive Engineer,
Western Railway,
Jamnagar.
4. The Executive Engineer,
Western Railway,
Rajkot.

.. Respondents

ORAL ORDER

26/10/1988

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

Heard Mr.D.P.Padhya learned advocate for the applicant. Learned advocate for the respondent not present when the case was called repeatedly for the hearing. In this case, the petitioner was a casual labour appointed on 24.11.1972 as per averments and was shifted from Rajkot to Jakhwada on 1.3.1986. She made representation regarding the payment of due on 1/3/1986 relying upon some instructions contained in the minutes dated 28/12/1984 in para 4 of which it was stated that "the labour should not be shifted till the various declared arrears are paid to them". The written statement in reply of the petitioner states that by letter dated 26.2.1986 the applicant was admittedly shifted but she refused to accept the present order in the presence of two witnesses and she absented herself from work since 1.3.1986. The respondent in the written statement in reply has stated that if the applicant is still willing, she can be assigned work under Executive Engineer (S & C),

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Jaipur in a different division. The applicant has been assigned seniority with effect from 27.4.1978 prior to which admittedly she has worked in broken spells under different units. The respondents' case is that the applicant has put in service of less than 8 years and 11 months as on 31.3.1983 and the seniority on VOP project has no bearing on 40% construction reserve. She is not eligible for 40% reserved vacancies. The last person has put in service of 9 years, 4 months and 26 days as on 31.3.1983 which is the date of consideration of 40% construction reserve post. The respondents' case in the written statement therefore is that the applicant is not entitled for 40% reserve post. The petitioner's plea regarding dues on various counts and her stand that she can resist the transfer on the ground of non-payment of such dues in terms of the instructions on which she relies does not persuade us to have much force. Such dues are a matter on which her representation substantiated by such proof as she may have can be considered by the respondents but on that basis alone her transfer does not become invalid. However, although no plea has been taken, regarding nontransferability the fact stands that the petitioner has resisted the transfer and under the rules applicable to casual labourers and as also held in various judgments by this Tribunal casual labour do not have the liability of transfer. The respondents' description of causing 'shifting' of petitioner from one division to another does not change the character of transfer which they are not allowed to order. We could not have the benefit of the stand taken by the respondent in regard to this question during the hearing and therefore for meeting the ends of justice we consider it necessary to take notice of the fact that such transfer has been

ordered illegally and cannot be sustained. On this analysis, it would be appropriate to direct the respondent as follows:-

The petitioner be taken back in service within a period of one month in the station in which she was employed on the eve of orders dated 26/2/1986 which appears to be from the documents placed in the case. The petitioner will have no claim of backwages during her period of absence but will not suffer any break in service on account of such absence caused by her resisting the transfer orders which must be held to be illegal. So far as her dues are concerned, the respondent authorities will give a speaking order after allowing the petitioner to make a representation, provided the representation is made within a period of one month. Such speaking orders to be passed by the Executive Engineer (S & C), Rajkot within a period of three months thereof. The right of retrenching the petitioner after observing formalities regarding notifying the seniority list giving due notice and retrenchment compensation as she may be entitled to under the rules as applicable to her will have to be followed before any action relating to her is taken by the respondent.

With this direction, the case is disposed of with no order as to costs.



(P.H. Trivedi)
Vice Chairman



(P.M. Joshi)
Judicial Member