

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
NEW DELHIO.A. No. 663
TxxNox

1987

DATE OF DECISION 19.3.1991

Shri Laxman Popat & Ors. Petitioner

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

Versus

Union of India & Ors. Respondent

Mr. B. R. Kyada Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R. C. Bhatt : Judicial Member

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?

(4)

1. Laxman Popat
2. Dahya Muroo
3. Jalaram Ramdas
4. Ausar Muroo
5. Batuk Nathu
6. Manu Ramji
7. Mansinh Ramlal
8. Pursottam Bhima
9. Ganesh Ramji
10. Chhana Dhuna
11. Raman Bodubhai
12. Chhagan Chuntha
13. Gandu Valji
14. Babu Jivan
15. Premji Bachar
16. Laxman Zaver
17. Karsan Garsan.

: Applicants

All addressed to
 Association of Railway
 & Post Employees,
 37, Pankaj Society,
 Paldi, Ahmedabad-7.

(Advocate: Mr. P. H. Pathak)

Versus

Union of India
 Through:

1. The General Manager,
 Western Railway,
 Churchgate, Bombay.
2. The Executive Engineer,
 Jamnagar (RJT Cell),
 Kothi Compound, Rajkot.

: Respondents

(Advocate: Mr. B. R. Kyada)

JUDGMENT
 O.A. No. 663/1987

Date: 19-3-1991

Per: Hon'ble Mr. R. C. Bhatt

: Judicial Member

This is an application filed by the applicants under Section 19 of the Administrative Tribunals Act 1985 for a declaration that the action of the respondents in not paying the wages of the applicants from 26.8.1985 to 6.11.1985 is illegal, invalid and inoperative in law and for direction to the respondents to make the payment of the same with penalty to the applicants and also further holding that the action of the respondents in not paying the said wages without giving any opportunity of being heard as illegal, invalid and violative

of principle of natural justice.

2. It is the case of the applicants that they are working as casual labourers at Jakhwada, that the applicants were likely to be transferred from Rajkot Division to Jaipur Division vide office letter dated 29th August, 1985 No.RJT/2/615/2 Vol. III, hence the applicants challenged the said order of transfer by filing Special Civil Application No.4511/85 before the High Court of Gujarat at Ahmedabad. The High Court was pleased to direct the respondents to maintain status quo vide order dated 26.8.1985. It is the case of the applicants that inspite of the order of High Court to maintain status quo, the applicants were not allowed to resume their duties. According to the applicants, the learned advocate for the Railway, at the time of hearing of the Special Civil Application before the High Court, agreed to withdraw the order of transfer and the statement was made by the learned advocate for the Railway that the applicants would be absorbed permanently in their own division, that the applicants withdrew the said Special Civil Application relying on that statement. The applicants have produced at Annexure-A the copy of the judgment of the High Court of Gujarat in Special Civil Application No.4511/85 dated 1st October, 1985. It is the case of the applicants that it was in pursuance to the consent of the learned advocate for the Railway that the respondents had withdrawn the order dated 29th August, 1985 and issued fresh order of transfer retaining the applicants within their division. According to the applicants, thereafter the respondents served the order on the applicants on 6th November, 1985 at Jakhwada where they are working at present under PWI, Jakhwada.

3. It is the case of the applicants that the High Court of Gujarat as per the order dated 1st October, 1985 in Special Civil Application No.4511/85 directed the applicants to make representation regarding the interagnum period

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for the payment of wages and as per the directions of the High Court, the applicants made representation to the respondents to make the payment. The applicants have produced it at Annexure A/1. It is also the case of the applicants that after the representations, after long time the Chief Engineer, vide his letter dated 14th May, 1987 directed the concerned Executive Engineer to take necessary action for the payment of the wages for the intervening period from 26th August, 1985 to 6th November, 1985, a copy of which is produced at Annexure A/2. According to the applicants, even after this letter at Annexure A/2, the respondents have not made the payment to the applicants for the intervening period. It is alleged that the respondents have no power to deduct the salary of the applicants and their action for not paying the salary of the intervening period is illegal bad, arbitrary and violative of Article 14, 16 and 311 of the Constitution of India.

