

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

O.A. No. 711
~~XXXXXX~~

1988

DATE OF DECISION 28-09-1989

Shri B.R.Vyas

Petitioner

Shri K.K. Shah

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri N.S.Shevde

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?

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1. Shri B.R.Vyas,
working as Khalasi-casual labourer
in Survey and Construction Department,
under Deputy Chief Engineer,
Baroda.

... Applicant

(Advocate : Mr.K.K. Shah)

Versus

1. Union of India
(Notice to be served through the
General Manager,
Western Railway,
Churchgate ,
Bombay.
2. The Deputy Chief Engineer,
(Survey and Construction),
Western Railway,
Pratap Nagar,
Vadodara.

... Respondents

(Advocate : Mr.N.S. Shevde)

J U D G M E N T

OA/711/88

Date: 28-09-1989

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

The petitioner in OA/711/88 filed under Section 19 of the Administrative Tribunals Act, 1985, impugns the order dated 28.10.1988 by which the respondent no.2 has addressed the letter to his colleague, whereby on the ground of their being no vacancies to absorb the petitioner in his district and his seniors are working in the said colleague's project, he has directed the petitioner to him.

2. The respondents do not dispute that the petitioner was granted temporary status by Memorandum dated 7.7.1987, at Annexure-A, and advert that the respondent No.2 by his memorandum dated 22nd May 1987, transferred 50 casual labourers to Chittor, that the applicant was also so transferred to Chittor by the said order dated 25.7.1987 annexed at A-1. The respondents say that the 50 persons transferred were junior most casual labourers who were rendered surplus, were required by Executive Engineer, Chittor. The respondents claim that the applicant willingly

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had gone to Chittor in May 1987 and joined there. The petitioner has claimed that some of the casual labours who were transferred by the order dated 22.5.1987 have ^{and} not resumed at Chittor ~~have~~ been continued at Baroda. But in that case in OA/271/87 the petitioner complied with the transfer order dated 22.5.1987, subsequently, some persons were transferred from Chittor to Kota by order dated 14.11.1987 and in OA/578/87 in the Central Administrative Tribunal, Jodhpur Bench they resisted the transfer to Kota and obtained interim relief by way of the said order. The respondents say that the respondent no. 2 was not a party in that case. The respondents deny that the Jodhpur Bench gave interim relief in favour of the applicant against the transfer from Chittor to Kota. The petitioner's ground is, that when the petitioner was rendered surplus, he should have been sent to Baroda. The respondents have denied that any junior to the petitioner has been retained at Baroda. The petitioner has challenged the action taken by the respondent authority at Chittor before the Jodhpur Bench of the Central Administrative Tribunal and the said matter is still pending.

3. The petitioner's plea is that the respondents have directed the petitioner to go to the originating division and on his doing so the Baroda Division refused to take him. The petitioner is not responsible for any administrative muddle by there being no vacancy in Baroda Division. The petitioner has denied that any seniority list is prepared and that he is junior according to the seniority list, and claims that the persons junior to him have ^{been} retained and therefore, he was unfairly treated. There is much dispute between parties regarding the non compliance in terms of the Supreme Court's direction and regarding the petitioner having been ascertained to be sufficiently juniors to be liable to retrenchment for avoiding which transfer is resorted to.

4. The question has arisen of the jurisdiction of Ahmedabad Bench to entertain the application because the petitioner was found to have served in Chittor and if his cause is in terms of transfer from Chittor to Baroda it should have been agitated ^{before} in the Jodhpur Bench. It was decided that as the petitioner had presented himself to the Baroda Division and has been denied employment there, it can be stated that the cause has arisen in the area under the jurisdiction of this Tribunal.

5. The tortuous narration of the past history of the petitioner's case is calculated to confuse the issues which are central in this case, namely, that the petitioner on presenting himself at Baroda, respondent no. 2 refused to take him and instead directed him to the Chittor authorities as there was no vacancy in Baroda division. The question therefore, should be rightly directed to the consideration of the legal claim of the petitioner, of being absorbed in the Baroda Division. It is not disputed that the petitioner originated in the Baroda division and that he was given temporary status as found in the order dated 7.7.1987 at Annexure-A.

