

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 560

1988

~~Ex No.~~

DATE OF DECISION 20.11.91

Shri Kaliyaperumal Ayyakannu & Ors. Petitioner^s

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

Versus

Union of India & Ors. Respondent

Mr. N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt

: Judicial Member

The Hon'ble Mr. S. Gurusankaran

: Administrative 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 ? YES
4. Whether it needs to be circulated to other Benches of the Tribunal. NO

[Signature]
20/11/91
MCA)

1. Kaliyaperumal Ayyakannu Mate
2. Gedha Payni
3. Ayyakanu Dhonthé
4. Thangamma Payni
5. Gopal Kannan
6. Nelavathi Kuddhan
7. Eruchan Nanuran
8. Kasthuri Danapal
9. Danapal Kerusnaswamy
10. Anthonyswamy Kadhervai
11. Dhayramml Rangswamy
12. Ponuswamy Sotallmuthu
13. Pakiyvadi Ayyakanu
14. Segan Kokul
15. Radhanvaval Chennaswamy
16. Kasavammal Muttheyan
17. Dhevasagaym Anthony
18. Ramaswamy Nankuran
19. Kanammal Kaliyaperumal
20. Chenapoli Kobinthan
21. Chellamuthu Ayakannu Mate
22. Malarkoti Anathuri
23. Rangswamy Nanni
24. Mukkai Kutteyan
25. Govindthan Arunachalam
26. Laxmi Kantaswamy
27. Ponuswamy Chalamuthu
28. Thellavanam Ayyakanu
29. Muthuswamy Perumal
30. Enpavalle Ayyakanu
31. Peryswamy Pavade
32. Anakamma Aruvan
33. Pachamuthu Anthony
34. Uttheriyamari Chenapan
35. Sakkravarathi Mayavan
36. Anchali Kuppan
37. Rathakirusnan Makadavan
38. Sevagame Thuraswamy
39. Ramlingam Veeramuthu
40. Attheymmal Arachan
41. Rasampal Veeramuthu
42. Vijay Laxmanan
43. Radhanam Keshvan
44. Adimulam Punnuswamy Mate.
45. Kaliyan Kullan
46. Panchan Arumugam
47. Palani Keshvan
48. Thopali Thailan
49. Arasai Vadivell
50. Rathnavel Sanyasi
51. Varamma Manekam
52. Subbaiya Pabu
53. Maruthai Karuppan
54. Arujan Sopan Mate
55. Palan Mathu
56. Elgaperumal Punnuswamy
57. Thennarasu Kannuswamy
58. Sakri Marimuthu (431)
59. Panchali Murthan
60. Anarkali Muthu
61. Kaliamma Rangaswamy
62. Panchai Munian
63. Poonga Angamuthu
64. Jaya Nathan
65. Saroja Karuppan
66. Indiragandhi Palturasen

67. Palai Maruthai
68. Amrapathi Arujan
69. Kullamma Keshvan
70. Amutha Ramaswamy
71. Ayaswamy Vairan
72. Ravi Sadayan
73. Kantarupam Sinna~~s~~wamy
74. Jyothiamma Thagraj
75. Anchalai Cingani
76. Laxmi Mannikam
77. Sanithai Subbaih
78. Veerai Chetti
79. Sarangam Kuppuswamy
80. Kashilingam Ramaswamy.

: Applicants

C/o. Chief Permanent Way Inspector
P.Q.R.S.
Western Railway,
Broach.

(Advocate: Mr.Y.V.Shah)

Versus

1. Union of India
through the General Manager,
Western Railway,
Churchgate,
Bombay-20.
2. Mr.Ehavsar or his
Successor in the Office,
Divisional Engineer/II,
Western Railway,
Baroda.
3. Assistant Engineer/II,
Western Railway,
Broach.
4. Mr.Shah or his
Successor in the office,
Chief Permanent Way Inspector,
Western Railway,
P.Q.R.S., Broach.

: Respondents

(Advocate : Mr.N.S.Shevde)

J U D G M E N T

O.A.560/88

Date: 20.11.91

Per: Hon'ble Mr.S.Gurusankaran

: Administrative
Member

1. In this application filed under Section 19 of the Administrative Tribunal Act, the applicants have prayed for quashing the impugned oral action of their transfer from the control of Chief Permanent Way Inspector (CPWI for short), Broach to P.W.I.

Dhrangadhra/Malia about 400 Kms. away being violative of paras 2501 and 2508 of Indian Railway Establishment Manual (IREM for short). Interim relief against the operation of the impugned transfer orders was also allowed.