4. The respondents have filed their written statement contending that the application is not tenable in law, that the application deserves to be dismissed on the ground that the applicants have not taken permission before filing this application to join all the applicants as parties in this single application. It is also contended that the present application is barred by limitation under Section 21 of the Administrative Tribunals Act. It is contended that the order passed by the High Court in Special Civil Application No. 4511/85 has no relevance in this application. It is contended that the department has tried its best to implement the High Court's order. It is contended that with a view to avoid retrenchment, the applicants were shifted to the work where it was available with the department and individual shifting orders were served on the applicants on 24th and 25th August, 1985, but some how or other, the applicants refused to accept the shifting order and therefore in the

present of 2 witnesses the order of the shifting as per the High Court's direction was served upon the applicants and therefore it could not be said that the order of shifting was not served the applicants as alleged. It is further contended that the applicants approached the High Court of Gujarat by Special Civil Application No. 4511 of 1985 and the High Court was pleased to issue an order to maintain status quo position as on 26.8.85 and therefore as the order was served on the applicants they were not taken on duty as per the High Court's order to maintain the status quo position. It is contended that as the applicants were directed to make representation to Railway Department for the wage for the intervening period during which they were out of job, the wages cannot be given to them as they have not worked and therefore the principles of no work no wage would apply. It is further contended that if the applicants apply for leave for intervening period, they could be paid leave salary to the exchange of leave due them as admissible under the Rules but as such no representation applying for leave has yet been received by the department and therefore their allegation in the application cannot be considered as they are baseless and the department is ready to consider the representation as answered during the intervening period, if the applicants are ready and willing to accept the same. It is contended that the application should be dismissed.

5. Learned advocate for the respondents contended that the application is not maintainable as the cause of action alleged by the applicants in the application has arisen separately i.e. dated 26.8.85 to 6.11.85 and further contended that the applicant has not taken permission before filing the application to file or join these applicants as party in single application, the application deserves to be dismissed. In view of this contention, it

is necessary to peruse the judgment of the High Court of Gujarat in Special Civil Application No. 4511/85 dated 1st October, 1985 produced as Annexure A by which the respondents were initially by interim order directed to maintain status quo as on 26th August, 1985 with regard to the petitioners which was followed by the joint representation of these applicants dated 12.4.1986 vide page 13 of the application addressed to the respondents demanding their wages for the intervening period of interim relief from 26.8.1985 to 6.11.1985. Having regard to these facts, it cannot be said that the cause of action has arisen separately. The High Court held, in terms, directing the applicants to make representation regarding the intervening period and the respondents were directed to consider the same. Thus, there is no substance in the contention of the respondents that the application is not maintainable on the ground that the cause of action has arisen separately. There is also no substance in the contention of the respondents that as no application was made seeking permission to join applicants together to file a single application the application deserves to be dismissed. This application was admitted by the Bench on 1.2.1988. Rule 4 of the Administrative Tribunals (Procedure) Rules 1987 reads as under:-

"Rule 4(5) **A**) Notwithstanding anything contained in sub-rules(1) to (3), the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter".

Thus, when the application was admitted, the Tribunal is presumed to have considered this rule allowing all applicants to join together to file the single application. Even looking to the averments made in the application and documents referred to above, we are satisfied that having

regard to the cause of action and the nature of relief prayed for, the applicants have a common interest in the matter and therefore they can join together to file the single application. At the most, there was irregularity on the part of the applicants in not making separate application for such permission but it could not be turned as illegality, and as observed above we are satisfied that all the applicants have common interest in the matter, and therefore they are entitled to join together to file this single application. Hence, the contention of the respondents that the applicants have not taken permission before filing this application to file this single application and that it should be dismissed on that ground has no substance and the same is rejected and we hold that the application is maintainable at law.

6. It was next contended by the learned advocate for the respondents that this Tribunal has no jurisdiction to entertain this application being not a service matter. There is no force in this contention. The claim of the applicants as mentioned in para 7 of the application is a claim of non-payment of salary or wages from 26th August, 85 to 6th November, 1985 and that claim is covered under Section 2 (q) of the Administrative Tribunals Act 1985 and hence it falls under Section 14 of the Administrative Tribunals Act which empowers this Tribunal to exercise jurisdiction to entertain this application.

7. The respondents have contended in para 4 of their written statement that the application is time barred under the Section 21 of the Administrative Tribunals Act. The learned advocate for the applicants submitted that the applicants in para 3 of the application have averred that as per the direction of the High Court in Special Civil Application No. 4511/85 the applicants made several representation to the respondents to make the payments of their

