

Apporplie (m)
Jud.

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~
AHMEDABAD BENCH

O.A. No. 600 OF 1987
~~XXXXXXXXXX~~

DATE OF DECISION 28-6-1991

Shri Paluben Devshi & Ors. Petitioner

Shri R.J.OZA Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri R.M.VIN Advocate for the Respondent(s)

CORAM :

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

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? *No*
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. Paluben Devshi,
2. Shankar D.
3. Laxmiben S.
4. Babulal K.
5. Bachu Pragji

All C/o.Mr.M.L.Patel,
Chairman,
Bhavnagar Division,
Western Railway Employees Union,
Bhavnagar Para,
Bhavnagar.

... Applicants.

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 001.
2. The Divisional Railway Manager,
Bhavnagar Division,
Western Railway,
Bhavnagar Para,
Bhavnagar.

... Respondents.

J U D G M E N T

O.A. No. 600 OF 1987

Date : 28-6-1991

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

In this application filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, the applicants originally require this Court to extend the benefit of the judgment in T.A./183 to 186 of 1987, delivered on 21.7.1987 ~~be extended~~ to them, and that their order of termination on 9.10.1982, is illegal and arbitrary. Subsequently they amended the prayer and now want this Court to direct the respondents to publish the seniority list of the casual labourers of the Bhavnagar Division in consonance with the scheme introduced by the Supreme Court in Indrapal's case and that the respondents should register their claim as per the Supreme Court's Judgment.

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2. The applicants claim that they were originally working as casual labourers under the respondents from February, 1980, and that they continuously worked for more than 120 days. They claim that the respondents issued a circular dated 20.3.1982, whereby casual labourers working in the coal section was shown as different class and this amounts to creation of artificial class. The petitioners were allowed to work upto 8.10.1982, and thereafter they were not permitted to resume duty on 9.10.1982. The other casual labourers who were placed in similar position challenged their termination and notification in T.A.183 to 186 of 1987, and they have succeeded. The petitioners approached Shri Nanavati, the then Divisional Railway Manager who informed them that the outcome of the Judgment will be made applicable to the petitioners. Relying on the work and also in view of their weak financial position they did not file immediately any petition.

3. The respondents in their reply claim that the judgment referred by the applicants are not of any help to them as they apply only to persons who are parties to that judgment. Out of five applicants in this application, applicants 2 and 3 left the Railway Service on their own accord. The other applicants were declared unfit by the medical authority at the time of their medical fitness examination. Applicants 2 and 3 have worked as coal loaders from 13.2.1980 to 10.11.1980 in broken period and further they remained unauthorised absent and left their services at their own accord. Other applicants worked as coal loaders from 14.2.1982 to 7.8.1987, 13.2.1980 to 30.6.1981 and 12.3.1980 to 29.9.1980, but since they could not succeed to pass the prescribed

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medical fitness examination duly examined by the Divisional Medical Officer, Western Railway, and by this way they could not qualify themselves for getting permanent appointment at initial stage, in Railway and accordingly they were discontinued. It is false to state that the applicants approached Mr. Nanavati, the then Divisional Railway Manager who informed them that the effect of the judgment of the cases referred will be applicable to them. These allegations were introduced to get over the plea of limitation. Hence the applicants are not entitled to any relief in the petition.

4. When the application was taken up for enquiry Mr. R.J. Oza, counsel for applicant was absent, Mr. R.M. Vin, argued for the respondents. Records were also perused.

5. In this application, the five applicants failed to follow the provisions of Rule-4 (5), of the Central Administrative (Procedure) Rules, 1987. Even on this ground the application is liable to be dismissed.

6. The applicants now claims in their application that the scheme envisaged by the Supreme Court be implemented and they should be given benefit under the scheme. On the other hand in para 3 of the application the applicants still claim, that the benefit of T.A. 183 to 186 of 1987, should be extended to them and they should be reinstated. This portion is still not amended.

