

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

XXXXXX XXXX XXXX

O.A. No. 513 OF 1988.
XXXXXX

DATE OF DECISION 16-1-1990.

GHEMA BIJAL & ANRS.

Petitioner(s).

MR. Y.V. SHAH

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondents.

MR. N.S. SHEVDE

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

yes 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?

(S)

1. Ghema Bijal,
2. Motiya Alagumuthu,
working at Jakhwada,
under Mr. Bhardwaj, PWI(C),
Western Railway,
Ahmedabad.

.... Petitioners.

(Advocate: Mr. Y.V. Shah)

Versus.

1. Union of India,
through the General Manager,
Western Railway,
Churchgate, Bombay.

2. Chief Engineer (C),
Western Railway,
2nd floor, Station Building,
Ahmedabad.

3. Mr. Pachori or his
successor in the office,
Executive Engineer(C)I,
Western Railway,
Ahmedabad - 2.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 513 OF 1988

Date: 16-1-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The two Railway employees working at Jakhwada under P.W.I.(C), Western Railway, Ahmedabad, have, in this application filed under section 19 of the Administrative Tribunals Act, challenged the legality of memorandum of transfer No. E/839/2 dated 18.7.1988 (Annexure A-5) transferring them (they figure at Sr.No. 14 & 28 respectively in the list of names of 30 employees figuring in the impugned order of transfer) to their originating division, namely

Rajkot division.

2. The facts common between the applicants and the respondents are that the applicants were recruited in V.O.P. Project, that they have acquired temporary status and that the work of Viramgam-Shahibag Doubling project on which they are working has been completed, and that they are working at Jakhwada since last 3 years.

3. The respondents claim that they are not transferable rests on provisions of para 2501 of the Indian Railway Establishment Manual and they allege that they were transferred in the past contrary to the provisions in the I.R.E.M. and had to seek protection of this Tribunal. Their further allegation is that the respondents have avoided their absorption as regular class IV employees either by not implementing the various instructions of the Railway administration in this regard or by deliberately and consciously delaying their implementation to cause disadvantage to the applicants. They further allege that the respondent railway authorities by such devices, absorb only open line casual labourers and transfer the applicants who belong to the Construction department arbitrarily from one division to another whereas they are required to be absorbed against 40% construction reserved regular posts or against new posts created for the operation and maintenance of new assets, which asset, in the case of the applicants is Viramgam-Shahibag Doubling Project.

4. The respondents while denying the allegations have relied upon this Tribunal's judgment in O.A.No.441/86 which is stated to have held that the casual labour could be transferred to their originating division. It is relevant to mention here that the applicants also rely this O.A. in which a stay was given against transfer. The respondents further say that the applicants are sent back to their originating division for which their consent is not required. The respondents also say that the applicants figure in the combined seniority list of their originating division as Survey & Construction Department is a temporary department and casual labourers in this temporary department are therefore placed in the seniority list of the division in which their initial place of recruitment falls. The respondents say that the applicants were recruited in Rajkot division and therefore cannot get seniority in Baroda division for purposes of career advancement and that the applicants are seniormost ranking between 1 to 300 of the seniority list of Rajkot division.

5. The points of disagreement between the applicants and the respondents were reiterated by the learned advocate Mr. Y.V. Shah for the applicants and Mr. N.S. Shevde for the respondents. Mr. Shevde also relied upon judgment in O.A.No.281/87 of this Tribunal which held that casual labour can be brought back to the originating division in the

seniority list of which the casual labour figures. Transfer of casual labour for this purpose was upheld as proper and valid and stated to be distinguishable from transfer from one division to another not being the originating division of the casual labour so transferred.

6. The parties agree that the applicants were originally recruited in the V.O.P. Project in Rajkot division and have acquired temporary status which has to be on the basis of their seniority in their originating division. As they have to seek career advancement on the same foundation, it is obvious that they have to come back to their originating division. The earlier transfers of the applicants about which allegations have been made by the applicants is not in the purview of the application herein for adjudication. It is undeniable and undisputed position based on rules on the subject of seniority lists including of casual labour that only such employees can figure in a list as have the right to figure in it and no outsiders. Casual labour so figures in the seniority list of respective originating division, the same being Rajkot division in the case of the applicants. They cannot, for this purpose, figure in the seniority list of another division where they may be because transfer of their transfer irrespective of whether such / came to be challenged or not at all and whether the challenge succeeded or failed. Any lateral entry

(12)

in the seniority list of employees of a division other than one's originating division will naturally upset the position of those entitled to be undisturbed in the seniority list of their division.

7. Thus viewed, the transfer of the applicants to Rajkot Division is unavoidable. Mr. Shevde relied upon the judgment in O.A.No. 281/87. That judgment also supports this view but for different reasons. To quote from that judgment. "..... that in the present case the petitioners are sought to be brought back to the originating division in which, their seniority being maintained, safe guards of "last come first go" is applicable. These orders are, therefore, to validly distinguishable from the other orders of transfer in which the petitioners were being transferred to divisions other than the originating division."

8. In the circumstances, the application cannot be allowed and is hereby decided accordingly as dismissed. The interim relief given to the applicants vide order dated 2.8.88 is hereby vacated. Parties to bear their own costs.

M. M. Singh
(M. M. SINGH) 16/1/90
Administrative Member