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wages for a period from 26th August, 1985 to 6th November, 1985 vide Annexure A1. The representation A/1 dated 7th May, 1987 was made by Viram Soda and other 15 casual labourers under PWI (C) JKD to the respondents and the reference is made to their earlier application dated 12.4.86. Reading this application dated 12.4.86 produced at page-13, it is clear that the said application was made by the present applicants and one Viram Soda who is not a party to this application. The learned advocate for the respondents submitted that the representation marked at A/1 dated 7th May, 1987 was not from the applicants but from Viram Soda. But this submission cannot be accepted in view of the fact that in the said representation, reference is made to previous application dated 12.4.1986 made by all the applicants. Moreover, representation marked at A/1 dated 7th May, 1987 was not made by only Viram Soda but it was made by him and other 15 casual labourers. Moreover, in the written statement the respondents have not contended that they have not received this representation. Hence considering the representation dated 7th May, 1987 this application is within time under Section 21(1) (b) of the Act. There is also another factor in favour of the applicants namely that as per their averments in the application, the Chief Engineer, vide his letter dated 14th May, 1987 directed the concerned Executive Engineer to take necessary action for the payment of wages for the intervening period and if this letter is considered as final order, the application would be within time as per Section 21(1) (A) of the Act. Therefore, in any view of the matter, this application is not barred under Section 21 of the Act. The contention taken by the respondents in para 7 of the written statements that the applicants had given reference of Special Civil Application No. 4511/87 in their letter dated 8th Sept., 1987 and that there was no such application filed by the present applicant and that therefore the department was not in

a position to find out the reference from the said letter dated 8th September, 1987 is factually wrong and incorrect because on perusing the said letter dated 8th September, 1987 produced at page 12, a reference is given to Special Civil Application 4511/85 and also a reference is given to the letter dated 14th May, 1987 vide Annexure A/2. On the contrary, the respondents' contention in para 5 of the written statement is that even at present the department is ready to consider the applicants' representation as answered during the intervening period, if the applicants are ready and willing to accept the same. The other contention is that the respondents wanted applicants to apply for leave for the intervening period as observed earlier. It is after the direction or order of the Chief Engineer vide Annexure A/2 dated 14.5.1987 that the respondents' now have second thought for inviting any representation from the applicants applying for leave for the intervening period which is very improper. Learned advocate for the applicants has relied on the decision in Bijal Ramji vs. Union of India AIR 1988 (1) C.A.T. 427 about question of delay and latches. The learned advocate for the applicants invited our attention to para 4 of this judgment. The respondents in that case had urged that the suit had been filed in December, 1981 while the impugned order was passed in 1972 and therefore the suit was barred by limitation on account of latches and delay of the petitioners. The Tribunal considered the decision in 1982 G.L.H. 687 in which the backwages were not allowed to the petitioners of that case by the authorities. It was observed that the

denial of the backwages for the period of delay would not cause any prejudice and detriment and the petitioner need not be denied justice in the facts and circumstances of the case. In the instant case having regard to the facts mentioned above we hold that the application is in time and is not barred by Section 2 of the Act.

8. Now coming to the merits of the claim of the applicants regarding non payment of their wages from 26.8.85 to 6.11.85, it is clear that the High Court of Gujarat by interim order had granted status quo existing on 26.8.85 and ~~and~~ continued upto 1.10.85 the date on which the said application was withdrawn by the applicants. The applicants have mentioned in the application that the order of transfer was dated 29.8.85 and inspite of the order of High Court to maintain status quo dated 26.8.85 the applicants were not allowed to resume their duties. It is further alleged in the application that at the time of hearing of the matter before the High Court, the respondents' advocate appearing in that matter had agreed to withdraw the order of transfer dated 26.8.85 transferring the applicants from Porbandar to Jaipur and the statement was made also that the applicants would be absorbed permanently in their own division and in accordance with the statement, the applicants withdrew the petition. That pursuance to the consent of the advocate of the Railway, the respondents ultimately withdraw the order dated 29th August, 1985 and issued fresh order of transfer retaining the applicants within their division and posted at Jakhwada and the said order was served upon the applicants on 6th November, 1985 and the applicants have resumed duties from 7th November, 1985 at Jakhwada where they are working at present. The learned advocate for the applicants, therefore, submitted that in view of these facts, it is clear that the applicants were forced to remain idle from 26.8.85 to 6.11.85 and the respondents did not allow the

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the applicants to resume their duties even though there was order of maintenance of status quo by the High Court and therefore the respondents are bound to pay the wages of the applicants for the intervening period.

9. The learned advocate for the respondents, on this point submitted that this Tribunal has to follow the decision of the High Court as it is and not to interpret the same. In view of this submission, we refer to the contention taken by the respondents in para 5 of the written statement where the respondents have contended that the orders were served on the applicants on 24th and 25th August, 1985 but some how or other, the applicants refused to accept the shifting order and therefore in presence of two witnesses, the order of shifting as per the High Court was served upon the applicants and that therefore it cannot be said that the order of shifting was not served upon the applicants. It is contended that the applicants approached the High Court and obtained the order of maintenance of status quo as on 26.8.85 and therefore as the order was served upon the applicants, they were not taken on duty as per the High Court's order to maintain status quo position. It appears that the meaning of the words 'status quo' understood by the respondents is that as there was an order of status quo dated 26.8.85, the applicants were not taken on duty in order to maintain status quo. This is not a correct reading of the order of the High Court. The High Court had directed the respondents vide order dated 26.8.85 to maintain status quo existing on that day. There was no question of not allowing the applicants to continue their duties at the same place. Moreover, there was no contention taken by the learned advocate for the Railway at the time of final hearing of the said application that the Railway had served the applicants with the order of shifting them

