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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 281 of 1987

DATE OF DECISION 01-07-1988

Paschim Railway Karmachari Petitioner
Parishad, Baroda & Ors.

Shri R. K. Mishra 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.

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.

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

01-07-1988

ORAL ORDER

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

Heard learned advocates Mr. R. K. Mishra and Mr. N. S. Shevde for the applicants and the respondents respectively. The petitioners' case is that in terms of our common judgment dated 30-1-1987 on the subject, the petitioners are not liable to be transferred and that the petitioners have been subjected to repeated transfers and this Tribunal has quashed the transfer from Baroda to Bharuch. It is submitted that on similar terms the transfer from Baroda to Rajkot also be quashed and that since the petitioners do not have any kind of lien in Rajkot division, the liability to go back to Rajkot division had such security of lien on permanent post been available, cannot be applied in the petitioners' case. It is further argued that the petitioners are being transferred mala fide because in one case there are allegations which are under investigation; that the petitioners are engaged as project labourers in Baroda division and the statement of the respondents in the transfer orders that there is no work in Baroda division is and that for such reason the petitioners are sought to be transferred is not true.

2. The respondents' case is that earlier transfers have been quashed on the ground the transfer is not a condition of service and in this case by our order dated 22-5-1987 in MA/199/87 with OA/245/87 we have stated that the respondents are free to bring the applicants on merits of their case to

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the original division. Learned advocate for the respondents Mr. Shevde states that, as asked, he has ascertained that Rajkot division is the originating division for the petitioners and that their seniority is being maintained on the seniority lists of that division and the safe guard of "Last come first go" would be applicable to the petitioners in that division. Further the impugned orders are distinguishable in this case from earlier orders on the ground that the respondents are only restoring the petitioners to their originating division where the safe guards apply. The respondents have denied the allegations regarding mala fide and learned advocate for the respondents has stated that the allegations are only regarding one petitioner Shri Manga Gobaria and cannot be raised regarding transfer of the petitioners in that case.

3. After hearing the learned advocates we find that in the present case the petitioners are sought to be brought back to the originating division in which, their seniority being maintained, safe guards of "last come first go" is applicable. These orders are, therefore, to validly distinguishable from the other orders of transfer in which the petitioners were being transferred to divisions other than the originating division. No scheme for safe guarding the rights of the petitioners to be continued in service in the originating division and protecting the petitioners against transfer if they do not consent to it can be made workable if the petitioners choose to plead for such safe guards and at the same time refuse to be in originating division. In the originating division they have the safe guard to be continued in the service, provided they are not terminated out of turn on the basis of last come first go. We, therefore, do not find that there is any weight or substance in the plea of the petitioners regarding their right to be protected against being sent back to the originating division. The respondents are competent

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authority to decide whether there is work in Baroda division or not. The petitioners have pleaded that there are numerous persons junior to them in Baroda division who are being retained. The petitioners have no right or title to be retained in Baroda division on this ground because this is not a question of termination.

4. We, therefore, uphold the impugned orders regarding sending the petitioners to Rajkot division. However, during the hearing the learned advocate for the petitioners has stated that the petitioners may be willing to forego their seniority and the safe guards relating thereto regarding termination except in compliance of last come first go principle if they are allowed to be retained in Baroda division on the basis of their date of joining therein and in accordance with their status or the capacity in which they have worked therein namely Project Casual Labourers. In the light of this, we would like to observe that if the petitioners make a representations ~~to~~ on these lines within a period of 15 days of the date of this order the respondents retain the petitioners in Baroda division until the disposal of such representation. With this order and observation the case is disposed of with no order as to costs.

Rushikesh
(P. H. Trivedi)
Vice Chairman

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Coram : Hon'ble Mr P H Trivedi .. Vice Chairman
Hon'ble Mr P M Joshi .. Judicial Member

14/10/1987

Heard learned advocate Mr R.K. Mishra for the applicant. Issue notice on the respondents to comply or reply within 15 days from the date of this order why the order for complying with the instruction in the judgment referred to should not be passed. The case be adjourned to 2nd November, 1987 for further direction.



(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member