

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH
 NEW X D E L H I

(6)

O.A. No. 548 OF 1988
 T.A. No.

DATE OF DECISION 20-08-1991.

Shri Mohan Surdev, and Others Petitioner

Mr. Y. V. Shah Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. 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? Yes

(7)

1. Mohan Surdev,
2. Gangaram Parshuram,
3. Durjan Maganiya,
4. Jatish Karuna,
5. Pavitra Surdev,
6. Lambodar Ravi,
7. Manchit Rameshwar,
8. Maganiya Durjan,
9. Vishwanath Katu,
10. Arjun Maganiya,
11. Navina Ramchandra,
12. Kasto Bidamal,
13. Nabhi Jaldhar,
14. Dhanpathi Parkhit,
15. Kasti Banesinh,
16. Gautam Wasu,
17. Suthaiya Arkhit, F.B.
18. Padma Haro, "
19. Kamla Surdev "
20. Madna Manchit "
21. Laxmi Maheshwar "
22. Piyajo Gangadhar "
23. Kavati Rasiko "
24. Vasanti Mohan "
25. Gomti Sanu "
26. Anukala Bhagrathi "
27. Chandrama Natho "
28. Sobha Taruna "
29. Shanti Gauro "
30. Hansa Ramchandra "
31. Vasanti Ramchandra

Residing at Kalol,
C/o.P.W.I. Western Railway,
CHANSMA.

...Applicants.

(Advocate : Mr.Y.V.Shah)

Versus

1. Union of India,
through the General Manager,
Western Railway,
Churchgate,
BOMBAY - 20.
2. Divisional Railway Manager (E),
Western Railway,
RAJKOT.
3. Mr.Soni or his
successor in the office,
Permanent Way Inspector,
Western Railway,
CHANASMA,
DIST. MEHSANA.

...Respondents.

(Advocate : Mr.B.R.Kyada)

A. S.

O.A.NO. 548 OF 1988

JUDGMENT

Date : 20.08.1991.

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

The applicant, have come forward with this application under Section 19 of the Administrative Tribunals Act, 1985.

2. It is the contention of the applicants that they were initially recruited as casual labourers in VOP Project, w.e.f. 3.12.1979, under Permanent Way Inspector, (C), Rajkot, and they continuously worked up to July, 1981. Thereafter they were retrenched from service without complying with the provisions of law and they opposed the same. They were re-engaged with effect from 23.6.1983, under P.W.I. (C), Dwarka. The applicants were transferred thereafter from Construction Department to Open Line and they were posted under the C.P.W.I., Mehsana, with effect from 1.10.1984. With effect from 28.2.1987, they were transferred from the Unit of Mehsana to Sabarmati, P.W.I. In OpenLine, seniority list is maintained as per Unit of each Inspector, while in Construction department, the seniority list is maintained as per Unit of each Executive Engineer. Within a period of six months thereafter they were transferred from the Unit of Sabarmati Inspector to the Unit of Chanasma Inspector. The applicants have come forward with this application challenging the further orders of transfer from the Unit of Chanasma Inspector to the Unit of Mehsana Inspector. Junior casual labourers are still retained

[Signature]

in Rajkot Division. Their seniority is not maintained either in the Construction Line or Open Line or in any other Units of Mehsana, Sabarmati or Chanasma. As they were working as casual labourers they are not liable to be transferred, in view of para 2501, of the Indian Railway Establishment Manual. Transfer orders thus passed were quashed in O.A./45/87, 423/87, and O.A./424/87. Hence this application for quashing the transfer orders from Chanasma to Mehsana.

3. The respondents filed the reply, wherein they claim that the applicants were originally engaged as casual labourers in Construction Department for the construction work. The work of VOP is for conversion of Meter Gauge into Broad Guage from Viramgam to Okha. When the work was completed, the casual labourers are to be retrenched or terminated. To avoid this, they want to provide alternative job and divert them to place where work is available. Diversion to other work cannot be considered as transfer, but the same was done keeping their original seniority. The seniority of the casual labourers is already notified in the year 1987, and none of the juniors of the applicants have been retained by PWI, CSMA. The word "casual" itself show that they will have to work where work is available, and due to the exigency of the service and therefore, it cannot be given as a right that particular casual labourer can work at one place and not other place. Hence the order is not a transfer but it is only shifting from one work to another work, in the interest of Administration and also in the interest of labourers, themselves. Hence they pray for the dismissal of the petition.



4. Heard Mr.Y.V.Shah, counsel appearing for the applicants and Mr.B.R.Kyada, counsel for the respondents. Records are perused.

5. The applicants have come forward with this application challenging the order shown in Annexure-A/2. This was issued to the first applicant and his gangman. It states as follows :

"This is to inform you all that at the PWI, Chanasma Section, the work which is in progress between Linch Jotana, as the CTR work was over and also as there is no ELA, you and all your Unit with 31, Gangman and with Ashabha Som's Gangman, all the 9 men, to remain present for work at Divisional Railway Manager (North), Mehsana, from 21.8.1988.

