

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~
~~XXXXXXXXXXXXXX~~

O.A. No. 581
~~XXXXXX~~

1988

DATE OF DECISION 28.9.1989

Shri Alimohammed Ismail & Others Petitioner^s

Shri P.H. Pathak

Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondent

Shri 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?

8

1. Ali Mohamad Ismail
2. Jayaben Bhoja
3. Kadviben Sama
4. Jiwiben Chaku
5. Mukla Vasram
6. Mavuben Govind
7. Santik Arjan
8. Dhanesh M.
9. Damji Kanji
10. Vallabhnath L.
11. Laxman Kana
12. Naga Kesha
13. Mavji N.
14. Narshi Chhagan
15. Narshi Limba
16. Devraj Tapoo
17. Roompsinh Tersinh
18. Mansinh Hamsinh
19. Abraham Varkay

All C/o. Association of Railway and Post employees, 37, Pankaj Society, Paldi, Ahmedabad.

: Petitioners

(Advocate: Mr. P.H. Pathak)

Versus

1. Union of India
Notice to be served through the Dy.Chief Engineer (C)VOP Railway Station, Ahmedabad.
2. Executive Engineer (C)W.R.
Near Ervin Hospital, Jamnagar.
3. Inspector of Works (W.R.)
(Const.) Godown Road, Near Railway Station, Porbandar.

: Respondents

(Advocate: Mr.B.R.Kyada)

J U D G M E N T

QA/581/88

Date: 28.9.1989

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

: Vice Chairman

The petitioners have joined together in challenging the impugned verbal orders transferring them from Porbandar to Bhavnagar with effect from 5.9.1989 by this application under Section 19 of the Administrative Tribunals Act, 1985 on the grounds that the petitioners being casual labourers are not liable to transfer; that the verbal orders of transfer are not valid; that the said order of transfer is not addressed to them; that the orders are malafide with a view to frustrating the Supreme Court's directions for preparation of seniority for the purpose of regularisation; that at Bhavnagar there is no work and that many juniors

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to the petitioners have been regularised without screening. The petitioners rely upon our judgment on the transfer liability of the casual labourers *Jivi Chaku vs. Union of India and Others* (1987) 3 Administrative Tribunals Cases 413. The petitioners state that the impugned order cannot be treated as an offer of employment as the petitioners have been relieved from Porbandar. They are therefore asking for the relief by the impugned orders to be quashed and set aside and for directions to obey the orders passed by this Tribunal in T.A.No.477/86 and to grant temporary status to the petitioners as per directions of the Supreme Court. They also ask for the the payment of dues with 12% interest and special costs. The petitioners have been protected by interim relief.

2. In reply the respondents have taken the stand that this Tribunal has no jurisdiction; that the petitioners are barred by limitation; that the petitioners cannot be allowed to be joined in a single application; that the transfer orders have not been passed verbally; that the word 'transfer' has been used by mistake in the relevant order but is meant only to shift the petitioners from one place to another in the same division there being no work for them at Porbandar and as the petitioners have been rendered surplus to the requirement of the unit of Executive Engineer (Const.), Jamnagar. The petitioners are borne in Bhavnagar division and due to the completion of VOP Project there being no work for them, they are directed to DRM (E) Bhavnagar for regular absorption in terms of the policy laid down by the Railway Board. They further plead that similarly situated persons were directed to Jaipur for want of work in VOP Project and this Tribunal had decided that the petitioners in that case had to go to their permanent department for absorption confirming the action of the Jaipur division to direct the petitioners in that case to their parent department.

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10

Further the petitioners have not made the Divisional Manager, Bhavnagar a party; that the chance of the petitioners for absorption as Gangman at Porbandar under DRM-Bhavnagar is good and therefore they are directed there, and that the respondents cannot be forced to keep the petitioners when there is no work for them. During the hearing, the learned advocate for the respondents had stated that the petitioners have been empanelled and when he was asked to give the list of panel has produced, a copy of the letter dated 5.8.198 enclosing the list which is entitled "Seniority list of casual labourers recruited at geographical jurisdiction of Bhavnagar division".

