

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

O.A. No. 453 of 1986 ~~198~~  
~~XXXXXX~~

DATE OF DECISION 30/04/1987

Shri Kasam Jusab & Ors. Petitioner

P. H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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.

J U D G M E N T

OA/453/86

30-4-1987

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

In this case the applicants have challenged the impugned order of their transfer from Porbunder to Jaipur Division of the Western Railway. They contend that they are senior to those who have been retained, that being casual labourers, they are not liable to be transferred, that the ground taken by the respondents for their transfer, viz. of the project having been completed and their being rendered surplus is not bona fide because, at the same time Executive Engineer Rajkot, has called for the labourers from Ahmedabad, that seniority list of the casual labourers has not yet been finalised and in terms of the Supreme Court's <sup>Rw</sup> orders on the subject, the principles of "last come first go", therefore, cannot be followed, and that the respondents have adopted a policy of "pick and choose", which is violative of Article 14 and 16 of the Constitution. They further contend that although there are instructions from the Railway Board following the directions, according to the applicants, of the High Court to reserve 40% vacancies in the permanent posts for absorption of casual labourers, no action for screening them and other casual labourers eligible for absorption has been taken. The applicants have annexed at 'B' the list of workers junior to them and at 'C' the letter calling labourers from Ahmedabad by Executive Engineer Rajkot.

2. The respondents have not filed a reply. We had, therefore, to appreciate their defence only from their submissions during the hearing. We could not ascertain whether the petitioners have complied with the transfer orders or have been still retained in Porbunder or whether the orders of <sup>Rw</sup> transfer dated 03/03/86 which are impugned are meant for their permanent absorption. However, we note that although the impugned orders have been <sup>Rw</sup> passed on 03/03/1986,

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the petition has been filed only on 19/12/1986. The applicants have sought relief for taking the petitioners back from Jaipur to Porbandar and, therefore, they must have already moved to Jaipur. The respondents having been given an opportunity to reply and having not availed of it are liable to have adverse inference to them and in favour of the petitioners to be drawn in the circumstances. We have dealt with the cases having analogous facts and questions in common judgments in OA/1/86 and OA/331/86 and other cases in which the relevant Rules 2501 to 2513 of the Establishment Manual have been discussed are decided. Both learned advocates have stated that this case could be decided in the light of our aforesaid decision. We have held therein that the question of transferring casual labourers cannot arise at all until their regularisation into temporary railway servants. If they are being rendered surplus and, therefore, retrenched they are entitled to the protection of the procedure prescribed under the Industrial Disputes Act and to retrenchment compensation or notice in lieu thereof, as the case may be in terms of that Act. Whether the intention of the respondents to offer alternative employment on completion of the project is bona fide can be gathered only from the facts and circumstances of the case. We are unable to say on the basis of the record whether the respondents are guilty of mala fide conduct, but as the applicant has listed some persons who are called from Ahmedabad to Rajkot Division we cannot exclude the possibility of the respondents being in a position to continue the employment of the petitioners as casual labourers in Rajkot Division. We are also unable to arrive at a finding whether the reservation of 40% vacancies in permanent posts for absorption of casual employees would apply to the case of petitioners on the basis of the facts on record.


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3. As the petitioners have already moved to Jaipur Division they

have accepted the transfer but they retain the right of having their seniority in the originating division, in this case, Rajkot and accordingly to be offered employment in that division when the work is available there. It is now infructuous for them to pursue the impugned order of transfer as such.

4. The petition has merits and is partly allowed subject to the above observations.

No order as to costs.

  
( P H TRIVEDI )  
VICE CHAIRMAN

  
( P M JOSHI )  
JUDICIAL MEMBER