

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXX~~

O.A. No. 585 OF 1988.
~~E.A. No.~~

DATE OF DECISION 24.1.1990

KANDASWAMY KUTTIMUTHU & 58 ORS. Petitioner s.

MR. R.K. MISHRA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s.

MR. N.S. SHEVDE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

- yes 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?
- As 4. Whether it needs to be circulated to other Benches of the Tribunal?

1. Kandaswamy Kuttimuthu,
 2. Swamidurai Arumugan,
 3. Subramniam Pavadai,
 4. Vadivel Kandaswamy,
 5. Subramaniam Kaliyan,
 6. Pandiyan Gangachalm,
 7. Ramaswamy Chittar,
 8. Govindraju Ramswamy
 9. Ramaswamy Palamalai,
 10. Velaragarni Sandaram,
 11. Kumaresan Shanmugam,
 12. Kannan Arunachalam,
 13. Paleniswamy Sellan,
 14. Anjali Murugan,
 15. Dhanakodi Karuppan,
 16. Ilandam Kuttimuthu,
 17. Vasandha Pavadai,
 18. Kamalam Vanathan,
 19. Kamalan Asakou,
 20. Vithilingam,
 21. Raju,
 22. Puchandi,
 23. Alagasan,
 24. Kaliyaperumal,
 25. Selvaraju,
 26. Arunasalam,
 27. Rajendran,
 28. Kaliyan,
 29. Manivalu,
 30. Kuppai,
 31. Ambusam,
 32. Anjali,
 33. Kodipavan,
 34. Saroja,
 35. Kamsala,
 36. Muthuswamy,
 37. Subramaniam,
 38. Rama Kirushanan,
 39. Kolanchinathan,
 40. Selvaraju,
 41. Kirushanmorthi,
 42. Madhavan,
 43. Kaliyamurthi,
 44. Narayanan,
 45. Karunanidhe,
 46. Ganesan,
 47. Paramasivam,
 48. Balakirushanan,
 49. Murkesan,
 50. Muniswamy,
 51. Manivelu,
 52. Rajendran,
 53. Kaliyamal,
 54. Devaki,
 55. Balvi,
 56. Sudamani,
 57. Rajamanikam
 58. Selathuri,
 59. Thiyanayaki,
- All C/o. P.W.I.,
Western Railway,
Baroda.

..... Petitioners.

(Advocate: Mr. R.K. Mishra)

Versus.

1. Union of India,
(Notice to be served through
the Secretary, Rly. Ministry,

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proceed to another place/project where work could be found (Sabarmati); they question the order on various grounds including that casual labour is not transferable and that casual labour seniority list is not prepared and first-come-last-go principle not complied with. The applicants' and respondents' pleadings and arguments also rest or proceed on a pattern. The applicants urge that the transfer of casual labour violates para 2501 of Indian Railway Establishment Manual (IREM for short); such transfers were struck down in the order of Ahmedabad Bench of this Tribunal in O.A.No. 505/87; though transferred, the facilities for transfer provided in IREM like joining time, salary advance, disturbance allowance are denied; in Baroda division itself more than a thousand contractors labour being used by Railways whereas the applicants transferred on grounds of no work; respondents committing breach of promise that applicants will be brought back to Bharuch after Baroda work; the benefit of provision of travelling allowance when deployed beyond the radius of 8 KM denied though such allowance has been upheld by Ahmedabad Bench of this Tribunal in O.A.No. 8/88; applicants approaching the Regional Labour Commissioner (Central) Ahmedabad with various demands like issue of seniority list of the entire division showing the strength of casual labour, publication of the seniority list in the manner decided in O.A.No. 505/87 of Ahmedabad Bench of the Tribunal; and service condition changed during pendency of conciliation proceedings by the impugned oral order of transfer.

3. The respondents deny all the allegations of the applicants; they describe applicants shifting from Baroda to Sabarmati as 'deployed' for reason that there is no work at Baroda or Bharuch; some from those working

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the Regional Labour Commissioner (Central) is after this Bench's decision in O.A.No. 193/88 in which 365 casual labourers working under Respondent No.5, CPWI(PQRS) Bharuch had challenged the order of their retrenchment but ended by expressing willingness to go elsewhere for work of similar nature which work was found. 822 labourers working under PWI (PQRS) Bharuch became surplus and came to be deployed at other places; 87 V.O.P. casual labourers had filed O.A.No. 505/87 in this Bench challenging their transfer from Bharuch to Viramgam which was decided in their favour with certain directions and orders of movement of remaining 735 were to be given to the mate of each gang in order to enable them to proceed to Sabarmati; the applicants did not accept the copies of the order and instead filed the application herein.

M 4. During the final hearing, Mr. Mishra submitted that the impugned order being oral its real nature is not clear though the respondents describe it as deployment which can be temporary only and travelling allowance has to be paid. With regard to his urging for payment of travelling allowance, to a specific question from the Bench Mr. Mishra replied that he is not aware whether the applicants preferred any travelling allowance claims.

5. Mr. Shevde for the respondents admitted that the order of transfer was not appended to the reply and not submitted otherwise also but the same was given to applicants. He submitted that the applicants filing no rejoinder to the respondents' reply implied that they accepted the reply which, as a consequence, deserved greater weight. He submitted that juniors to applicants came to be retained at Baroda because of interim order of Ahmedabad Bench in O.A.No. 508/88.

