

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 358
T.A.X. No.

1987

DATE OF DECISION 7.7.1988.

Shri Popat Sidik

Petitioner

Shri B.B. Gogia

Advocate for the Petitioner(s)

Versus

Union of India & Anr.

Respondent

Shri B.R. Kyada

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

(11)

Shri Popat Sidik,
 Village Setalus,
 Post Manalus,
 Taluka Lalpur,
 Dist. Jamnagar.
 (Advocate - Shri B.B. Gogia)

.. Petitioner

Versus

1. Union of India, through
 General Manager, W.Rly.,
 Churchgate, Bombay.
2. Executive Engineer (C),
 Western Railway,
 Jamnagar.

.. Respondents.

JUDGMENT

7.7.1988.

Per : Hon'ble Mr. P.M. Joshi .. Judicial Member

The petitioner Shri Popatt Sidik of village Setalus (Jamnagar District), has filed this application on 21.7.1987 under section 19 of the Administrative Tribunals Act, 1985 against the Union of India represented through General Manager, W.Rly., Bombay and Executive Engineer (C), Jamnagar. According to the case set up by the petitioner, he was engaged as casual labourer in survey and construction department on V.O.P. project on 8.9.1978 as a Male Beldar under P.W.I., Jamnagar and he has continuously worked till 16.8.1985 and thereafter he was shifted to Jaipur division and accordingly he had not been allowed to work there. By way of amending the pleading, he has contended that he being casual labour, he is not liable to transfer and hence the order of transfer is illegal and void. He has therefore, prayed that the respondents be directed to treat him in continuous service from 16.8.1985 till he is reinstated with all benefits of salary etc.

2. The stand of the respondent - railway admini-

stration in their counter, is that on completion of the V.O.P. Project, the petitioner and others were directed to Jaipur under Assistant Engineer, W.Rly., vide office letter No. VOP/JAM/K/G.Misc./7 dt. 2.8.1985, but the petitioner refused to go to Jaipur and now, he has come with a plea that he is not allowed to continue in the service, after a period of 2 years.

3. When the matter came up for hearing, Mr.B.B.Gogia and Mr. B.R.Kyada learned counsel for the petitioner and respondents respectively waived oral hearing and conceded to file written submissions. They, however, have not preferred to file the same. We have therefore, proceeded to decide the case on merits on the basis of the materials placed on record.

4. The short point for our consideration is whether the action of the respondent in discontinuing the services of the petitioner as a result of the petitioner's refusal to accept the transfer is bad in law. Our answer is in the affirmative.

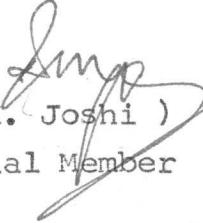
5. The fact that the petitioner was engaged as casual labour on V.O.P. project from 18.9.1978 is not in dispute. Moreover, the fact that he continued to work till 16.8.1985 is not controverted. It is the case of the respondents that when there was no work available, they had no alternative left either to retrench the petitioner or to send him elsewhere and accordingly, the petitioner was transferred to Jaipur under office letter dt.2.8.1985. It is also conceded by the respondents that the petitioner refused to go to Jaipur. It is not the case of the

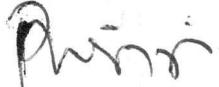
respondent that thereafter they offered or provided any work to the petitioner. Eventually, the petitioner has been thrown out of job. This action amounts to retrenchment as defined in the Industrial Disputes Act. The term "retrenchment" as defined is very comprehensive. The casual labour is considered to have acquired a temporary status on completion of 4 months continuous service, either in the same work or any other work of the same department, to which they may be shifted. In group of matters pertaining to casual labourers, this bench while referring to relevant provisions of the Indian Railway Establishment Manual, has held that the casual labourers are not liable to be transferred, as transfer is not an incident of service in the case of the casual labourers, (See Para 2508 of I.R.E.M.). In identical matters, such transfer orders have been declared as untenable at law. In the instant case, the action of the respondent in transferring the petitioner to Jaipur under office letter dt. 2.8.1985, therefore, cannot be sustained. The petitioner refused to go to Jaipur and consequently on his such refusal, the respondents have not permitted the petitioner to work on his job. This action on the part of the respondent being unauthorised cannot be sustained.

6. In this view of the matter, the application succeeds. The impugned order of the respondents directing the petitioner to Jaipur is held illegal and the same is accordingly quashed and set aside. We, therefore, direct the respondents to reinstate the petitioner with continuity of service. Since the petitioner has filed the application after a considerable delay, we do not prefer to award any back wages, however, the petitioner is held entitled to the benefits of

salary and wages from the date of the institution of the application i.e. 21.7.1987. The respondents are further directed to work out the arrears of such salary or wages from the said date and pay the same alongwith reinstatement within 3 months from the date of this judgment.

The application is allowed to the extent stated above. There will be however, no order as to costs.


(P. M. Joshi)
Judicial Member


(P. H. Trivedi)
Vice Chairman.