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CAT/5/12

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

O.A. No.

293/89

1989

~~XXXXXXXXXX~~

DATE OF DECISION 7.12.1989.

Ayyaswamy Ramaswamy & Others. Petitioner

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

Versus

Union of India & Others. Respondent

Mr. B.R. Kyada. 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?
- No* 2. To be referred to the Reporter or not?
- No* 3. Whether their Lordships wish to see the fair copy of the Judgement?
- No* 4. Whether it needs to be circulated to other Benches of the Tribunal?

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Ayyaswamy Ramaswamy
and others.

: Applicants

(Advocate-Mr. Y.V. Shah)

V/s.

Union of India,
Western Railway and others.

: Respondents

(Advocate-Mr. B.R.Kyada)

CORAM : Hon'ble Mr. M.M. Singh : Administrative Member.

J U D G M E N T

O.A./293/89

Date 7.12.1989.

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

In this application filed under section 19 of the Administrative Tribunals Act, the ten applicants casual labourers who have acquired temporary status (nine working as Male Beldars and one as Mate) have questioned the oral order dated 21.7.1989 of transfer from the unit of Permanent Way Inspector Kalol, to the unit of Permanent Way Inspector, Katosan, on the grounds that Railway twin grounds that Railway Casual Labour enjoys immunity against transfer both according to rules 2501 and 2508 of Indian Railway Establishment Manual (I.R.E.M. for short) and according to judicial pronouncements, including of the Central Administrative Tribunal. The applicants were given ad-interim relief on 18.8.1989 in M.A. 515/89 in this application in terms that the "petitioners on their presenting themselves at either Kalol or Katosan be allowed in terms of the respondents giving them employment at the station where they present themselves" and also ad-interim relief on 25.7.1989 that pay and allowances should be paid

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to the applicants in terms of paras 2501 and 2508 of I.R.E.M.. The learned advocate for the applicants, informed, in the course of his arguments when the case came up for final hearing, that the applicants have complied with the order of their transfer.

2. The respondents chose to file no reply but contested the application through their learned advocate who, during the final hearing, tendered DRM Office Rajkot reference of 29.8.89/7.9.89 addressed to him advising that all but three of the applicant Casual Labourers "have been given permanent posting in clear vacancies" and the names of the three of them who had not been given such a posting (applicants at serial numbers 2, 5 and 9) also mentioned. Mr. Shah took strong exception to the tendering of this record at the final hearing stage and proceeded to argue that when a party has not filed reply, it forfeits its right to be heard at the final hearing much less to be allowed to tender on item as record at the stage of the final hearing. Shri Shah's exception was not acceptable. A party can well choose to forego filing ~~by~~ written reply without thereby forfeiting the right to oral hearing. Regarding the record in question, it contained information about the present status of the applicants. In fact even the applicants were called upon, as seen from the record of proceedings on 25.7.1989, to give required particulars to the respondents so that their cases could be traced out for reply and the applicants, in M.A. No. 515/1989, furnished the date of recruitment of each of them which is noticed to be 03.05.1972 for applicant No. 10, the earliest recruited, and 06.10.1980, for applicant No. 6, the last recruited and the remaining recruited between these two dates on different dates and years. →

With these far and wide gaps in the dates of recruitment of the various applicants, striking is the incongruity of the allegation at para D of page 7 of the application that several juniors to the applicants are still working under the respondents, that they have not been selected, empanelled and absorbed in the class IV regular posts, etc. It is obvious that these processes cannot be simultaneous for the several applicants recruited over a period of eight years stretching from 1972 to 1980 and their rights and interests in these regards should obviously accrue to each according to his service particulars the most important being the date of recruitment. In this logic arising from the record furnished by the applicants, have joined as common applicants ^h those whose grounds for a common petition merely consist of their common label of Casual Labour and the alleged oral order transferring all of them together from one place to another implying that all of them were collected together and the impugned order announced to them.

3. No wonder that when such a set ^{of} applicants have ^h filed a common application against transfer and when ^h their ^h individual status has been looked into by the respondents, they have said, albeit at the final hearing stage, that all but three of them have been given permanent postings in clear vacancies. Even with regard to the three not given permanent posting in clear vacancies, the DRM's reference of 29.8.1989 says that the PWI Kalol is 07.09.89. directed to take them on duty.

4. In view of the above, the cause of action no more survives and the application is liable to be disposed off with following order:

5. The DRM Rajkot should ensure that P.W.I. Kalol has taken on duty applicants at serial numbers 2,5 and 9 of the application in accordance with the DRM's reference dated 29.8.1989 addressed to Mr. 07.9.1989 B.R. Kyada, the learned advocate for the respondents. In case the applicants have not yet been taken on duty by P.W.I. Kalol, the applicants should be taken on duty on the date they report to the P.W.I Kalol for this purpose.
6. Parties shall bear their own costs.

M M Singh
7/11/89
(M.M. Singh)
Administrative Member.

M.A./515/89

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O.A./293/89

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

18/8/1989

Heard Mr. Y.V. Shah and Mr. B.R. Kyada, the learned advocates for the petitioners and respondents respectively. By the order dated 25.7.1989, the petitioners were asked to supply the particulars regarding the orders of transfer and the respondent was asked to file a reply on admission and interim relief within 15 days from that date. Learned advocate for the petitioners states that he has filed the papers concerning required particulars, on 31.7.1989 with copy to the learned advocate for the respondents to which learned advocate for the respondents states that he has not received and accordingly has been unable to file his reply. The petitioners' case is that they have not been allowed the work either at Kalol from where they have been ordered to be transferred orally according to them, or at Katosan to which station ^{they} have been transferred and according to the stay order the petitioners want interim relief by way of orders obliging the respondents to give employment to the petitioners at Kalol. Learned advocate for the respondents wants more time for filing reply. On admission and ad interim relief ^{the} case be put up on the Board of 28th August, 1989. In the meantime, ad interim relief ^{allowed} in terms of the petitioners on their presenting themselves at either Kalol or Katosan, be

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allowed in terms of the respondents giving them employment at the Station where they present themselves. With this order, M.A./515/89 stands disposed of. Direct service allowed.


(P H Trivedi)
Vice Chairman

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