

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEW DELHI~~O.A. No. 540/87.
T.A. No.

198

DATE OF DECISION 02-07-1991

Shri Kanji Gandubhai & others PetitionerShri P.H. Pahtak Advocate for the Petitioner(s)

Versus

Union of India & Others RespondentShri R.M. Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi (Vice Chairman)

The Hon'ble Mr. S. Santhana Krishnan (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*

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1. Kanji Gandubhai
2. KaluDevji
3. Dhiraj lal Ghohabhai
4. DaudHasan
5. Ravji Manji
6. Chandu Kaha,
7. Chhagan Mulji
8. Bhada Nathu
9. Bharat Jah.
10. Association of Railway and Post
Employees through it's treasurer
Shri R.C.Pathak.

All addressed to
37, Pankaj Society,
Paldi, Ahmedabad.

....Applicants

Versus

1. The Union of India.
Notice to be served through
The General Manager (W.R.),
Churchgate, Bombay.
2. Divisional Railway Manager(W.R.),
Bhavnagar para, Bhavnagar.
3. Assistant Engineer
Western Railway,
Railway Station,
Jetalsar.
4. Mansukh Kanji
5. Savji Manji
both addressed
C/o C.P.W.I (W.R)
JETALSAR
6. Kara Manji
7. Laxman Ghusha
C/o.P.W.I. (W.R.)
Upleta (Dist.Rajkot)

...Respondents.

J U D G M E N T

:O.A./540/87

Date: 02-07-1991

PER : Hon'ble Mr. S.Santhana Krishnan : Judicial Member

The applicants have come forward with this application to declare the screening held on 6.11.1987 at Jetalsar as illegal and invalid and also declare the regularisation if any made on that day as invalid and direct the respondents to regularise the services of the applicants under section 19 of the Administrative Tribunals Act, 1985.

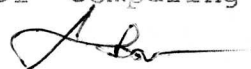
2. The grievance of the applicants as is seen from the application is that applicants 1 to 9 are working as Gangman under the C.P.W.I., at Jetalsar and for the administrative convenience in the year 1987, it was divided into two units. One is the Original Jetalsar Unit and other is Upleta Unit. All the Gangman who are working in Jetalsar Unit were also divided into two parts and 11 Gangman were transferred to Upleta Unit. An obligation is cast upon the respondents to maintain a combined seniority list of the labourers working in the division. The respondents have ignored the seniority of the applicants, issued a letter dated 2.11.1987 calling upon casual/substitutes for screening. It has come to the notice of the applicants that unfair practice is adopted in the screening on 6th November, 1987. Even previously juniors were called for screening at Jetalsar and Porbandar vide their letters dated 26.2.1985 and 29.6.1987. The applicant's association had challenged the said screening by filing a separate O.A./256/87. The respondents were called upon to produce the seniority list and they also produced the same. It is important ^{to} note that the names of the labourers mentioned

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in the note are not in their seniority list. Hence the screening held on 6.11.1987, at Jetalsar, ignoring the seniority of the applicant is invalid.

3. The respondents claim in their reply that the nine applicants cannot jointly file the application and as such it is not maintainable. The applicants have not exhausted the alternative remedies and hence the application is barred by section 20 of the Act. The persons who are affected are to be impleaded and hence the application is bad in law in not joining the necessary parties. The applicant No. 10 is not a recognised trade union of the Western Railway and as such they cannot maintain this application. The applicants are working on open lines and is maintained Senior subordinatewise; they are working under Chief Permanent Way Inspector, Jetalsar, they cannot compare their seniority with Casual labours of that unit. Initially there was only one Unit of seniority i.e. Chief Permanent Way Inspector, Jetalsar. The unit was bifercated into two units i.e. PWI, Jetalsar and PWI, Upleta. The applicants who are working under P.W.I., Jetalsar remained under the same unit i.e. CPWI Jetalsar. Some of the earthwhile juniors to the applicants were placed under the created unit of PWI Upleta. This is, therefore, an administrative action and taken in the interest of administration. The applicants' juniors happened to go under other unit only because they happened to be working in particular gang at the time of bifercation. The applicants did not claim at the relevant time that they wanted to be shifted on new units, obviously because they might not be desirous to be disturbed from gang and unit where they were working. Their decision to hold screening was then taken as the seniority is unitwise. After bifercation of the unit the question of comparing the



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senioritywise of other unit does not arise. The screening is made strictly as per unit seniority of CPWI - Jetalsar and PWI-Upleta. The rules governing the open line substitutes like the applicants and the project casual labourers are quite different. A panel of seventeen persons has been notified for CPWI-Jetalsar Unit and for PWI-Upleta Unit. The applicants failed to establish any prima facie case. Hence they pray for the dismissal of the application.

4. The applicants filed a rejoinder wherein they claim that the applicants are entitled to join and file one application as there is a common question of fact. There is not alternative remedy available and as such the present application is maintainable. It is clear from the respondents reply that juniors to the applicants were called for screening and are regularised. Even by an administrative action their right of applicants seniority cannot be ignored. It is the duty of the administration to establish the screening of the employees in both the units so that their seniority and right of regularisation can be protected. The respondents are also aware, of the claim of regularisation, will be as per unit and as such it is their duty to inform the applicants well in advance about their rights in bifurcating the units and should ask for option. Due to the negligence of the respondents, the right of the applicants cannot be rejected.

