

Chitambar (Jud)

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH DELHI~~

O.A No. 561

1988

~~T.A. No.~~

DATE OF DECISION 1.7.1991

Shri Khusilal Ketu & Ors. Petitioner

Mr.R.K.Mishra 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. M.M.Singh : Administrative Member

The Hon'ble Mr. R.C.Bhatt : Judicial Member

JUDGMENT

1. Shri Khusilal Keta
2. " Noroho Sillo
3. " Ankuro Sundar
4. " Dutia Maroli
5. " Gocorav Vishnunathan
6. " Babulal Duria
7. " Bisno Mena
8. " Karno Labu;
9. " Chakra Kamal
10. " Kesbo Ragunath
11. " Bhokrna Jani
12. " Sansaro Madhav
13. " Nathu Dhanoshwar
14. " Lakhan Ruthu
15. " Ullaso Bhognat
16. " Baidi Dhormo
17. " Ujali Norohmo
18. " Laxmi Bisno
19. " Aravali Chakra
20. " Mukta Kishan
21. " Gayatri Dhanoshwar
22. " Champa Maljit
23. " Mango Hira
24. " Sumati Keshav
25. " Shyamkumar Aneshwar
26. " Lalman Gosiram
27. " Parbha Kaliandra
28. " Aneshwar Dhansing
29. " Sajmani Madho
30. " Sumitra Madhav
31. " Rajan Kumar
32. " Dhano Ugre
33. " Suparo Kandul
34. " Ravti Bhagto
35. " Niraso Dhaniram
36. " Alekh Borja
37. " Lalitha Trilochan
38. " Bimla Sahdev
39. " Champa Kailash
40. " Mugna Bono
41. " Gokul Gopal
42. " Sushila Jagu
43. " Padvati Manohar

All C/o.H.J.Gupta
Sant Kabir Nagar
Akota, Near Rly. Line,
Baroda.

: Applicants

(Advocate: Mr.R.K.Mishra)

Versus

1. Union of India
Through:
The Secretary, Railway
Ministry, Rail Bhavan
New Delhi.
2. The Chief Engineer,
Western Railway, Churchgate,
Bombay.

3. Sr.Divisional Engineer-II
Western Railway,
Pratapnagar, Baroda.

4. C.P.W.I (PQRS)
Western Railway,
Bharuch.

: Respondents

(Advocate Mr.N.S.Shevde)

O R A L J U D G M E N T
O.A. 561/88

Date:1/7/1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. This application under section 19 of the Administrative Tribunals Act, 1985, is filed by the 43 applicants and one Paschim Railway Karamchari Parishad to quash and set aside the orders at Annexures A/1 and A/2 dated 20th August, 1988 passed by the respondents for transferring the 43 applicants to Dhrangdhra. During the pendency of this application, the applicants have deleted applicant No.1 i.e. Paschim Railway Karamchari Parishad. It is the case of the applicants that the applicants are sought to be transferred from CPWI (PQRS) Western Railway, Bharuch to Dhrangdhra by the impugned orders A/1 and A/2. It is alleged by the applicants that they ^{are} were recruits of December, 1983. It is alleged by the applicants that they have made an application Annexure A/3 dated 20th August, 1988 to the Labour Commissioner (Central) at Ahmedabad in which the demands were made by the Paschim Railway Karamchari Parishad ^{ing} included these applicants also. The case of the applicants is that when the application (presumably under section 33 of the Industrial Disputes Act) had been preferred to the Labour Commissioner (Central), Ahmedabad raising the Industrial Dispute and when the said conciliation proceedings were pending before the said authority, the respondents ~~was~~ were not entitled in law to change or alter the service condition of the applicants and therefore the transfers/ deployment of employees at least at Annexure A/1 was in total contravention of Section 33 of the Industrial

