

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~New Delhi~~
AHMEDABAD

O.A. No. 480
~~Ex. No.~~

1987

DATE OF DECISION 18-08-1989

Shri Trambklal Sunderdas & Ors. Petitioner^s

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

Versus

Union of India & Another Respondent

Shri B.R. Kyada 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?

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1. Trambaklal Sunderdas,
2. Nathu Aala
3. Kanubha Devisangh
4. Hira Aala
5. Hasipatha.

: Applicants

All applicants are
working in Rajkot
Division.

(Adv: Mr.P.H.Pathak)

Versus

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

: Respondents

(Adv: Mr. B.R.Kyada)

JUDGMENT

O.A.480/87

Date: 18-08-1989

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

: Vice Chairman

The petitioners impugn the order dated 12.8.1987 by which they are transferred from Rajkot to Bhuj and relieved from 21.8.1987 on the grounds that Casual Labourers are not transferable and that the petitioners were screened and empanelled for regular appointment against 40% reserve quota which would entitle them to be regularly appointed in the division namely Rajkot. By transferring them at this stage the petitioners lose the advantage of retention in the Rajkot Division and would also lose their seniority as regular appointees in that division. The petitioners rely upon our common judgment in a batch of cases in OA/368/86 dated 30.1.1987 and also on the observations of the Hon'ble Supreme Court by which seniority lists are to be prepared divisionwise of Casual Labourers for regularising those who are longest in service and effecting retrenchment of surplus labour

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on the basis of "Last come first go", only.

2. In their reply the respondents have urged that the application has become infructuous because the applicants other than Trambaklall have carried out the impugned order and have been working at Bhuj. Besides the applicants are no longer casual labourers and are made regular employees against 40% construction reserve posts and accordingly are now rendered transferable. The question of the seniority list in the division is of no concern to the applicants because they are borne on the seniority group of Survey and Construction Department having been screened and selected against 40% reserve and therefore the judgment in the 'Indrapal Yadav's case on which the petitioners rely is not applicable to them.

3. In our judgment dated 30.1.1987, referred to in O.A./1/86 etc., it was held that casual labourers are not transferrable, but that if they accept the transfer orders they are not invalid. Even in such a case their transfer can only be regarded as operating on a provisional basis and they continue to have the right of reckoning their seniority in the originating division for the purpose of their regularisation in their turn.

4. The precise status of the petitioners has not been made clear in the pleadings or during the hearing. The impugned orders describe their subject as "Promotion, Reversion and Transfer, Class - IV's staff, 40% construction major staff". The petitioners have not established by a production of a relevant job card or any other documents, their status as casual labourers. They have referred to the history in an earlier case in O.A./368/86, in which they have challenged their transfer to Jaipur. They

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have to establish their status in this case on the relevant date on the record of the present case and the earlier orders, presumably, decided upon with reference to the documents produced in that case or pleadings in that case can not adequately help the petitioners in this case. In the letter dated 7.10.1986, annexed at A-2 on the other hand the respondents have merely averred that the petitioners are not Class-IV employees for which posts they have been screened and empanelled. They have also not produced any orders appointing the petitioners to regular Class-IV posts. We are, therefore, unable to agree with the respondents that they had a right to transfer the petitioners until such appointment is effected. If before such appointment, the petitioners have been screened and empanelled, they do not lose the right of protection against the transfer. On the other hand if the petitioners have been relieved and have joined at Bhuj, they have in effect implemented the impugned order which as has been stated in the judgment referred to, they were at liberty to do and in such circumstances the petition can be regarded as infructuous. It is significant that the petition has been made only on 18.9.87, when the impugned orders are dated 12.9.1987, and the petitioners have been relieved on 21.8.1987.

5. Another plea taken by the petitioners is that there is unfair discrimination practised against the petitioners, because others who are similarly situated are still working in the Rajkot division. The respondents in their counter have stated that only one applicant Shri Trambaklal was allowed to be retained on humanitarian considerations, but the other applicants have carried out their transfer. There was sufficient scope for the applicant to present the authorities with a request due to personal circumstances for invoking compassionate grounds and either

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they have not so represented or because no decision on their representation has been made or it turned down it cannot be said that there is any unfair discrimination if one of the applicant is allowed to be retained. As has been stated earlier for casual workers transfer orders are valid only to the extent of their accepting them and if they are challenged after their implementation no plea of discrimination can arise. Another plea of the petitioners is that they have been arbitrarily transferred so that their juniors can be retained in the originating division viz. Rajkot and that they have a right to be continued in the Rajkot division and if transfers are at all necessary this liability should first go to their juniors. They have given the names of their juniors in their petition. The respondents have not dealt with this part of the petition with reference to the persons named. However, this question need not detain us because casual workers whether junior or senior are not transferable but if they accept the transfer by implementing orders, the fact that their juniors have not been transferred in their place cannot be made a grievance after such accepting of the transfer.

6. The petitioners have dwelt at length on their right of being retained in Rajkot division on the plea that once they are screened and empanelled they have a right to regular appointment in the Rajkot division and they cannot be transferred. The Supreme Court's orders referred to only the direction regarding regularisation in the order of their seniority and do not exclude the scope of casual labourers accepting transfer. They do not, in my opinion place any restraint on transferring Class-IV employees, if otherwise they are found subject to legal orders of transfer.

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7. There is no doubt that in terms of the Supreme Court's direction and our judgment referred to the petitioners continue to be entitled to their regularisation in their turn. Until such regularisation, they retain their right of being placed in the seniority list of the division of origin. They do not lose this right by their transfer to Bhuj. Their claim for regularisation as a result of screening and empanelment is not lost or affected in any way by their transfer to Bhuj. There is no doubt that on regularisation, the seniority list which will be applicable to them will be the relevant seniority list of Class-IV posts in which they are regularised.

8. Subject to our above observations, we find that the petition does not have merit. Rule discharged. Parties to bear their own costs.


(P.H. TRIVEDI)
VICE CHAIRMAN

R.A. St. No. 228/89

in

O.A./480/87

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CORAM : Hon'ble Mr. J.N. Murthy : Judicial Member

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

30.8.1990

The matter may be placed before the proper bench.

M M Singh

(M M Singh)
Administrative Member

J N Murthy

(J N Murthy)
Judicial Member

*Mogera