

Liberal Labour Society (180)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

jud
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✓
T.A. No.
✓

O.A. No. 256

1987

DATE OF DECISION 19.7.1991

Association of Railway & Post Petitioner
Employees through its Executive Committee
Member Shri Ahmad Noor Mohammed & other
Members.

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

Versus

Union of India & Ors. Respondent

Mr. R.M.Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M.Singh : Administrative Member

The Hon'ble Mr. R.C.Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

Association of Railway &
Post Employees through its
Executive Committee Member
Shri Ahmad Noor Mohamed and
other Members as under:

1. Shri Ahmed Noormohmed
2. Shri Bhupat Chhagan
3. Shri Gagan Kana
4. Shri Ibrahim Sumar
5. Shri Rameshchandra Raghavji
6. Shri Hasam Mohamed
7. Shri Barain Ziaa
8. Shri Bachu Pancha
9. Shri Kala Jesang
10. Shri UKka Machha
11. Shri Govind Siddy
12. Shri Gopal Govind
13. Shri Navghan Mohan
14. Haridas Prabhudas
15. Khimji Ramji
16. Adimulam Murugan
17. Ramaswamy Arumugam
18. Mohansing Kansingh
19. Bhomsing Ratansing
20. Mari Keshavan
21. Kafarisng Halusin
22. Dharamalingam Mathu
23. Naransing Kansing
24. Bharanigar Jethigar
25. Chinaswamy Ramaswamy
26. Ravi Chelamuthu
27. Gogan Meru
28. Ahmed Jusab
29. Bhaga Menshi
30. Vardraj Rangaswamy
31. Vaiyapuri Chel amuthu
32. Shri Premji Manji
33. Notiben Bhikha
34. Hematsing Derubha
35. Bhikha Bechar
36. Amarshi Mardai
37. Deva Kera
38. Ibrahim Yusuf
39. Arbi Yusuf
40. Dhanesh
41. Sukha Soma
42. Mavji Nanji
43. Motising Vajesing
44. Magan Mohan
45. Parsing Raghya
46. Kishor Chhagan
47. Chimal Gomal
48. Baboo Kana
49. Naga Kesha
50. Laxman Kana
51. Periyaswamy Muthuswamy
52. Narshi Tapoo
53. Devraj Tapoo
54. Hamir Pota
55. Mansing Hemsing
56. Rupsing Tejasing
57. Kesarsing Bhavsing
58. Harisingh Devising
59. Selamuthu Kutumpari
60. Bhikha Gagji
61. Hargovind Ranchhoddas
62. Harsi Chaku
63. Ranchhod Deva

64. Pala Hira
65. Prabhudas Kelaram
66. Mohan Premji
67. Bhikha Raghav
68. Nagbha Navalsing
69. Damji Kanji
70. Narsi Limba
71. Alimohmed Ismail
72. Jasa Ghogha
73. Momaiya Hamir
74. Natha Vasta
75. Deva Bhavan
76. Machha Vira
77. Raja Karsan
78. Mohmedali Husen
79. Ranganath Naleshiv
80. Dadu Muru
81. Bhaila Bhikha
82. Chinapayan Subrayan
83. Raju Chinatambi
84. Laxmansingh Jagesing
85. Chunilal Premji
86. Dhiru Tapoo
87. Gova Karsan
88. Veja Mangla
89. Maheshkumar Natwarlal
90. Sukhalal Chhagan.

All addressed to : Association of Railway & Post Employees, 37, Pankaj Society, Bhata, Paldi, Ahmedabad.
(Adv.: Mr.P.H.Pathak)

: Applicants

Versus

1. Union of India
Through:
The Divisional Railway Manager (W.R.)
Bhavnagar Para, Bhavnagar.
2. Assistant Engineer (W.R.)
~~Jetalsar Railway Station,~~ <sup>The chief Engineer (W.R.)
Rly. station IInd floor</sup>
~~Jetalsar.~~ ^{Alsead} : Respondents
(Adv.: Mr.R.M.Vin)

JUDGMENT

O.A. 256/87

Date: 19.7.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. This application is filed by Association of Railway Post Employees along with other 90 members of the said association seeking the reliefs that the respondents be directed to regularise the services of the applicants effective before the date from which their juniors are regularised and the respondents be directed to post the applicants of their original place and to consider the

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seniority of the applicants from the initial date of appointment and they may be placed accordingly in the seniority list of regular employees and to declare the action of the respondents to keep employees as casual labourer for years and to deprive them of permanent **benefits** as unfair labour practice under Section 25(J) of the Industrial Disputes Act.