2. The pertinent facts of the applicants' case are that they are casual labourers (CL for short) initially recruited in V.O.P. Project on or about 1979/80 and almost all CLs have completed more than 5 years of service. The applicants have stated that they were transferred under respondent No.2 in 1983-84 and since then they are working under his territorial jurisdiction. Even though all the applicants have been given temporary status, they have not yet been screened and absorbed against regular Group 'D' posts. The applicants have maintained that in view of the provisions of para 2501 of IREM, they are not liable for transfer outside their territorial jurisdiction. They have also claimed that the seniority list on open line for the purpose of retrenchment, recruitment and screening is maintained inspector-wise and they have never been notified their seniority positions nor where they have been maintained. They have stated that seniority list for CLs on projects is maintained Executive Engineer-wise. They have submitted that the combined seniority list of "open line" and "project" CLs have not yet been prepared and notified. They have, therefore, contended that their transfer outside the jurisdiction of CPWI/Broach is arbitrary and illegal. They have referred to the decisions of this Tribunal in identical cases in Original Applications No.45, 423 and 424/87, wherein the transfer orders have been quashed.

3. The respondents have filed their reply resisting the claims of the applicants. They have taken a preliminary objection that applicants Nos. 13, 22, 38 and 44 to 80, who were also the applicants in O.A. 193/88 filed before this Tribunal are estopped from challenging the orders of their deployment, since they are in accordance with the orders of this Tribunal dated 16.8.1988 in O.A. 193/88 (supra). The respondents have denied that the applicants have been deployed under oral orders and they have produced copies of two written orders dated 20.8.1988 (Annexure R/2) under which a total of 124 gangmen were deployed. They have pointed out that due to completion of work, CLs working under PWI (PQRS) were rendered surplus and required to be retrenched. They, therefore, called for willingness from the CLs to go on deployment at other places, where work of similar nature was available. Instead of giving willingness, they filed O.A./193/88, which was decided vide order dated 16.8.1988. The respondents have further pointed out that the entire 822 CLs working under PWI (PQRS) Baruch became surplus and were required to be deployed at other places. They, therefore, called for willingness to go on deployment at other places, where work of similar nature was available. Instead of giving willingness/unwillingness these labourers filed O.A. 193/88 (supra) and obtained interim relief not to disturb them from Baruch. During the pendency of that application, respondents had submitted that they wanted to deploy the CLs at other places. Applicants also had shown their willingness to go to other places. It is stated that the lists of CLs to be deployed were also given to the counsel for the applicants in that matter. The matter was heard and decided on 16.8.1988. The respondents have also

pointed out that 87 V.O.P. CLs. had filed O.A.505/87 in which judgment was delivered in their favour with certain directions about deploying 735 CLs. The respondents have contended that accordingly lists of gangs were prepared and handed over to the mates of each gang with necessary railway passes in favour of entire gang to enable them to proceed to their place of deployment. They have stated that when the letters were sought to be served on the mates of the 3 gangs, they refused to take the said letters and hence endorsements were made to the effect by respondent No.4 on the office copy in the presence of the witnesses as can be seen from Annexure R/2. They have, therefore, pointed out that these applicants have approached the Tribunal suppressing the facts, that they were deployed under written orders as per orders in O.A. /193/88. The respondents have denied that the present applicants are the CLs. recruited initially in VOP project stating that they have not produced their service cards or other documentary evidence in support of their averments. They have also stated that the applicants were engaged as fresh CLs by respondent No.4 in 1983-84 and they rely on the original record for their service particulars. They have not disputed that the seniority of CLs on open line for retrenchment and recruitment is maintained ^{wise,} inspector. They have also denied the contention of the applicants that they have been repeatedly transferred from one unit to another against the provisions of para 2501 of IREM and denying them Travelling Allowance (T.A.) and other monetary benefits. They have refuted the

claim of the applicants, who are seniormost, have been deployed retaining several juniors under respondent No.4.

4. We have heard the counsel for both the parties and perused the documents produced before us. Regarding the preliminary objection of the respondents that applicant Nos. 13, 22, 38 and 44 to 80 are estopped from challenging the orders of their deployment as it is in accordance with the orders of this Tribunal dated 16.8.1988 in O.A. 193/88, we are reproducing below paras 4 and 5 of the orders dated 16.8.1988.

"4. The main grievance of the petitioners was that they apprehended termination of their services at the hands of the respondents and now, in view of the statement coming from the respondents, they will have no room for any such apprehension. Since the petitioners are also willing to accept the deployment orders, which may be issued by the respondents Railway Authorities, there will be no question of their termination. It is equally true that when the petitioners were borne in this division i.e. at place Bharuch in the course of time at the time of screening and absorption, their retention in the division will be duly considered by the authorities. We have no doubt, in case where there is scope for the Railway Authorities to engage the petitioners at the present station they will sympathetically consider the question of bringing them to the present station in future.