at other place and that therefore there was no question of maintenance of status quo or that the applicants should be asked to go at a place as per the alleged order of shifting. On the contrary, the learned advocate for the railway appearing before the High Court wanted the scheme approved by the Hon'ble Supreme Court in Infrapal Yadav vs. Union of India to be implemented and with a view to absorb the applicants it was necessary to transfer them to other places where there were vacancies in the Survey and Construction Department or in open line, if vacancies were not available in the Survey and Construction Department. Therefore the submission of the learned advocate for the Railway in that case was that the respondents would absorb the applicants in accordance with the said scheme as per their seniority and preferably in the Division to which they belong and the applicants had also agreed to join their duties at the place where they would be directed to join after taking into consideration the direction. Therefore, it cannot be contended by the learned advocate for the respondents that the applicants were not taken on duty in view of the order of maintenance of status quo position. In view of the order of the High Court, the respondents were bound to allow the applicants to resume duty. Moreover, it is important to note that there is no denial to the averments made by the applicants in the application that the Railway's advocate had agreed to withdraw the transfer order dated 29.8.85 and in pursuance to the consent of the advocate of the railway the applicants withdrew Special Civil Application 4511/85 and there is also no denial of the fact that the next order was served on 6.11.85 and the applicants have resumed duties on 7.11.85 at Jakhwada. Therefore, the contention taken by learned advocate for the respondents has no substance.

10. Learned advocate for the respondents also submitted that the date of transfer order mentioned in Special Civil Application 4511/85 is 19th August, 1985 while in the application it is 29th August, 1985. In our view, this mistake or error does not assume any importance because as mentioned in the High Court's order, the applicants were to be relieved on 26th August, 1985 and order for maintenance of status quo was granted on 26th August, 1985 and admittedly as per written statement of respondents, the applicants were not taken on duty in view of the order of the High Court regarding maintenance of status quo. The applicants offered themselves for duty and there was no reason for the respondents for not taking them on duty. The conduct on the part of the respondents in not allowing the applicants to resume duty in view of the High Court's order shows that the applicants were forced to remain idle even though the order of transfer dated 29th August, 1985 was ultimately withdrawn and fresh order dated 6.11.85 was issued in compliance of which the applicants resumed on duty from 7th November, 1985. Moreover, the submission of the learned advocate for the respondents that there is no proof to show that the applicants of this application were the same applicants before the High Court in Special Civil Application 4511/85 has also no substance because the contention taken in the written statement para-5 by the respondents that in view of the order of the High Court, the applicants were not taken on duty shows that these very applicants were petitioners in the said Special Civil Application.

11. The learned advocate for the applicants submitted that fair play is a part of the public policy and is a guarantee for justice to citizen. In support of his submission, he relied on the decision in K. I. Shephard and Others vs. Union of India and others reported in 1987

SCC (L & S) 438. The Hon'ble Supreme Court has observed in para 15 of this judgment as under "the fair play is a part of the public policy and is a guarantee for justice to citizens". Learned advocate for the applicants submitted that the respondents in this case has not acted fairly. Learned advocate for the respondents submitted that the decision relied on by the learned advocate for the applicants was with regard to regular employees and that ratio will not apply in this case. In our view, the respondents have certainly not acted fairly in this case by denying the legitimate claim of the applicants for wages for the period from 26th August, 1985 to 6th November, 1985.

12. Lastly, the learned advocate for the respondents relying on page 999 of Railway Establishment Manual by M.L.J and submitted that the applicants being casual labourers were not entitled to the wages for the period for which they have not worked. He submitted that these applicants were out of job during the period in question and the principles of no work no wage would apply. We do not agree with him on this point as the fault was not of the applicant but was of the respondents in not allowing the applicant to do work on the erroneous understanding of the High Court's ad interim order. It is established by the applicants in this case that applicants were forced to remain idle from the work for the period from 26th August, 85 to 6th November, 85 by respondents and hence, the applicants are entitled to claim the wages of that period from the respondents.

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13. No other points were urged before us.

14. In the result, application shall have to be allowed to the extent that the applicants are entitled to their wages from 26th August, 1985 to 6th November, 1985

and the respondents are directed to pay the same to the applicants at the rate admissible as per rules within three months from the date of this decision. The application is allowed to the above extent. We pass no orders as to costs.

Nehru

(R.C.Bhatt)
Judicial Member

Patel

(P.H.Trivedi)
Vice Chairman