6. The order of Ahmedabad Bench in O.A.8/88

Rail Bhavan,
New Delhi)

- 2. The Chief Engineer,
Western Railway,
Churchgate, Bombay.
- 3. Sr. Dvl. Engineer-II,
Western Railway,
Pratapnagar, Baroda.
- 4. Permanent Works Inspector
(PQRS) Western Railway,
Baroda.
- 5. Permanent Works Inspector,
(PQRS), Western Railway,
Bharuch.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A. No. 585 OF 1988

Date: 24.1.1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

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The 59 applicants, all temporary service Gangmen recruited at Bharuch in December, 1983 moved to Baroda in May 1988 and working under PWI (PQRS), Western Railway, Baroda, have filed this joint application under section 19 of the Administrative Tribunals Act, challenging the order orally communicated to them on 1.9.88 by PWI (PQRS) that they are transferred to Sabarmati (Ahmedabad).

2. The undisputed facts of the case answer what can be described as a pattern in such cases: enlistment of casual labour for a Railway project at a particular place (Bharuch); the recruited rendered surplus because the project completed; the Railway administration moving to retrench them; they questioning the step in Court/Tribunal; they and the Railway administration coming to a settlement whereby they agree to move to another project (Baroda) in order to avoid retrenchment; this second project also completing and they or

Respondent No.5, CPWI(PQRS) Bharuch, had filed O.A.No. 193/88 in Ahmedabad Bench challenging their retrenchment and as the Railway administration had expressed willingness to deploy the surplus casual labour where work similar to their work in Bharuch could be found, the applicants showing their willingness for such deployment in order to avoid retrenchment, O.A.No.193/88 was dismissed on 16.8.1988; thus surplus casual labour of Bharuch came to be deployed to other places legally and properly; regular orders of such deployment were to be handed over to the mate of each gang but before that could be done, the applicants approached this Tribunal by filing the application herein though all the applicants except one have since carried out the orders of their deployment and resumed at Sabarmati on 20.9.1988; no breach of order in O.A.No. 505/87 of Ahmedabad Bench has been committed; casual labour with temporary status is transferable. When Railway administration offers alternative work in other places to casual labour liable to be retrenched, joining time and transfer allowances are not admissible to such casual labour and only Railway pass is issued for their travel to the new place of work; for such moves on the part of the Railway administration, question of implementing seniority list does not arise; the applicants have no right to ask for reasons behind Railways giving work on contract basis and that in any case the applicants have not pointed out any specific place where such work has been given; seniority of open line casual labour is maintained Inspector-wise and of construction labour Executive Engineer-wise; that Respondent No.4 had not promised the applicants that after completion of work at Baroda they will be sent back to Bharuch; order in O.A.No. 8/88 of Ahmedabad Bench is not applicable to the facts of the case herein and applicants' approach

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upon by the applicants decided that full daily travelling allowance is admissible to casual labour deputed to discharge duties beyond the radius of 8 KM. from their headquarters. Order of Ahmedabad Bench in O.A. No.505/87 relied upon by the applicants as also by the respondents involved transfer of casual labour from Bharuch to Viramgam and the decision was that "petitioners be not transferred until their seniority is ascertained in the seniority list prepared in their originating division and thereafter the liability to transfer will be on the basis of their accepting it voluntarily. If sought to be transferred, procedure for 'last-come-first-go' will have to be followed." The respondents rely on order in O.A.No. 193/88 of Ahmedabad Bench in which 365 casual labour applicants of Bharuch who apprehend retrenchment were the applicants and taking note of the parties coming to a settlement (as the respondents offered jobs to the applicants within the Railway division and the applicants showed willingness to accept these jobs) judgment on merits of rival contentions became unnecessary. Almost all the applicants herein were also the applicants in O.A.No. 193/88.

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7. As the applicants herein were shifted from Bharuch because of their accepting work at Baroda to avoid retrenchment at Bharuch, for purposes of application of para 2501 of I.R.E.M. which bars transfer of casual labour, Baroda virtually became their place of recruitment. As the respondents chose not to append a copy of the impugned order with their reply or otherwise and Mr. Shevde urged that the averments in respondents' reply not questioned by the applicants by filing a rejoinder therefore deserved greater weight, the real nature of the impugned order revealed in the reply of the respondents being, to quote from

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the reply, "..... the applicants are not transferred from Baroda to Sabarmati but are deployed..... " the real nature of the impugned order is deputation on duty away from their headquarters instead of transfer and therefore provisions of para 2508 of I.R.E.M. cover such order. Such order can therefore not be struck down as it is not an order of transfer and it also cannot be struck down on any further grounds that it involves transfer outside the applicants' originating division firstly because it is not a transfer order and secondly because Sabarmati falls in Baroda division. It would be and would have been in order for applicants to, in view of the contents of respondents' reply, supra, which revealed the real nature of the impugned order, prefer their daily allowance bills as provided in para 2508 of I.R.E.M. However, Mr. Mishra is not aware whether the applicants have preferred such bills.

8. In the light of the above, there exists no such oral order as deserves to be set aside. The respondents' reply reveals the real nature of the order as being legal in accordance with the provisions of para 2508 of I.R.E.M. and the applicants entitled to daily allowance for their stay at Sabarmati pursuant to the order. The application is thus liable to be dismissed and is hereby dismissed. The parties to bear their own costs.

M. M. Singh

(M.M. SINGH)
Administrative Member