

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
 AHMEDABAD BENCH  
 XXXXXXXX XXXXXXXX

O.A. No. 439 OF 1987.  
 TAXXNo.

DATE OF DECISION 17-1-1989.

HASAM MAHMAD & ANR. Petitioner s.

MR. P.H. PATHAK Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. B.R. KYADA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

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?

1. Hasam Mahmad,  
2. Babubhai Manibhai. .... Petitioners.  
(Advocate: Mr. P.H. Pathak)

Versus.

1. Union of India  
Notice to be served through  
The General Manager  
Western Railway,  
Churchgate,  
Bombay.  
2. Executive Engineer(C),  
Western Railway,  
Near Ervine Hospital,  
Jamnagar. .... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A.No. 439 OF 1987

Date: 17-1-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The two Railway employees have, by this application under section 19 of the Administrative Tribunals Act, challenged the order of their transfer, namely, order No. VOP/JAM/E/891/1 dated 12.8.1987 issued by the office of the Executive Engineer(Const.), Jamnagar to Bhuj. The order contains sixteen names. The applicants figure at serial numbers 5 and 6 in it.

2. The applicants' case is that the judgments of this Tribunal hold that Casual labour cannot be transferred; that the applicants joined as ~~casual~~ labour in the year 1973; that the applicants passed

medical test and have also been screened but the respondents have not given the applicants regular employment as class IV employees; and that instead of giving employment as regular class IV employees, the respondents issued the impugned order transferring them from Rajkot division to a different division, namely, at Bhuj in Ajmer division in order to, to quote from the application "deprive the applicants of the regular posting in their own division". The applicants have also accused the respondents of disregarding Railway and Court directions and instructions to prepare divisionwise seniority list of casual labour for absorption as regular class IV employees; and that the impugned order allegedly "intentionally mentioned that the applicants are junior most" and so alleging, the applicants enclosed details of labourers senior to the applicants (Annexure A-2). It is also alleged that these juniors are regularised in the division ignoring the seniority of the applicants. The applicants therefore pray that the impugned order of transfer and their relief on transfer be declared as illegal, invalid and inoperative in law and quashed and set aside with costs.

3. The respondents' reply is to the effect that the applicants are no more casual labour but are regular class IV Railway employees transferred to work under Dy. C.E. (CN), Bhuj and not under Divisional Railway Manager, Ajmer, as alleged in the application and they have already resumed at the place of their transfer.

Respondents have also said that the case law relied upon by the applicants is irrelevant as that pertains to non-transferable status of casual labour whereas the applicants are regular class IV employees and therefore liable to transfer. Letter dated 14.6.1985 (Annexure R-1) addressed by Executive Engineer(Const.), Western Railway, Rajkot, to the two applicants herein regarding offer of appointment to class IV posts listed out the conditions such appointment was subject to. According to the respondents, the two applicants gave their consent to such appointment in writing (Annexure R-II) and were then appointed as regular class IV employees.

4. The burden of applicants' rejoinder to the respondents' reply is that the applicants continue in the status of casual labour and therefore all the case law and instructions pertaining to casual labour, including those pertaining to seniority, screening and absorption, continue to be applicable to them. Their say is that Annexure R-I is outside their knowledge and contents of and signature on Annexure R-II annexed by the respondents in their reply are unknown to them.

5. The learned advocate for the applicants, Mr. P.H. Pathak, was absent when the case was, at long last after more than two years from the date the original application was filed, called on final hearing. Learned advocate for the respondents, Mr. B.R. Kyada, completed his submissions and the judgment was reserved.

12

6. However, while scanning the case file put up for rendering the judgment, came to notice in the file the written submissions on behalf of the applicants at page 36 to 43, both pages inclusive. The date recorded on page 43, the last page of the submissions, is 1.1.1990. The date and time the written submissions were tendered to a ministerial hand of this Tribunal is recorded on page 36 as 2.1.1990 at 10.45 hours. This record also mentions that Mr. R.C. Pathak tendered the written submissions. Mr. R.C. Pathak is on record as learned advocate who appeared for Mr. P.H. Pathak, the learned advocate for the applicants, on 20.12.89 and mentioned that Mr. P.H. Pathak, the learned advocate for the applicants, wanted to submit written arguments. In connection with that mention, the order stated:

M

"As the matter is fixed for final hearing, the written arguments should have been ready and submitted. Mr. B.R. Kyada, the learned advocate for the respondents present. Mr. B.R. Kyada, has objection on the various grounds including time being taken. The case is adjourned to 22nd December, 1989. No further adjournment shall be given for final hearing."

As such the learned advocate Mr. R.C. Pathak was aware of the contents of the above order dated 20.12.1989. It is most unusual if not surprising that he handed over the written arguments in the manner and on the date and time they were handed over to a functionary of this Tribunal who incorporated the written arguments in the case file. No orders from the Presiding Member came to be sought for all this. The written arguments so incorporated in the case cannot be taken into consideration for adjudication as the same came to be

tendered and incorporated in the file without due orders after the final hearing with no opportunity to the respondents to reply to the same.