7. The applicants will have to first establish that they have got a cause of action to file this application and this application is not barred by limitation.

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Admittedly the applicants were not allowed to resume duty on 9.10.1982. Hence, they ought to have filed the application within one year from this date. It is not their case that they made any representation in writing to the respondents about their termination. The applicants are not parties to T.A. 183 to 186 of 1987. Further, the applicants themselves produced Annexure-A/2, the copy of the judgment. The judgment does not anywhere states that the benefit should be extended to all other casual labourers placed with similar situation. When the applicants were aware that the other applicants have filed an application against their termination, if the applicants have got any grievance they ought to have impleaded themselves as parties in the above application. Further, the present application is filed only on 23.11.1987, five years after the termination. The applicants failed to give any reasonable explanation in the application how the application is in time. The applicants have also not chosen to file any application under Section 21 (3), of the Administrative Tribunals Act. Hence, there is no cause of action for this application. The present application is also hopelessly barred by limitation.

8. Even a perusal of the plea shows that the applicants in fact want this Tribunal to enforce the judgment of the Supreme Court in the Indrapal's case. The applicants fail to rely on any provision of the Act whereby this Court can enforce the Judgment of the Supreme Court. No authority is also produced by the applicants on this aspect. Hence we find that this Court

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cannot enforce the judgment of the Supreme Court. Even on ~~this~~ ground the applicants are not entitled to claim any relief in their application.

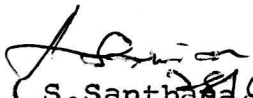
9. Even taking for granted that the applicants are entitled to the relief as claimed, the applicants will have to establish that they are working continuously under the respondents for over 120 days. The applicants have chosen to produce only Annexure-A/1. This will establish that the applicants are working and they were given temporary status. The respondents have specifically stated in their reply that applicants 2 and 3, left the services on their own accord and applicants 1, 4, and 5, were found ~~unfit~~ by medical authority at the time of medical examination. The respondents ^{have} also produced Annexure-R-I, to establish the same. The applicants have not chosen to file any rejoinder to dispute these allegations in the reply. Hence, the respondents have established that applicants 2, and 3, left on their own accord and applicants 1, 4, and 5, were found medically unfit.


10. As the applicants failed to establish that their services were terminated as contended by them, they cannot claim any relief in this application. The applicants also failed to produce any order of termination. The applicants further claim that they approached one Mr.Nanavati the then Divisional Railway Manager, who informed them that the judgment under T.A. 183 to 186 of 1987, will be extended to them also. This is denied by the respondents. The applicants failed to produce any affidavit from the above said Mr.Nanavati, to prove

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that he gave any such assurance. As the present application is devoid of merits, the applicants are not entitled to claim any relief in this application, as such the application stands dismissed. No order as to costs.


(S. Santhana Krishnan)
Judicial Member


(M. M. Singh) 20/4/21
Administrative Member

Stamp no 616/87

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Original Petition No. 600 of 1987

Miscellaneous Petition No. — of —

Shri Palaben Dewshi Rao Petitioner

Versus

Union of India & Ors.

This application has been submitted to the Tribunal Shri R. J. Oza, Advocate Under section 19 of the Administrative Tribunal Act, 1985 and the same has been scrutinised with reference to the points mentioned in check list in the light of the provisions contained in the Administrative Tribunals Act, 1985 and Central Administrative Tribunal (Procedure) Rules, 1985.

The application has been found in order and may be listed on 15/12/87 for admission.

OR

The application is not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 10 days -Draft letter is placed below for Signature.

The applicant has since removed the defects and the applicant may now be listed for admission.

Rm
23/11

Ord
ASTT. 24/11/87

Se
24/11/87
OR J

This ~~is~~ is ~~not~~ a fresh matter may be listed on 15/12/87 for admission. Pre-admission notice may be issued to the parties concerned.

24/11/87