6. Learned advocate for the petitioner has laboured long and hard on the petitioner's right of resisting transfer for which he has sought support from our judgment, (1987) 3 Administrative Tribunals Cases 413, Central Administrative Tribunal, Ahmedabad Bench, Jivi Chaku versus Union of India and others. He had also relied on the Jodhpur Bench judgment, but later has restricted himself only to the judgment of this Bench referred to. In that judgment it was held that casual labourers do not have any liability to transfer even when temporary status is allowed to them until they are given regular employment. However, the plea of the petitioner abundantly shows that the petitioner worked at Chittor consequent to the orders

in May 1987 and in OA/578/87 obtained interim from the 9 Jodhpur Bench of this Tribunal against his transfer from Chittor to Gurlu Kota. The final decision regarding the liability of the petitioner's transfer from Chittor to Gurlu Kota agitated in OA/578/87 is pending decision according to the respondents as stated in para 7 of their reply. It is only proper that the merits of the orders impugned in that case should be left to be decided by the Jabalpur Bench. It is only relevant however, to note that the facts that the petitioners had complied with the orders dated 22nd May 1987 and that the further transfer of the petitioner is a matter before another Bench of the Tribunal having jurisdiction in that case in which the petitioner has joined, are relevant for deciding whether, he has impugned any order of May 1987 transferring him from Baroda to Chittor. In the batch of cases decided upon by the ~~this~~ Bench of this Tribunal in the case of (1987) 3 ATC 413 Jivi Chaku Versus Union of India and others, relied upon by the learned advocate for the petitioner while ruling that the casual labourers is not subject to the liability of the transfer, it has also been concluded that it is open to the respondents to offer transfer to another division to casual labourers, as an alternative to termination of their services and it is open to such casual labourers to accept such transfer.

7. The compliance of the petitioner and the absence any protest against such transfer ~~for~~ for the purpose of this case and that this petition is filed on 15.11.1988 in which only the order of the respondents No. 2 to refuse to take the petitioner back in Baroda is impugned, are sufficient to justify the interpretation that the learned advocate for the petitioner challenges the transfer from Baroda to Chittor as an afterthought. No purpose can be served by unsettling the situation ~~acquiesced in~~ by the petitioner.

8. Similarly the question whether the juniors have been retained at Baroda or not can not be regarded as relevant for the purpose of this case. The petitioner cannot unsettle the situation regarding such juniors which has been accepted by him for such a significantly long period.

9. The question in the case is limited to the circumstances in which the petitioner was allowed to be relieved from Chittor division and ordered to go to Baroda division. The respondents contend that it is the petitioner who requested to go to Baroda and at his request that the Chittor authorities allowed him to go there, and in support they have relied upon Annexure-A dated 19.4.1988. A perusal of this document shows that the transfer is at the request and on the responsibility of the petitioner and therefore, he is declared ^{in it} not to be entitled for any kind of facility.

10. Accordingly the action of Baroda authorities namely respondent No. 2 not to accept him ⁺ true and redirecting him to Chittor as there was no vacancy in his district, is only an administrative order to the Chittor authorities is not to be regarded as any order of transfer. There is force in this contention.

11. From the facts and circumstances of this case, it is not necessary to go in further detail regarding the question of the seniority list being prepared according to the instructions of the Supreme Court. The respondents have urged that such seniority lists have been drawn up and the petitioner being junior he is liable to be transferred.

12. In terms of the judgment of ^{this} Bench referred to the petitioners' right in the rejoining his division namely Baroda division can be derived from the seniority list ^{only} for the purpose of his absorption if the posts reach up to him in the order of seniority. The petitioner may make representations in this regard to the

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it is
Baroda authorities namely Respondent No. 2 and ~~he~~ observed
that it would be proper for Baroda authorities to give a
reply to the petitioner within 3 months of this
representation being made, If the seniority lists have
been drawn up as claimed by them, there should be no
difficulty in doing so.

13. Subject to the above observations no merit is
found in the petition, and no relief in terms of quashing
and setting aside the impugned orders dated 28.10.1988
is deserved or justified. Subject to the observations above
the petition fails and is rejected. Rule discharged.
No order as to costs.

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