7. Mr. B.R. Kyada, the learned advocate for the respondents, argued that Western Railway has eight construction divisions and casual labour in these divisions is absorbed as class IV regular employees after screening, medical test and other formalities. He strongly relied upon Clause-VIII of Annexure R-I, the offer dated 14.6.85, which reads as under :

"Please note that after your appointment against construction reserve posts, your name from the seniority list of casual labours will be struck off and you will have no right to claim for re-appointment as casual labour, and for any benefit of service rendered by you as casual labour, and under any of the circumstances whatsoever."

He also strongly relied upon Annexure R-II signifying acceptance of the offer of regular employee class IV by the two applicants. In view of this, he urged that the applicants are regular class IV employees and hence transferable. In this connection, he referred to paras 5 & 6 of the respondents' reply to the effect that the applicants being regular employees are liable to be transferred and the respondents have rightly transferred them and others under Deputy Engineer(S&C), Western Railway, Bhuj, where both the applicants have resumed and it is wrong to say that the order of transfer is bad in law. He also referred to contents of page 8 of the original application wherein it is admitted that the applicants have already been relieved from 21.8.1987. He urged that the application suffers

from misstatement of facts and deserves to be dismissed. Relying on Gujarat Electricity Board & Anr. v/s. Atmaram Sugnomal Poshani, 1 (1989) A.T.L.T.(SC) 758, Mr. Kyada argued that transfer is an incident of service and when an employee does not comply with transfer order though working in a transferable post the concerned administration will be justified to initiate disciplinary steps in accordance with the rules applicable to the employee and punish him including by depriving such an employee of his job.

8. Presuming but not accepting for the sake of arguments that the applicants are ignorant of the contents of Ann. R-I & R-II as mentioned by the applicants in their affidavit dated 14.9.89, Ann. A-1 of the record the applicants relied upon is clear regarding their status in service. Annexure A-I is reproduced below :-

WESTERN RAILWAY

No. VOP/JAM/E/891/1

Office of the Executive  
Engineer (Const) Jamnagar.  
Dated - 12-8-87.

To,  
PWI (C) RJI/JAM  
IOW (C) PBR/RAJKOT

Sub: Promotion, Reversion & transfer class IV  
staff 40% construction reserve staff.

Ref: CE (C) ADI's a letter No. E.615/1/ADI vol. VII  
dated 25-7-87.

Consequent upon the closer of subordinate offices and various store depots, the following junior most class IV (40% construction reserve staff) who are surplus to the requirement of this office are hereby transferred in the same scale of pay under Dy. CE (CN) Bhuj as per their seniority ?

13

Sl. No.	Name	Design.	Scale of pay	Subordinate under whom working.
1.	Shri Guman Singh K.	W/man. 196-232 (R)	XEN (C)	JAM.
2.	" Kolanji V.	-do-	-do-	PWI (C) RJT
3.	" Balwant Vithal	-do-	-do-	-do-
4.	" Dhiru Tapu,	-do-	-do-	-do-
5.	" Hasam Mohmad	-do-	-do-	-do-
6.	" Babu Manilal	-do-	-do-	-do-
7.	" Tambakalal S.	-do-	-do-	PWI (C) JAM
8.	" Natha Alla	-do-	-do-	IOW (C) RJT
9.	" Hira Alla	-do-	-do-	-do-
10.	Smt. Hansi Pitha	-do-	-do-	-do-
11.	Shri Kanubha Devisingh.	-do-	-do-	-do-
12.	Smt. Saroja Thangval	-do-	-do-	PJI (C) PBR
13.	Shri Gopal D.	-do-	-do-	-do-
14.	" Kaliyan R.	-do-	-do-	-do-
15.	" Govindswami N.	-do-	-do-	IOW (C) PBR
16.	Smt. Sakunthala M.	-do-	-do-	PWI (C) RJT

XEN (C) JAM.

C/CE (CN) (W) - CCG ADI for information please.  
SAO (C) RJT, AEN (C) RJT For the information and n/a  
Divi. Chairman - WREU/WRMS-RJT.  
Dy. CE (G) (S & C) BVJ