5. Heard Mr. P.H. Pathak learned counsel for the applicants and Mr. R.M. Vin learned counsel for the respondents. The records were also perused.

6. The contention of the respondents that the applicants cannot combine and file one application is without any basis,

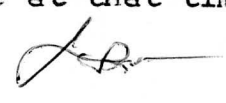


in view of the fact that the cause of action is one and the same. Even otherwise Rule 4(5) of the Central Administrative Tribunals Rules contemplate more than one person to join together and file a single application in respect of the same cause of action. Hence the application by the applicants is maintainable.

7. Regarding the contention of the respondents that the applicants ought to have pursued the other remedies, the respondents have not even stated in their reply, what are the other remedies that are open to the applicants. The applicants have come forward with this application stating that their juniors have been called for screening for regularisation. As the respondents failed to point out that any other remedy is available for the applicants, we find no force in their contention that the present application is barred under Section 20 of the Administrative Tribunals Act.

8. Regarding the nonjoinder of the persons effected it is seen that after the respondents raised this objection the applicants impleaded the affected persons as parties. Though they are served with notices, they failed to appear. As the effected persons are now made parties there is no force in this objection.

9. The fact that the applicants were originally working in C.P.W.I. Jetalsar as gangman, is admitted. It is also admitted by the respondents that there was only one unit till July, 1987, and at that time for administrative convenience the unit was divided into two namely Jetalsar Unit and Upleta Unit. It is admitted that the juniors were included in Upleta Unit. The respondents are fully aware at that time that



they are going thereafter to consider the seniority unit-wise. Hence they ought to have informed the applicants about this and required them to state whether they want to go to Upleta unit. Without giving any option to them in writing, they cannot now claim that they were under the impression that the applicants might not be desirous to be disturbed from the gang. It is the duty of the respondents to inform the applicants that if they remain in Jetalsar unit, their seniority may not be considered in Upleta Unit. Admittedly, in 1987, when the unit was divided into two, the respondents failed to give any option to the applicants. Hence, they cannot now claim that because they are considering the seniority of each unit unitwise, the applicants cannot have any grievance.

10. It is admitted that the applicant 1 to 9 are senior to the persons called in Upleta Unit. Annexure A gives the particulars of working days for applicants 1 to 9, Annexure A/2, is the letter of the respondents calling upon the persons working in both the units for screening on 6.11.87. In CPWI Jetalsar Unit, 12 persons were called for screening and they are all seniors to the applicants 1 and 9 as we see from the list attached to Annexure A/2. Hence the applicants cannot have any grievance for their seniors at Jetalsar being called in for screening on 6.11.87. The other list attached to A/2, is calling the persons from FWI, Upleta Unit. It is seen that many of the persons in this case are juniors to the applicants. The applicants also produced A/3, the seniority list and they contend that their names are not found therein. The respondents have produced R/3, seniority list regarding the Jetalsar Unit. It is seen that the persons called for screening namely the 17 persons in Jetalsar Unit are senior to the applicants. But, the list R/4, show that the

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respondents have chosen to call from Upleta Unit, may persons who are juniors to applicant No. 1 to 9. Though the respondents have produced R/5, the list show the persons selected in Jetalsar unit, they have not chosen to produce the list regarding the Upleta Unit. It is seen that respondents No. 4 to 7 were selected in Upleta Unit. As the applicants have established that they are seniors to persons working in Upleta unit and that due to no fault of theirs they are not called for screening they are entitled to claim that the screening held on 6.11.1987, at Jetalsar regarding FWI, Upleta unit is invalid. The applicants have established that they are seniors in Jetalsar Unit and they have not given any option to go to Upleta unit when the unit was divided in July, 1987, Hence the respondents are not entitled to ignore the claim of applicants 1 to 9 for the screening held on 6.11.'87. They are not entitled to call for screening, juniors working in Upleta unit though they are seniors in this unit as the same was divided from the original FWI Jetalsar Unit.

11 The counsel for the applicant placed reliance on a decision reported in 1988 S.C.C., page-24, (Bhagwan Dass and other versus State of Haryana and other). We find this decision is not of any help to the applicants as it deals only regarding the question of equal pay for equal work.

12 In view of the foregoing discussion we find that the applicants have established that the screening held on 6.11.'87, at Jetalsar unit is invalid, regarding FWI Upleta unit. Hence they are entitled to a declaration that the screening held on 6.11.1987 at Jetalsar unit regarding FWI Upleta unit, is invalid and the respondents be directed to



regularise their services taking into consideration the seniority of the applicants 1 to 9 over the persons selected in FWI, Upleta Unit. The respondents are hereby directed within three months from the date of the receipt of the order to consider the claim of the applicants for screening and regularisation, as the screening on 6.11.1987, regarding the persons of Upleta unit is illegal and invalid. No order as to costs.



(S. SANTANA KRISHNAN)
Judicial Member



(P.H. TRIVEDI)
Vice Chairman