5. Having regard to the facts and circumstances, we do not find that there is any grievance left over for the petitioners to continue the petition. The application therefore, stands disposed of with the observations made above. The interim order issued earlier stands vacated as it was only against termination. By virtue of the aforesaid discussion M.A./569/88 & MA/542/88 also stand disposed of as no more orders are sought."

5. In view of this, the preliminary objection has to be allowed. The applicants Nos. 13, 22, 38 and 44 to 80 (the number given by the respondents in the reply and not disputed by the applicants), have

definitely tried to misuse the process of law in joining the present application, when they had agreed for such deployment in O.A./193/88. The learned counsel for the applicants fairly agreed to the preliminary objection being sustained. Hence, this application so far as the applicants Nos. 13, 22, 38 and 44 to 80 are concerned, is liable to be rejected.

6. The counsel for the applicants pointed out that the other applicants were not parties to O.A./193/88 and hence they are not estopped in challenging the orders of their deployment away from Bharuch. He argued that since their seniority is borne on open line under CPWI/ Bharuch, they can be deployed only under his jurisdiction. He stated that the other applicants are not willing to be deployed outside the jurisdiction of CPWI/ Bharuch and if there is no work available for them, they may be discharged in accordance with the law following the provisions of the Industrial Disputes Act. (I.D. Act for Short)

7. Before proceeding to consider this demand, we would like to observe that there are a large number of applications filed by Railway Casual Labourers before this Tribunal and they are pending final disposal for a few years. In their orders in O.A. 576/86 in the case of A. Padmavalley and Ors Vs. CPWD Telecom (Page 334 of Volume II Full Bench Judgment by Bahri Brothers) a larger Bench of this Tribunal at Hyderabad Bench has referred to the observations of the Supreme Court in the cases of Premier Automobiles vs. Kamalakar Shantaram Wadge (AIR 1975 SC 2238) and Rohtas Industries vs. Union of India (AIR 1976 SC 425).

"In the Rohtas Industries case the decision in Premier Automobiles case was cited with approval and it

was held that if the I.D. Act creates rights and remedies, it has to be considered as unoflato. But, it has made clear that the High Court could interfere in a case where the circumstances require interference. This is clear from the following observations in regard to exercise of jurisdiction under Article 226.

"This Court has spelt out wise and clear restraint on the use of this extraordinary remedy and the High Court will not go beyond the wholesome inhibitions except where the monstrosity of the situation or the exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered".

8. The larger Bench has held that "Administrative Tribunals are not substitutes for the authorities constituted under the I.D. Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with these authorities in regard to matters covered by that Act. Hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the I.D. Act do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisdia, which lays down a contrary interpretation is, in our opinion, not correct.

An applicant seeking relief under the provisions of the I.D. Act must ordinarily exhaust the remedies available under that Act.

The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of the discretionary power would depend upon the facts and circumstances of each case, as well as the principle laid down in the case of Rohatas Industries".

9. Most of these applicants have been filed and

admitted before the decision of the Larger Bench was delivered and hence they have to be disposed of quickly. But this Tribunal, as observed by the Supreme Court, has to keep in mind the wise and clear restraint spelt out by the Supreme Court in the exercise of the extra-ordinary powers under Article 226 of the constitution in admitting such applications, where the applicants seeking the reliefs under the I.D. Act have not exhausted the remedies under the Act. Further in O.A. 58 of 1991 with M.P. 17 of 1991, the Madras Bench of this Tribunal have held in their orders dated 9.1.1991, that regarding violation of Section 25 F of the I.D. Act, they should raise Industrial Dispute, which is the normal remedy available to them. In that case the applicant contended that he cannot get interim relief before that machinery and hence he had approached the Central Administrative Tribunal. The Madras Bench have held that "if the law maker has not provided for any interim relief in such kind of machinery under the I.D. Act, he has done so with full wisdom. Such a scheme should not be disturbed. Ofcourse this Tribunal would interfere in such matters, where there is a crying injustice perpetrated, which could not be allowed to continue". We have made these observations because, both in the application and the reply a number of other points have been raised regarding the seniority unit on which the names of the applicants should be borne as a permanent measure for final screening and absorption as regular employees, their seniority with reference to other CLs, the jurisdiction within which they can be deployed without their consent etc. Even though all these points may not be fully relevant for deciding the issue before us, we are convinced that the applicants have

