

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 505 of 1987
XXXXXX

DATE OF DECISION 15-7-1988

Paschim Railway Karamchari Parishad, Petitioner
Baroda and 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. JUDGEMENT

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.

(X)

JUDGMENT

OA/505/87

15-07-1988

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

In this case 87 petitioners detailed at Annexure 'A/1' have sought relief of quashing and setting aside the orders at Annexures 'A/1', 'A/2' and 'A/3' transferring them from Bharuch to Viramgam on the ground that the petitioners being Casual Labourers are not liable to transfer and that work is still available to them at Bharuch. The respondents have mainly challenged the contentions of the petitioners on the following grounds :-

- (1) The petitioners cannot agitate their grievance through a Union which is not even recognised and cannot be, therefore, made a party.
- (2) The impugned orders are separate and there is no common cause for joining all the 87 petitioners whose condition of service are different.
- (3) The judgment of the Tribunal regarding transferability of Casual Labourers who acquired temporary status needs to be reconsidered and the respondents contend that on getting temporary status the petitioners can be transferred.
- (4) The seniority list of Baroda division is ready and that all the 87 petitioners are not in Baroda division and have no claim on the open line job in Baroda division or on seniority in the Baroda division. The divisions in which the petitioners are initially engaged could be Rajkot or Bhavnagar.
- (5) The employees at Annexure 'A/4' are not junior to the petitioners and have not joined in the later part of 1986.

2. While it is true that the petition has been heard on the basis of the 87 petitioners representing their case through a union although

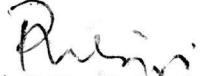
the impugned orders are separate, we have allowed their grievances to be agitated through a petition of a Union because on perusal of the orders which have been addressed to Gangs, common cause can be said to arise which can conveniently be dealt with by a petition through the Union.

3. We do not propose to deal with the grievance regarding retention of juniors as a ground for examining the claims of the petitioners because we dispose of the petition on other grounds.

4. We also do not propose to examine the merits of the respondents' plea that the judgment of this Tribunal regarding the liability of transfer of Casual Labourers needs to be reconsidered. We have by no means, satisfied about the merits of such a plea. Even if it had any, the proper course would be for the respondents to appeal against the judgment or, if there was scope for it, to seek review of it. This has not been done. We are, therefore, bound to follow that judgment so far as this case is concerned.

5. Whether Baroda division is the originating division of the petitioners or not, admittedly, the petitioners find themselves at Bharuch in the Baroda division. The plea that the respondents have prepared a seniority list of the Baroda division and that the petitioners do not belong to it is not a satisfactory explanation for the competence of the respondents to transfer the petitioners or give rise to the liability of the petitioners for such a transfer. There is no averment that there is any seniority list prepared for the divisions in which the petitioners originate and there is no specific averment that the petitioners' rights in the originating division, be it Rajkot or Bhavnagar, have been protected. In such circumstances it is futile for the respondents to argue that the petitioners should be disturbed from where they find themselves. The petitioners have cited AIR 1982 S.C.854 L.Robert D'Souza Vs. Executive Engineer, Southern Rly. especially paragraph 20 in support of their plea. This has been already dealt with in our judgment in OA/151/87.

6. We, therefore, find merit in the petition and direct that the petitioners be not transferred until their seniority is ascertained in the seniority list prepared in their originating division and thereafter the liability to transfer will be on the basis of their accepting it voluntarily, ^{If} sought to be transferred, procedure for 'last come first go' will have to be followed. The impugned orders are quashed and set aside. Rule made absolute. There will be no order as to costs.


(P.H. Trivedi)
Vice Chairman