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Disputes Act, 1947 and therefore the action was illegal, null and void. The order Annexure A/2 made by the respondents is also identical in language with the order Annexure A/1. Therefore, the important question which arises in this application is, whether the applicants are entitled to invoke the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 when the application of the Union ^{consisting} ~~through~~ of 476 employees including the applicants ^{was} ~~is~~ pending for conciliation proceeding before the Labour Commissioner (Central), Ahmedabad. The next question is that when the applicants on their own ^{as per} ~~in~~ the application have taken an alternative remedy available to them under the Industrial Disputes Act and when that remedy is not exhausted ~~among thereto~~ and when it is not decided yet under the I.D. Act, ^{whether} ~~the remedy intended to invoke~~ the jurisdiction of this Tribunal would be barred under Section 20 of the Administrative Tribunals Act, 1985. The respondents have filed their reply in details ~~have~~ contending that out of the applicants of this application, applicant Nos. 1 to 22, 24, 31 to 33, 35 to 38, 40 and 42 had filed O.A./193/88 before this Tribunal challenging the validity of the notice dated 26.2.1989 whereby they ~~are~~ apprehended that their services were sought to be terminated. This Tribunal while deciding O.A./193/88 on 16.8.1988 held as under:-

"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 are come in this division i.e. at place ~~Banuch~~ Bharuch, in the course of time, at the time of screening and absorption, their retention in the devision 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."

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2. The learned advocate Mr.N.S.Shevde relying on the decision of OA/193/88 submitted that those applicants who were parties to the said application were bound by the decision in that case in as much as they had shown their willingness to accept deployment orders that might be issued by the respondents against them. He, therefore, submitted that they had no cause of action ^{to} file this application. He further submitted that ~~so far~~ the other applicants of this application who were not parties to OA/193/88 also cannot challenge the order A/1 and A/2 because the order ~~consist~~^s of transfers of the casual labourers ^{which} ~~should~~ form the gang and the persons in the gang go from one place to another place. ^{all} Hence he submitted that gang could not be broken only for giving convenience to those applicants who are not willing to go from one place to another place.

3. We do not at this stage go into the discussion as to whether the applicants of this application who were not parties to OA/193/88 can make grievance about their transfers from one place to another. It is sufficient for us to consider the two main questions which go to the route of this application namely that when the applicants have invoked the jurisdiction under the Industrial Disputes Act by making an application under Section 33 of the said Act and if the said application ^{was} ~~is~~ pending as per the applicants ^{on their own} ~~say~~ in the application whether this Tribunal has jurisdiction to allow the applicants to take a parallel proceeding during the pendency of the conciliation proceeding under the I.D.Act namely whether the applicants would be entitled to file application under Section 19 of the Administrative Tribunals Act, 1985 and secondly the applicants having taken alternative remedy by taking steps under Section 33 of I.D.Act before Labour Commissioner (Central) Ahmedabad and the said proceeding pending whether ^{at the time of this application} ~~their~~ ^{is}

they can seek remedy under Section 20 of the Administrative Tribunals Act. Our answers to both these questions would be in negative for the reasons mentioned here in. Section 33 of the Industrial Disputes Act deals with the conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings. The applicants have made application under this Section of I.D.Act before Labour Commissioner (Central), Ahmedabad by the application Annexure A/3 dated 20.8.1988 received by that authority on 22.8.1988 as appears from the endorsement at Annexure A/3 and this application is made by the applicants before this Tribunal subsequently on 30.8.1988. Thus, the applicants had chosen to take alternative remedy before the forum under I.D.Act before filing this application before this Tribunal. Sub-Section 2,3,4 and 5 of Section 33 envisage the situation during the pendency of the said proceedings. Section 31 of the I.D.Act says that any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. The applicants have categorically mentioned in this application in para 6.3 that during the pendency of conciliation proceeding, service conditions cannot be altered and thus, the transfers/deployment of the employees at least at Annexure A/1 is in total contravention of Section 33 of I.D.Act, 1947. Therefore, the applicants were entitled to take further steps under Section 31 of the I.D.Act and the applicants cannot make the application before this Tribunal. This Tribunal cannot entertain the application of the applicants. Moreover, the applicants have taken alternative remedy under the I.D.Act before filing this application and the said proceedings is pending and therefore also the ^{same} remedy is not available under Section 20 of the Administrative Tribunals Act and they are not entitled to come before this Tribunal for the reliefs which they seek

in the application.

4. In view of our above findings against the applicants, we hold that the applicants have no legal right at present to approach this Tribunal and the application deserves to be dismissed and the in-^{terim} relief granted earlier ^{shall} have to be vacated.

ORDER

The application is dismissed. Interim relief vacated. Rule is discharged. No orders as to costs. The application is disposed of.

R.C. Bhatt
(R.C. Bhatt)
Judicial Member

M. M. Singh
(M.M. Singh)
Administrative Member