3. On hearing, the learned advocates and on perusal of the pleadings, it appears that the respondents have given a somewhat garbled version shifting their stand in an attempt to confuse the issues. This Tribunal has held the view that casual labourers are within the jurisdiction of the Tribunal in so far as their service conditions regarding transfer liability regularisation procedure for retrenchment etc., are concerned. Besides, this Tribunal has also allowed in similar cases several applicants to join themselves in a single application for the sake of convenience. In this case it must be noted that the impugned orders are not addressed to the petitioners individually and even according to the respondents, the orders of shifting or transfer dated 5.9.1988 at Annexure 'A' which are jointly operating against them are incorporated in a single order. The petition has been filed on 9.9.1988 against the impugned order of 5.9.1988. It is difficult to see how the plea of any bar of limitation can be seriously advanced. The respondents' stand that the impugned orders are not transfer orders but merely purport to shift the petitioners from one unit to another in the same division does not

convince for two reasons. Firstly the impugned orders in terms describe themselves as transfer orders and although the learned advocate for the respondents states vigorously that this does not make them transfer orders we do not see why we should read in the orders something which is contrary to what is stated therein. Secondly, the plea that they are merely for shifting from one place to another in the same division and therefore they are not being transferred also cannot be accepted because shifting from one place to another is governed by para 2508 which is as follows:-

"2508. Travelling allowance:- Ordinary payment of travelling allowance to casual labour should not arise as they are recruited locally where necessary and are not liable to transfer. However, when it is necessary to depute them on duty away from their headquarters, daily allowance will be paid to the skilled, semi-skilled and unskilled casual labour at the following rates:-

Particulars of locality	Unskilled & semi-skilled staff		Skilled and highly skilled staff.	
	Rs.	P.	Rs.	P.
Ordinary localities	2.	00	3.	00
Darjeeling, Delhi, J & K State, Madras and Simla.	3.	00	4.	50
Bombay and Calcutta	4.	00	6.	00

that
It is clear ~~therefore~~ if the respondents presume to act under this paragraph the shifting of the labourers is expected to be only for a temporary period as the concept of daily allowances involves only a temporary absence from the head quarters to which they are expected to return on completion of their work. The terms in which the order is passed makes it clear that no claim for daily allowances can be raised and therefore this para cannot be invoked as investing the respondents' action with even the limited authority given by it for shifting the casual labourers. Thirdly the plea that the petitioners have a liability of transfer because it is needed for

their regularisation does not satisfy. The respondents have produced a seniority list. This falls short of the process of screening and empanelment and regularisation being completed. The petitioners' status from casual labourers with or without temporary status is not elevated to that of regular employees. Until then their freedom from the liability of transfer continues has to be upheld. The respondents have held out what amounts to a veiled threat that the petitioners will only harm themselves if they do not comply with the impugned orders which are merely for screening them and their resistance to such orders will only delay their screening and subsequent regularisation. The proper course for the respondents would be to give specific orders asking the petitioners to go to any particular authority or place for subjecting themselves to screening and to give them necessary passes or other facilities as they are entitled to in such cases. Nothing in the impugned orders shows their having any connection with the objective of even any remote concern about the petitioners' screening or regularisation. The respondents have stated quite clearly and in so many words that the petitioners were surplus at Porbandar due to the closure of the VOP project. This plea therefore cannot be mixed up with that of a regularisation by screening of the petitioners. In fact advancing of this plea together with that of the plea of sending the petitioners for screening reveals that the respondents' hands are not clean regarding the way they have proceeded with the petitioners.

4. In the circumstances of this case therefore we have no hesitation in holding that the impugned orders are bad and need to be quashed and set aside and are ordered to be quashed and set aside. The petitioners have been protected by interim relief. Rule made absolute. The respondents are at liberty to pass appropriate orders for shifting

the petitioners after satisfying conditions laid down under the appropriate instructions or rules for doing so. The respondents are at liberty to pass separate orders asking the petitioners to present themselves for screening if the petitioners^{turn} for screening has come. We have no doubt that there will be no further delay in the process by issuing the appropriate orders or giving the necessary facilities to the petitioners for doing so. As the respondents have admitted that the petitioners are due for screening, they are directed to pass appropriate orders for their screening within a period of four months from the date of this order. It is not considered necessary to pass any orders regarding the relief of special cost or interest pressed for by the petitioners.

5. Subject to the above observations, the petition has merit to the extent stated. The impugned orders of transfer are quashed and set aside qua petitioners. Rule made absolute. No order as to costs.

P.H. Trivedi
(P.H. Trivedi)
Vice Chairman