It is obvious that the subject of the above pertains to class IV staff and the order of transfer issued consequent upon the closure of subordinate offices, that the order of transfer covers junior most class IV 40% construction reserve staff who are surplus to the requirement and are transferred as per their seniority seemingly to places where work can be found for them. The designation of all the 16 transferred employees, applicants included, is mentioned as 'watchman' in the scale of pay Rs. 196-232. It is therefore clear that the applicants enjoyed the status of class IV employees and their designation watchman. Had their elevation to regular class IV status from casual labour been against their wish, they would be required to protest at such appointment. However, it has to be noted that the

applicants have questioned their transfer by saying that they are casual labour yet to be appointed as class IV regular employees whereas the order that is questioned self-evidences that the applicants are class IV regular employees. In claiming to belong to a lower status on the unreliable ground that higher status has not only not been accorded to them but has in fact been denied, the motive seems to be to somehow escape an inconvenient transfer order. Plea for interim relief against the impugned order was not accepted. While on the one side the applicants have alleged that the impugned order of transfer intentionally mentions that the applicants are juniormost though the respondents prepared no seniority list, on the other side the applicants have annexed Annexure A-2, a list of those said to be junior to the applicants. Annexure A-2 is in fact order dated 26.2.1986 issued by the DRM's office Bhavnagar Para declaring the result of screening of casual labour conducted on 29.11.1965 and 21.2.1986. But the applicants, admittedly according to their application, are from Rajkot division ! In any case, some months before that, the Executive Engineer (Construction) Rajkot had made offer of, by his reference dated 11.6.85, regular class IV status to the applicants (R-I) and the applicants had accepted the offer (R-II). Of course, the applicants have questioned the veracity of these documents it seems with the motive of somehow escaping the transfer. Casual labour waits anxiously for a number of years to acquire the status of regular class IV employees

and here are two applicants out of sixteen transferred under the impugned order, who disown that status merely it seems for the sake of escaping the transfer order. There is no ostensible reason for the respondent Railway administration to fabricate record to show that the applicants had been promoted to regular class IV status. The suit is thus devoid of all merits and submissions to the contrary have to be rejected, as made with the sole motive of evading the order of transfer.

9. In view of the above, the application is liable to be dismissed as unfounded and is hereby dismissed accordingly. Normally in such an outcome, the applicants should bear the costs of the respondents. However, seeing the economic level of the applicants, each of them is directed to pay the respondents rupees fifty only as token costs within one month of this order

M M Singh  
( M.M. SINGH ) 17/1/90  
Administrative Member

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

4/9/1989

Mr.B.R.Kyada, learned advocate for the respondent has not earlier furnished Annexures R1 and R2, he would like to file them. Mr.P.H.Pathak learned advocate for the applicant has stated that he would like to furnish the supplementary rejoinder, for referring to these Annexures he wants adjournment. The case is adjourned. The respondent to file a copy of the Annexures in the course of the day. Registry to fix the date.

*Phew*  
(P.H.Trivedi)  
Vice Chairman

mogera

CORAM : HON'BLE MR. M. M. SINGH .. ADMINISTRATIVE MEMBER.

9.11.1989

Mr. P.H.Pathak the learned advocate for the applicant requests for adjournment. He has some personal problems to-day. He requests that matter may be placed after 24th November, 1989. Registry to take necessary action accordingly. Mr.B.R.Kyada the learned advocate for the respondent present.

H. M. Singh  
( M. M. Singh )  
Administrative Member.

R

O.A.No. 439/87

20

Coram : Hon'ble Mr. M.M. Singh, Administrative Member.

18-12-1989.

Mr. B.R. Kyada, the learned advocate for the respondents has sent leave note. Mr. R.C. Pathak for Mr. P.H. Pathak, the learned advocate for the petitioner present. The case is adjourned for final hearing.

M. M. Singh  
( M.M. SINGH )  
Administrative Member.

6  
(2)

CORAM : HON'BLE MR. M. M. SINGH .. ADMINISTRATIVE MEMBER.

20.12.1989

Mr.R.C.Pathak for Mr.P.H.Pathak, the learned advocate for the applicants, mentions that Mr.Pathak wants to submit written arguments. As the matter fixed for final hearing, the written arguments should have been ready and submitted. Mr.B.R.Kyada, the learned advocate for the respondents present. Mr.B.R.Kyada, has objection on the various grounds including time being taken. The case is adjourned to 22nd December, 1989. No further adjournment shall be given for final hearing. Registry to take necessary action.

M. M. Singh

( M. M. Singh )  
Administrative Member.

R

22  
O.A./439/87

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

22/12/1989

Mr.P.H.Pathak, learned advocate for the applicants has sent a leave note. Nobody present for the respondents. The matter is adjourned. Registry to fix the next date for final hearing.

M M Singh  
(M.M.Singh)  
Administrative Member

a.a.bhatt

M.A.ST.244/90

(24)

IN R.A./30/90

IN O.A./439/87

Date	Office Report	ORDER
30.9.1991		<p>Present : Shri P.H. Pathak, counsel for the applicants.</p> <p>Shri B.R. Kyada, counsel for the respondents.</p> <p>Heard Shri P.H. Pathak, counsel for the applicants. The applicants want to amend review the application. The Review Application is still not circulated. Hence the office to circulate it first, where the point will be considered. The office to take prompt action in this matter.</p> <p><i>rcb</i>, (R.C.BHATT) Member (J)</p> <p><i>PSH</i> (P.S.HABEEB MOHAMMED) Member (A)</p>

\*Ani.