From 20.8.1988, afternoon, you are relieved from your service, to remain present for the duty. The necessary Duty Card are handed over to the Asha bha Gang."

P.Way Inspector,
W.Rly,Chanasama.

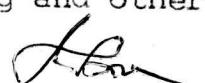
6. As soon as this order is issued the applicants have filed the above said petition and claimed interim relief. On 29.8.1988, a Bench of this Tribunal passed the following order :

"There shall be no transfer of the petitioners. If the respondent-railway authorities redeploy the labourers, they may do so within such authority for redeployment as the respondents may have and subject to specifying the period and payment of allowances as is required of them.

John

7. The main contention of the respondents as we see from their reply is that the order dated 19.8.1988, is not a transfer but only shifting them from one place to another where there was work. It is seen from the pleadings that the applicants were originally working in V.O.C. Project, from 3.12.1979 to July, 1981. When the work was over they were deputed to another place where work was available. Though para 2501, of the Indian Railway Establishment Manual, prohibits the transfer of casual labourers, it contemplates deputation from one place to another on payment of TA and DA as per the Rules. Even a perusal of the order shown as Annexure-A/2, show that it is not a transfer, but only a deputation from one place to another place. Hence the rules do not prohibit deputation from one place to another subject to the payment of DA and TA as per the Rules. In fact the applicants themselves admit in their application that they were sent from one place to another as soon as the work in one place was over. The respondents in their reply clearly point out that the shifting is done keeping their original seniority when they were engaged.

8. The applicants further claim in their application that their juniors were retained at Rajkot Division, whereas they were posted from one place to another. On the other hand the respondents categorically state in their reply that none of the juniors are working in the original places as claimed by the applicants. The applicants have not chosen to file any rejoinder giving the names of the juniors, their date of joining and other particulars.



Hence we find no force in this objection of the applicants.

9. As Exhibit-A/2, the order in dispute is not shown to be an order of transfer, the applicants cannot have any grievance over the same. The order relied upon by the applicants and passed in O.A./45/87, O.A./423/87, and O.A./424/87, are not of any help as those orders were construed as transfer orders. Hence these orders relied upon by the applicants are not of any help to them.

10. We will have to take into consideration the subsequent events happened in the application. The applicants claiming that the respondents disobeyed the interim orders filed C.A./60/88. The respondents were directed to file reply for the same. In their reply the respondents point out that the applicants were originally working under CPWI, Sabarmati and thereafter they were directed to work under PWI, Chanasma for CIR work. This work was available from 2.9.1987 to 20.8.1988 and after the completion of the above said work they were directed to work under C.P.W.I., Mehsana for C.T.R. work. Though they have issued orders, with this effect on 29.8.1988, they refused to do the work as directed. In the meanwhile they received the interim order from the Tribunal. Even when the applicants are shifted from Chanasma to Mehsana they were given single duty Journey pass from Executive Engineer, PWI, to Mehsana. But, in view of the interim order of the Tribunal, they were taken on duty and thereafter served them notices of termination complying with the provisions of the Industrial Disputes Act. Hence, they contended that they have not committed any contempt of Court. Even when the contempt Application was pending, the applicants themselves have

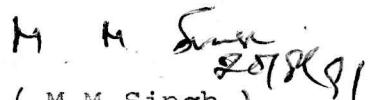


received the orders of termination and when the Contempt Application was taken on 21.11.1988, the counsel appearing for the applicants wanted to file amendment application in O.A./504/88, in view of the termination order. But no such amendment application was filed thereafter. The notice issued in the Contempt Application was discharged in view of the compliance report. As the applicants themselves admit that their services were terminated they cannot claim any further relief in this application.

10. The applicants have come forward with this application challenging their transfer from Chanasama to Mehsana. It has already been found that this is not a order of transfer. Hence, the applicants cannot claim any relief on Annexure-A/2. Even otherwise after the above said order the applicant's services were terminated and though the counsel appearing for the applicants wanted to file amendment application questioning the termination, no such application seems to have been filed on a perusal of the application.

11. In view of the above said discussion, we find no merit in the application and the application is liable to be dismissed and accordingly the same is dismissed. We however, make no order as to costs.


S. Santhana Krishnan)
Judicial Member


(M.M. Singh)
Administrative Member

in
O.A./548/88

(14)

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. P.M. Joshi .. Judicial Member21/11/1988

Heard learned advocates Mr. Y.V. Shah and Mr. B.R. Kyada for the petitioner and respondents respectively. This petition in which notice has been issued has not been replied to by the respondents and at the request of the learned advocate for the respondent 10 days time is given for reply as another opportunity. Learned advocate for the petitioner states that in the meantime, he has received the orders of termination which has occasioned amendment of the contempt petition and also of the case O.A./548/88. He may file amendment petition before Registry. The case be posted after 10 days.

Registry to examine whether in this case since the original order was regarding transfer, the contempt application should also be placed before Single Judge Bench.


(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member

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