2. It is alleged by the applicants in this application that they have been working in the **Bhavnagar** station since years. the details of which are mentioned by them in the documents Annexure-A prepared by them. It is alleged that the applicants have been working continuously in the department of the respondents - railway, that they are senior labourers and as per the decision of the Hon'ble Supreme Court of India in Indrapal Yadav's case, they are entitled for absorption as regular employees of the respondents. The grievance of the applicants as found from the application is that the respondents have openly flouted the direction of the Hon'ble Supreme Court of India and they have screened junior most labourers and have started regularising them also. The applicants have produced at Annexure A/B, a copy of the order dated 26.2.1986 of D.R.M.'s Office Bhavnagar, by which the casual labourers named therein have been put in a provisional panel after they were screened by the Screening Committee. It is alleged by the applicants that these persons in Annexure-B are juniors to the applicants and respondents have started regularising them which act of the respondents is violation of Article 14 & 16 of the Constitution. It is also the grievance of the applicants that the action of the respondents in keeping the employees as temporary casual labourers for years and depriving them on the benefits regularisation amounts to unfair labour practice, as per provisions of the Section 25T of Industrial Disputes Act.

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It is alleged in the application that the respondents are exercising the powers ~~is~~ in total arbitrary manner, that no seniority list is prepared and that the respondents are not obeying the orders of the Court.

3. The respondents have filed detailed reply ~~in~~ the allegation of the applicants. However, it ~~may~~ noted at this stage that the applicants seek relief of regularisation ~~and~~ seniority on the basis of their claim on the document Annexure A/1 which is not a certified copy obtained from any of the department of the respondents but this is the list prepared by the applicants themselves and they have not shown ~~either the~~ ^{from which} ~~source or~~ the original material/this list is prepared. Therefore, the fate of this application much depends on the correctness of the contents of this list produced at Annexure A/1. The grievance of the applicants is that the casual labourers whose names are mentioned in the Annexure-B are juniors to ~~them~~ and the respondents have started regularising the casual labourers whose names are shown in Annexure-B, which ~~act~~ amounts to violation of Article 14 and 16 of the Constitution of India.

4. The respondents have in the written statement contended that the application is barred by Section 21 of the Administrative Tribunals Act, that the applicants have not joined General Manager, Churchgate, Bombay as a party respondents and hence the application requires to be dismissed for want of necessary party. It is also contended by the respondents that the applicants are appointed on Construction Organisation and they are not working at present on Bhavnagar Division and that it is only the Construction Organisation which can properly scrutinise the applicants' claim and give the true facts of the claim and the said organisation is also not as a party in this case but the applicants have joined Bhavnagar division which is not their employer and therefore also the application deserves to be dismissed.

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5. It is contended by the respondents - Divisional Railway Manager, Western Railway, Bhavnagar that the casual labourers shown in Annexure A/1 are not appointed on Bhavnagar division and perusing the list at Annexure A/1, it is clear that they were appointed on Viramgam Okha Conversion Project undertaken by Survey and Construction Department of Railway which is a separate department than Bhavnagar division, that the applicants at present are also not serving on Bhavnagar division and therefore, the present respondents are not in a position to admit that the applicants are employed in railway or otherwise. The respondents have not admitted the service particulars which given in Annexure-A in respect of each applicant. They have contended that only those project casual labourers have a claim for absorption for a particular division, who are appointed initially on the jurisdiction on that division. It appears from the reply of the respondents that those project casual labourers have a claim for absorption in Bhavnagar division who are initially appointed on the jurisdiction of Bhavnagar Division. It is contended by the respondents that the persons who are selected as mentioned in Annexure/B are juniors to the applicants. According to the respondents, screening was ~~then~~ however held for 64 vacancies in conformity with the High Court interim orders in earlier two petitions filed by the applicant Ahmed Noormohmed. They have also contended that the Bhavnagar division has already prepared and published the divisionwise seniority list of project casual labour vide letter dated 22.1.1987 which includes ~~red~~ the names of the project casual labourers transfer/^{red} to this division and also names of those whose names are advised by construction organisation but the names of the applicants do not appear in the said seniority list, as none of the construction office as advised their names and service particulars to this division. It is further contended that after publishing the seniority list, one month's time/^{given} for making representation but neither any recognised union nor the applicants have made any representation about the