a right and the respondents a duty to resolve all these issues so that the applicants have a clear picture about their positions. If these issues had been raised under an Industrial Dispute in the proper forum, they would have been gone into in depth with all the relevant records and sorted out the matter. We must also express our unhappiness about the casual manner in which the respondents, the biggest employer of CLs in the Government have given reply denying that the present applicants are not the CLs initially recruited in VOP project and stating that the applicants have not produced their service cards. The respondents have all the necessary records of the CLs engaged in each unit and even when they are deployed at other units, their names have to be retained in their original unit for seniority, screening and absorption. In fact, this Bench in their orders dated 16.8.1988 (supra) have observed that "it is equally true that when the petitioners are borne in this division i.e. at place Bharuch, in the course of time, at the time of screening and absorption, their retention in the division will be duly considered by the authorities". Hence, it was incumbent on the respondents to have categorically stated whether these applicants are project CLs belonging to VOP Project and if so whether they are borne on the seniority unit of Baroda, Rajkot or Bhavnagar division for final screening and absorption and if not, whether they are Open Line CLs under the Seniority Unit of respondent No.4 and are to be finally absorbed after screening only on Baroda division. We are sure that the respondents will consider these observations and convey the correct position not only to the applicants but also to all other similarly placed "open line" and "preject" CLs so that disputes are avoided at a future date.

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10. Since the relief asked for is only to set aside the impugned oral orders, for which there are actually written orders, we do not find it necessary to go into these aspects. The contention of the applicants other than Nos. 13, 22, 38 and 44 to 80, (referred to as balance applicants hereinafter) that they are not bound by the orders of this Bench dated 16.8.1988 (supra), since they were not parties to O.A. 193/88, has to be upheld to the extent they are not covered by the orders of this Bench in O.A. 505/87 referred to in para 3 of the reply statement of the respondents. If the Balance Applicants are "project" CLs borne on Baroda Division, they can be deployed within the territorial jurisdiction of Baroda Division without their consent as per the ratio laid down by the Supreme Court in Inder Pal Yadav's case (1985) 2 S.C.C. page 648, since they will be governed by the seniority list of 'Project' CLs for the entire division for discharge and reengagement. If they belong to the seniority unit of 'open line' CLs under CPWI/ Bharuch, they cannot be deployed outside CPWI/ Bharuch jurisdiction without their consent. The Balance Applicants have stated in para 3 of the application that even though they were initially recruited in V.O.P. project on or about 1979/80, they were transferred under respondent No.2 in 1983-84 and since then, they have been working under his territorial jurisdiction. The respondents in para 4 of their application have denied that the applicants are CLs originally appointed in VOP project and stated that they were engaged as fresh CLs under respondents No. 4 in 1983-84. During the arguments, the counsel for the applicants maintained that the applicants are borne on seniority list of respondent No. 4 and therefore cannot be transferred out of the jurisdiction of CPWI/ Bharuch.

This contention of the applicants is different from what is stated in their application as mentioned above, since territorial jurisdiction of respondents No. 2 & 4 are different in as much as respondent No. 4 is one of the inspectors working under respondent No. 2. As desired by the Balance Applicants in M.A. 801/88, the respondents have filed certain documents under M.A./45/90. A brief perusal of the same shows that as far as we can see, the list of CLs coming from VOP upto 1.4.1985 does not contain all the names of the Balance applicants. Hence from the records produced before us, we can only infer that atleast many of the Balance applicants have been recruited as fresh CLs in 1983-1984. Therefore, we can only conclude that they belong to open line and cannot be transferred outside the jurisdiction of respondent No. 4. In the result, the Balance applicants have to succeed.

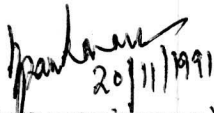
11. The applicants have also produced a copy of G.M./W. Railway's letter No. E (E) 615/5/7 dated 12.10.91 at Annexure A/1. Even though it is mentioned in para- 2 that for Survey and Construction Department, retrenchment and screening shall be that of Executive Engineer as of now, this is no longer valid as far as project CLs are concerned, as it stands modified by the judgment of the Supreme Court in Inder Pal Yadav's case (Supra).


12. In the result, we pass the following orders:

- (1) The application as far as the applicants Nos. 13, 22, 38 and 44 to 80 is dismissed and the interim orders passed is discharged as far as these applicants are concerned. They may be given fresh written orders of deployment and the applicants relieved immediately thereafter from their present place of working for reporting at the new place. In case of those who refuse deployment, their services can be

terminated in accordance with law under the provisions of the I.D. Act.

- (2) As far as the balance applicants are concerned, the application is allowed and the deployment orders dated 20.8.1988 are hereby quashed. Since the counsel for the applicants has stated that the balance applicants are not willing for deployment and in case of non- availability of work, they have to be retrenched as per their seniority, they shall be retrenched only in accordance with law under the provisions of I.D. Act. As far as the balance applicants are concerned, the interim orders are made absolute as far as transfer is concerned with the above proviso.


(S. Gurusankaran)
Member (A)


(R.C. Bhatt)
Member (J)