

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No.  
~~XXXXXX~~

517 of

1988

DATE OF DECISION 4.9.1989Vikram Tapubhai & Ors. PetitionerMr. P.H. Pathak

Advocate for the Petitioner(s)

Versus

Union of India & Anr. RespondentMr. B.R. Kyada

Advocate for the Respondent(s)

## CORAM :

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

The Hon'ble Mr.

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?

(6)

1. Vikram Tapubhai,
2. Mansinh Shiva,
3. Premji Sana (Chhana)
4. Hiraji Bhavanji,
5. Vimlaben Kasturchand

C/o. Association of Rly &  
Post Employees,  
37, Pankaj Society,  
Paldi, Ahmedabad-7.

.. Petitioners

(Advocate- Mr. P.H. Pathak)

Versus

1. Union of India,  
Through  
Divisional Engineer I,  
W.Rly., Kothi Compound,  
Rajkot.

2. C. Permanent Way Inspector (W.R.)  
Railway Station,  
Rajkot.

.. Respondents

(Advocate - Mr. B.R. Kyada)

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

O R A L - O R D E R

O.A./517/88

4/9/1989.

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

Heard Mr. P.H. Pathak and Mr. B.R. Kyada, learned advocates for the petitioner and respondents respectively. Learned advocate for the petitioners takes the following grounds. The first ground is that the impugned order is a verbal order of transfer. Against that the respondents stated that far from being so, the orders passed by the respondents is at Annexure R-1 dt. 27.7.1988 and that order in terms states that on account of urgency of work, the petitioners were sought to be shifted for a period limited to 27.7.1988, the petitioners are

shown at serial number 10, 12, 18, 21 and 23, in that order. The second ground of the petitioner is our that as laid down in various judgments the petitioners are not liable to be transferred as long as they are casual labourers. The respondents have urged the fact that the shifting was required on urgency and that the petitioners have been already granted temporary status makes them liable to the orders. We have held in a number of cases that unless the petitioners receive formal orders of regularisation, their status continues to be of casual labourers and they do not become liable to be transferred. The verbal orders <sup>or</sup> was the orders R-1 can only be therefore, interpreted as offers which the petitioners were free to accept. The third ground taken by the petitioners is that the petitioners have been earlier transferred and they have not been given the benefits of such transfer by way of allowance etc. Learned advocate for the respondents stated that this is not a relief that they have asked in this case nor can they join in this case. This submission <sup>is</sup> ~~has~~ <sup>great</sup> force especially because whatever may be the validity of the orders <sup>whether Verbal or as of R1</sup> ~~or as of R1~~ the relief <sup>is</sup> ~~has~~ <sup>asked</sup> ~~asked~~ in this case and not asked for in clause 7 in this case. No orders therefore regarding such relief can be passed. The forth ground taken by the petitioners is that the respondents should be punished for contempt as stated in sub para (B) of para 7 and that the petitioner should be granted temporary status ~~and~~ <sup>sub</sup> as stated in para (C) of the same para. These two are separate causes and cannot be combined in this case. There are already orders <sup>of</sup> granted by the Courts regarding preparation of the seniority list for

casual labourers and the petitioner can derive such reliefs with reference to such orders as may be applicable to them.

2. The petitioners have been granted interim relief from 4th August, 1988. As stated earlier, the petitioners are not liable to transfer and it is amply clear from the pleadings that the petitioners have not moved to Khamhalia from 4th August, 1988. ~~T~~he rule can be made absolute and the petitioner having already worked, there is no difficulty in the payment to them being made.

3. The only question which arises is whether the petitioners should be paid from the period between 28th July, 1988 to 4th August, 1988. Learned advocate for the petitioners was asked whether there is any averment that the petitioners were relieved from Rajkot. He states that in para 5 at page 6 of his application, there is such averment, because it was a verbal order which he impugned he cannot show from any document that he was in fact relieved. The learned advocate for the respondents states that there is a written order dt. 27.7.1988 at Annexure R-1 and there is nothing to show that the petitioners were relieved or refused work at Rajkot, had they clearly indicated that they are ignoring such order and want to work at Rajkot. However, in reply to para 2 to the application of the petitioner in para 6, the respondents have explained the circumstances of the orders which is a written order of shifting <sup>here</sup> but there is no dispute of the statement that the petitioners were relieved in terms in this para. In

para 6 the respondent has stated that 18 persons have already resumed duty and only five persons who were not willing to go have not joined to Khamhalia but are not coming at Rajkot without any reason. This reply is dt. 17.11.1988, The question therefore, arises whether it can be presumed whether the petitioners offered themselves for duty from 28th July, 1988 to 4th August, 1988 or not. The petitioners have not filed any rejoinder to explain or dispute regarding the averment of the respondents in para 6. In the circumstances, the petitioners have to prove strictly that they offered themselves for duty and they were refused the same. Subject to their doing so, the petitioners may be paid their wages from 28th July to 4th August, 1988.

4. In the result, the impugned order whether verbal dated 28th July, 1988 or written order dt. 27th July, 1988 as the case may be are quashed and set aside, Subject to our above observation qua the petitioners only. Rule made absolute. No order as to costs.

*P. H. Trivedi*

( P. H. Trivedi )  
Vice Chairman