claim of the applicants and therefore, this objection has raised in the application cannot be entertained. It is contended that even otherwise in absence of the details about the initial appointment in a particular division and the full service particulars about the number of days worked by them, their posting, the list Annexure A/1 which is prepared by the applicants themselves cannot be considered because in absence of the complete service details obtained from the relevant organisation the respondents cannot be admit any of such particulars prepared by the applicants and the details given by the applicants in Annexure A/1 cannot be the basis for their claim either for absorption or for the grievance that the persons who were selected from the Annexure/B are juniors to them. It is also contended that the Hon'ble Supreme Court had issued final modified order for preparation of departmentwise combined seniority list of project casual labourers with reference to each division on 11.8.1986 (in case of Inderpal Yadav), that direction of such seniority list is issued under Headquarter letter dated 19th September, 1986 produced at Annexure R/1, that the screening for the unit was finalised on 26.2.1986 much before the order of the Hon'ble Supreme Court for preparation of the combined seniority list of project casual labourers and that the respondents thus have not flouted the order of the Hon'ble Supreme Court because after that direction from Hon'ble Supreme Court such combined seniority list is prepared and notified on 22.1.1987 produced at Annexure R/2. The respondents have categorically denied that the persons regularised by order dated 26.2.1986 are juniors to the applicants. They have also contended that reading the list Annexure A/2, 23 applicants at Sr.No. 9, 14, 36, 46, 60 to 68, 70 to 79 82 & 83 have no claim for absorption on Bhavnagar division and 7 applicants out of 90 i.e. Applicant Nos. 5, 6, 7, 15, 25, 28 and 45 are since regularised in Class IV themselves vacancies, and they have no reasons or ground to join.

in this application.

6. The respondents have also contended that two Special Civil Applications No. 2018/83 and 2868/83 were filed before the High Court of Gujarat and as per the interim order in those application the Bhavnagar division was allowed to fill up 60% vacancies by holding screening, and 40% posts were kept vacant and the respondents have acted accordingly. It is contended that the said two petitions fix on transfer to this Tribunal, were renumbered as TA/277/86 and TA/269/86 which were disposed by this Tribunal on 22.6.1987, the copy of which is produced at Annexure R/3 and according to that judgment 40% vacancies kept vacant had to be filled in by project casual labourers by holding screening as per the rules, not later than six months of the date of the judgment and the respondents are acting according to that judgment but the applicants name having not appeared in the combined seniority list of Project Casual Labours prepared by this division, the respondents do not give any commitment for their names.

7. Therefore, the main contention of the respondents is that in absence of the authentic data of the service particulars of these applicants including number of days worked, present whereabouts, initial appointment, etc. their case cannot be considered. The respondents have also denied that the applicants are continuously serving as alleged by them. It is contended that the seniority list as per the direction of the Hon'ble Supreme Court is already prepared and published by the respondents. The respondents prayed that the application be dismissed.

8. The applicants have amended the application by joining the General Manager, Western Railway and the Chief Engineer, Railway Station, Ahmedabad as respondents.

9. The applicants filed rejoinder controverting the contentions taken by the respondents in their reply. The

of circulars applicants have annexed with the rejoinder the list issued by the Ministry of Railway and General Manager dated 8.5.1981 and 12.10.1981.

10. The learned advocates for the parties have produced before us the written submissions. The applicant in his written submissions has stated that the legislature has taken due care to avoid exploitation and rotation of the employees by the employer and the applicant has referred to Section 25 T of the I.D.Act, 1947 and item No.10 of Schedule V of I.D.Act and has also referred to the decision of the Hon'ble Supreme Court in H.D.Singh vs. Reserve Bank of India reported in 1985 4 SCC page 201 in which it was held that to rotate an employee as even Badli worker and to deprive the employee of the benefits of the provisions of I.D.Act amounts to unfair labour practice and the Hon'ble Supreme Court directed regularisation of the services of Badli employee. Relying on this decision, it is stated in the written submissions that though the applicants are working continuously as casual labourers, the respondents have not regularised their services under the guise of project casual labourers and the applicants are deprived of the benefits and status available to regular employee of railway though the applicants have put services of 10 to 15 years. The reliance is placed ~~at~~ on Annexure A. It is important to note that the Annexure-A, on which much reliance is put by the applicants, is the list of the applicants working in Bhavnagar division as mentioned in the title of the list and it is prepared by the applicants. It does not show that it is the certified copy or the authenticated service copy of the document containing the particulars of each applicant. Therefore, the basis on which the applicants have come to this Tribunal alleging that they are working in Bhavnagar division since many years and still they are not regularised by the respondents and that the respondents have screened juniormost labourers shown in the

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list Annexure-B suffers from great infirmity namely that there is no reliable evidence to hold that the contents of Annexure-A produced by the applicant are the true contents. The respondents in the reply have categorically contended that the applicants at present are not working on Bhavnagar division and 90 casual workers shown as applicants in the said Annexure-A are not appointed on Bhavnagar division but even from the list Annexure-A it is clear that they are appointed on Viramgam Okha Porbandar Project undertaken by Survey and Construction Department of Railway which is a separate deptt. than Bhavnagar division. The respondents have not admitted the service particulars as given in Annexure-A. Moreover, it is also contended in the reply by the respondents that reading column 5 of Annexure-A, it is clear that 23 applicants out of 90 have no claim on Bhavnagar division as they are appointed at the places like Sikka, Khambhalia, Hapa etc. which are not falling on the jurisdiction of Bhavnagar division and their serial numbers are also given in the reply. The respondents have also denied that the persons selected for screening etc. are junior to the applicants and their defence is that the screening was held for 60% vacancies in conformity with Hon'ble High Court's interim orders in earlier two petitions filed by the present applicant Shri Ahmed Noormohmed. It is also contended by the respondents that the Bhavnagar division has already prepared and published the divisionwise seniority list of project casual labourers vide letter dated 22.1.1987 which includes the names of the project transferred casual labourers to the Bhavnagar division and also names of those whose names are advised by Construction Organisation, but the names of the applicants are not found in that seniority list and even after publishing the seniority list one month's time was given for making representation but there is no representation made by the applicants for their inclusion of their names in the list. List Annexure-A
... does not show the full service particulars of the applicants, namely the details of the initial appointment,

