

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXX~~

O.A. No.
~~XXXXXX~~

81 OF 1987

DATE OF DECISION 22-07-1991

Shri N.R.Mehta and Others Petitioner

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

Versus

Union of India and Others Respondent

Shri B.R.Kyada. 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*

1. Devji Oghad,
2. Dana Kalyan,
3. Devji Ratna,
4. Shankar Karshan,
5. Haji Tribhovan,
6. Bahadur Ganda,
7. Jalamsinh Bholaji,
8. Chhagan Chuna,
9. Vashram Bijal,
10. Samji Mavji,
11. Magan Ganda,
12. Amarsinh Ajitsinh,
13. Racnhhod Jeshing,
14. Shantubha Kalubha,
15. Ajit Gopa,
16. Babu Nagji,
17. Priyaswami Kripan,
18. Dhanji Raising,
19. Dilip Roopsinh,
20. Narshi Jasha,
21. Narendra Rasiklal,
22. Rata Amarsinh,
23. Devraj Popat,
24. Tege Bhana,
25. Dinesh Mavji,
26. Devji Chhagan

All addressed to
C/o. Association of Railway
and Post employees,
P.H. Pathak,
37, Pankaj Society,
Bhatta,
Paldi,
Ahmedabad.

...Applicants.

Versus

1. Union of India,
notice to be served through
The Divisional Engineer,
Western Railway,
Kothi Compound,
Rajkot.
2. Assistant Engineer,
Western Railway,
A.E.N. Office,
Surendranagar.
3. Public Works Department,
Western Railway,
Than.

... Respondents.

J U D G M E N T

O.A. No. 81 OF 1987.

Date : 22-07-1991

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

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicants challenge

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their order of transfer from Than to Kalol and also require the respondents to regularise their services and also direct them to release their increments due.

2. The applicants in this application claim that they were working under the control of P.W.I. Kalol, for over 10 to 15 years and the respondents are keeping them as temporary employees which amounts to unfair labour practice as per Section 25-T, read with schedule V of the Industrial Disputes Act. To deprive them of permanent absorption they were shifted from place to place. Originally they were working in the VOP Project at Porbandar, under the Executive Engineer (C) Rajkot. They were then transferred to openline division for permanent absorption to Assistant Engineer, Surendranagar. Applicants No.1 to 11 want them to be regularised in the time scale of pay Rs.200-250 on the clear vacancy. For reasons best known to the Assistant Engineer, Surendranagar, he had issued an order dated 25.3.1986, posting the applicants again as casual labourers to work ELA work. By the very said order he had permitted and posted the junior most employees on the places of applicants. The said action of the respondents is not only illegal but also violative of Article 14 and 16 of the Constitution of India. Once an employee is regularised he cannot be reverted back as casual labourer without giving any reason or notice. It violates Section 19 of the Industrial Disputes Act, 1947. When they were working under P.W.I., Than, all of a sudden without giving any reason the respondents shunted them to P.W.I. Kalol. While they were working under P.W.I. in Kalol, the junior most employees working under P.W.I. Kalol are retained at Than for openline work. The said action is in violation of Article 14 and 16 of the Constitution of India. The applicants have passed the screening test in the year 1983 as well as obtained temporary status from 1981 onwards. They are also entitled to claim increment for the past four years. Hence this application.

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3. The respondents have not chosen to file written reply.

4. Only the counsel appearing for the applicants has chosen to file written submissions. Though time was given counsel for the respondents, ^{he} failed to submit his written submissions.

5. The applicants have come forward with this application for setting aside the order of transfer from Than to Kalol and also claiming regularisation and for release of all their increments. The burden is on the applicants to establish that they are entitled to reliefs claimed. The contention of the learned counsel appearing for the applicants that because the respondents have not chosen to file any reply, they should be granted all the reliefs they claimed, is without any basis.

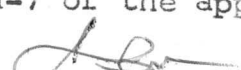
6. We are unable to understand on a perusal of the allegations made in the application what the applicant really want in their application. Though the applicants claim that they were working as casual labourers of P.W.I., Kalol, for 10 to 15 years, they failed to produce any documents like Muster Roll, Service Card, to establish their claim. Annexure A/ is a list prepared by the applicants without any reference to records and as such no reliance can be placed on the same. Though the applicants state in para 7 of the application that the respondents granted them temporary status from 1981 onwards and that they have passed the screening test in the year 1983, they failed to produce any record to substantiate the same.

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7. The main grievance of the applicants is that the respondents have violated many of the provisions of the Industrial Disputes Act. On this they will have to approach only the Labour Court and they cannot agitate this before this Tribunal.

8. There are 26 applicants in this case and they have not chosen to state how this common application by them is maintainable. Admittedly, the applicants worked under the respondents, even according to them on different dates and as such they may not have any common cause of action between them. Further, only the names of applicants 1 to 11 are found in Annexure-A/C. Hence it is not shown how the other applicants joined in this application. Further the applicants also failed to file any application under Rule-4 (5), of the Central Administrative (Procedure) Rules, 1987, seeking permission from this Tribunal to file one common application. Even on this ground the application is liable to be dismissed.

9. Even taking for granted that the applicants are entitled to approach this Tribunal for reliefs claimed in this application, the applicants failed to produce any records to show that the respondents granted them temporary status. They also failed to produce any order fixing their pay scale at Rs.200-250. It is not even stated in the application what is the increment each applicant is entitled per year, and what was their last increment ? The applicant failed to produce any records on this aspect. The allegations in para-7 of the application are as follows :



"The applicants are entitled to get increment." Hence the applicants are not even able to say what is the amount they are entitled to claim as increment for the last four years. In the absence of any such particulars the applicants cannot claim any relief from this Tribunal, regarding the increment due to the applicants, even if it is really due.*

10. The applicants further pray that the order of transfer from Than to Kalol dated 27.9.1986, be set aside. This order is passed more than 5 years back and it is not even stated in the application where the applicants are now presently working. The documents filed along with the application are all typed copies and the applicants have not even produced the original. Annexure-B is said to have been issued on 1.6.1985, in respect of all the applicants, but we find only the name of the Applicants 1 and 8. Hence, we are unable to state how these orders affect the other applicants. Originally the applicants questioned the order dated 25.3.1986, shown as Annexure-C, Subsequently the prayer is amended and they have given up the same. The applicants now challenge the order dated 27.9.1986 shown as Annexure-D. But this order of transfer is not shown to apply to the applicants, as it mentions only 39 casual labourers and the name of the applicants are not shown in this order. Hence the applicants are not entitled to question the same.

11. The applicants also claim in para-6 of the application that some of the juniors were allowed to work in P.W.I. Kalol. They are not made parties to this application. Further, the applicants failed to produce

any approved seniority list from the Railway to show that the persons shown in para-6 are in fact juniors to them. Though para-6 refers to an order dated 20.1.1987, the same is not produced. Regarding the relief of regularisation as already stated the applicants failed to state any basis for the same. For all these reasons we are unable to agree with the counsel appearing for the applicants that the applicants are to be given the reliefs claimed by them on the basis of the allegations without any proof. As the applicants failed to substantiate their claim alleged in the application we find no option but to find that the applicants are not entitled to claim any relief in this application.

12. In view of the above discussion we find no merit in this application and as such the application is dismissed. We however make no order as to costs.


(S. Santhana Krishnan)
Judicial Member

M M Singh
22/7/91
(M.M.Singh)
Administrative Member