the details of number of days worked by them, the division in which they have worked and therefore the respondents are right in their contention that in absence of these particulars, it cannot be said that the applicants are working in Bhavnagar division as mentioned in that list for 10 to 15 years and their grievance that their services are not regularised also cannot be considered as they have failed to produced the reliable evidence in support of their case. The respondents in details have stated that they have acted according to the guideline as per the decisions of the Hon'ble Supreme Court in Inderpal Yadav case and others. We see much force in the submissions of the respondents that when the applicants have not produced satisfactory evidence about their service particulars the applicants assertion in the application and list Annexure -A1 prepared by them it cannot be concluded that they are working for 10 to 15 years in Bhavnagar division and that their services are not regularised and that persons whose names are shown in the Annexure-B are junior to them and that by screening them or ultimately regularising some of them, there is violation of Article 14 and 16 of the Constitution of India.

11. The applicants in their written submissions have in details referred to the provisions of I.D. Act and have referred to many decision also and the letters of Railway Board, but the same can be pressed into service by applicants provided first the applicants had produced reliable material to show that they are working since 10 to 15 years in Bhavnagar division and that the injustice is being done to them by not regularising them and that persons whose names are shown in Annexure -B are junior to them. The applicants seek reliefs on the basis of their bare allegations in the application and only the list Annexure-A prepared by them. If relying on such a document Annexure -A, we hold that the persons whose names are shown in the Annexure-B are junior to the applicant and that their screening and regularisation of some of them

subsequently by respondents was illegal, it would result in doing injustice to those persons whose names are mentioned in Annexure "B". There was heavy burden on the applicants, first to produce reliable evidence in support of their services, in absence of which it cannot be presumed that whatever details are shown in the list Annexure A are correct and on basis of those details, we cannot hold that the persons whose names are shown in Annexure- B are juniors and cannot hold that there is violation of Article 14 and 16 of the constitution of India in as much as the persons shown in the list Annexure -B though juniors are screened by respondents and some of them are regularised by respondents in preference to the applicants are seniors. Therefore, on merits the applicants have no case.

12. The respondents have contended in the reply that the application is barred by limitation under Section 21 of the Administrative Tribunals Act. On this point, it is necessary to refer to the first order of this Tribunal dated 22.5.1987 on which date the order was made by the Bench for issuing notices on the respondents to reply on limitation and also on merits within 45 days from the date from the date of the order then the matter was adjourned twice or thrice. On 26.2.1988 the Bench has passed an order that the reply has been filed by the respondents and the applicant may file rejoinder if any within one month. Thereafter on 15-3-1990 the applicant and their counsel were not present. But Mr. R.M. Vin, learned advocate for the respondents was present and the Tribunal heard learned advocate for the respondents and perused the records meaning thereby that the application and the documents filed, the reply filed by the respondents and the documents filed with the reply were perused by the Tribunal and the Tribunal held that considering the nature of the

relief claimed in the application, the Tribunal did not find any reason not to admit the application. Therefore, the matter was admitted after perusing the record and hearing the learned advocate for the respondents. The counsel for the respondents at that time also submitted that the reply filed at the time of admission be treated as the reply to the Original Application. Therefore, the respondents had filed reply on the point of limitation also and after hearing the learned counsel for the respondents the matter was admitted considering the point of limitation. Hence, now the respondents cannot again agitate the point of limitation. However, even if that question of limitation is to be considered the order under challenge is an order Annexure 'B' dated 20.6.1986 by which according to the applicants the persons juniors to them were screened and some of them were regularised ultimately by respondents. They have filed this application on 20.5.1987. In our discretion we condone the delay of two months and 24 days having regard to the facts of the case and hold that to treat the application in time. However, as mentioned above, there is no merit in the application and it deserves to be dismissed. Hence, the following order:

ORDER

The application is dismissed. No orders as to costs.

R.C.Bhatt
(R.C.Bhatt)
Judicial Member

M.M.Singh
19/7/91
(M.M.Singh)
Administrative Member