

Transcript (No) 9
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 37 of 1989.
~~XXXXX~~

DATE OF DECISION 22.1.1992

Patha Bhagvan & Ors. Petitioners.

Mr. P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents.

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? x
3. Whether their Lordships wish to see the fair copy of the Judgement ? x
4. Whether it needs to be circulated to other Benches of the Tribunal ? x

Patha Bhagvan & Ors.

.. Applicants

Versus

Union of India & Ors.

.. Respondents

O.A. No. 37 of 1989

Present : Shri P.H. Pathak for the applicants
Shri B.R. Kyada for the respondents.

JUDGMENT

Dated : 22.1.1992

Per : Hon'ble Shri R.C. Bhatt .. Member (J)

Seven applicants, describing themselves as casual labourers belonging to Rajkot Division, have filed this application under section 19 of the Administrative Tribunals Act, 1985 seeking five reliefs. However, it appears that on 23rd August, 1989 when this application was admitted, the learned advocate Mr. Pathak for the applicant restricted the reliefs to para 7(A) and 8(D) of the application. These two reliefs relate to declaration that the impugned order of transfer produced at Annexure A given by respondent No.3 on 10th January, 1989 transferring the applicants from Amirgadh to Bhavnagar as illegal and invalid and to quash the same and the respondents be directed to pay special cost to the applicants.

2. The learned advocate Mr. Kyada has taken the objection against seven applicants filing this application jointly in which only one order dt. 10th January, 1989 under challenge given to applicant No. 1 is annexed.

He submitted that under section 19 of the Administrative Tribunals Act, the aggrieved party has to file the application against the impugned order and he also invited my attention to Rule 4 sub rule 5(a) of the Central Administrative Tribunals (Procedure) Rules, 1987 which says that the Tribunal may permit more than one person to join together and file a single application if it is satisfied having regard to the cause of action and the nature of relief prayed for, that they have common interest in the matter. He submitted that in the instant case, the order under challenge is only addressed to applicant No. 1 and not to all the applicants and therefore, even if all the applicants have common interest, unless they have annexed the order addressed to them, this application is not maintainable by all, except applicant No. 1. He drew my attention to the order of this Bench on 1st February, 1990 where he had taken this objection and the Tribunal has passed an order that this objection can be placed in detailed hearing. It is an admitted position that the order under challenge Annexure A is an order served on applicant No. 1 alone. No other applicant has still today produced the order served on them.

under Section 19 of the Act
Therefore, they do not satisfy the condition of filing application against the impugned order and therefore, the application is not maintainable so far applicants No. 2 to 7 are concerned.

3. Even if, it is assumed that all the applicants were served with the same type of order as served on applicant No. 1 and they are sought to go to work 'temporarily' from Amirgadh in Rajkot Division to Bhavnagar

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Division as per the detailed office order dated 9th January, 1989, the question is whether the order under challenge is a transfer order. The learned advocate for the applicants submitted that the order under challenge is a transfer order, while the learned advocate for the respondents submitted that it is not a transfer order. He submitted that the order under challenge shows the subject "REQUIREMENT OF LABOURS ON BVP DIVISION (TEMPORARILY)". The body of the order dt. 10th January, 1989, says that the applicant No. 1 was directed on 10th January, 1989 to work temporarily on BVP Division under DRM(E) BVP. Necessary pass was also enclosed with that order. The learned advocate for the respondents submitted that the respondents were conscious of the legal position that the casual labourers cannot be transferred. He submitted that the applicants have also failed to establish that all of them are casual labourers. He submitted that in the reply, the respondents have contended that some of the applicants have been absorbed and are working on regular employment and therefore there was no sense in saying that the applicants were casual labourers. In any case, according to him, the impugned order was not an order of transfer. The learned advocate for the applicants submitted that though in the impugned order it is not mentioned that the applicant No. 1 is transferred, the respondents in their reply have contended that "and therefore, it is upto the petitioners whether to go to the place of transfer or not and the department is at liberty to initiate action under the rules for not obeying the order in question". It is true that this contention is taken by respondents in reply, but we have to see the text and substance of the

not only impugned order and the contention in reply by the respondents. The common office order produced by the applicants at page 12 dt. 9th January, 1989 shows that hundred (100) temporary status VOP labourers were urgently required in BVP Division and they were directed to work temporarily under DRM(E) BVP at BVP Division with immediate effect. Therefore, reading this office order which is common for 100 persons including the applicants and also reading the impugned order Annexure A, it cannot be said that it is an order of transfer of casual labourers. Once it is held that it is not a transfer order then no relief as prayed can be given to the applicants.

4. It is also important to note that this application was filed on 16th January, 1989 and the applicants have alleged in their application that they have till date not moved from Amirgadh and not carried out the order of transfer. This application was admitted on 23rd August, 1989. The learned advocate Mr. Kyada for the respondents submitted that the respondents have modified their order on 17th January, 1989 produced at Annexure R-1 which reads as under :

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"In partial modification of this office orders cited above, 80 senior most VOP labourers belonging to Rajkot Division appearing in the combined project casual labour seniority of Rajkot Division as shown in the enclosed list are now directed to work under PWI(MG) Sabarmati falling in the control of Rajkot Division instead of to work under DRM(E) BVP."

The list of 80 labourers belonging to Rajkot Division directed to PWI(MG) Sabarmati of Rajkot Division includes the name of these seven applicants. The respondents have categorically contended that the names

of the applicants are appearing in this modified order list as serial number 1, 2, 3, 7, 31, 50 and 70 and they were directed for absorption in Rajkot Division by posting them in PWI(MG) Sabarmati as per the combined seniority list of Rajkot Division. They have also contended in para 3 of the reply that the applicants No. 1, 4 and 5 joined at Rajkot Division and were working in PWI(MG) Sabarmati whereas the applicants No. 2, 3 and 6 have been continued on this unit as they were not accepted by the Division at present. So far as applicant No. 7 is concerned, the respondents have contended that he had filed S.C.A./1202/89 in the High Court of Gujarat where ad interim order was granted in favour of that applicant and hence for that reason the applicant is still working with the department. There is no rejoinder filed to this reply nor any explanation is given about the modified order Annexure R-1 dt. 17th January, 1989. Learned advocate Mr. Pathak submitted that this modified order was not served on the applicants. In absence of the rejoinder to the specific contention of the respondents of the modified order, the applicants' version that they have not been served with this order cannot sustain. The modified order Annexure R-1 shows that the applicants are, as per that order, directed to work under same division and therefore, the impugned order in any case would not survive. As observed above, the modified order was passed on 17th January, 1989 while this application was admitted on 23rd August, 1989 that means about seven months after that modified order. The learned

advocate Mr. Pathak for the applicant submitted that the applicants were serving at the same place where they were serving on the date of filing this application due to interim order passed by the High Court of Gujarat. The respondents have contended in their reply that the S.C.A./1202/89 was filed by the applicant No. 7 and he was allowed to work in the same station as per that order. It is not, therefore, established that all the applicants were working on the same station by virtue of the order of the High Court.

5. In the instant case, having heard the learned advocates and perusing the record, it is clear that the impugned order Annexure A is not an order of transfer. Moreover, that impugned order is already modified by Annexure R-1 dated 17th January, 1989 for 80 labourers including the applicants and they were required to work in the same Division under PWI (MG) Sabarmati, therefore, the initial order does not survive. No rejoinder was filed to the reply by the applicants.

6. Under these circumstances, there is no case for the applicants to get the relief prayed for, hence following order.

O R D E R

Application is dismissed. No order as to costs.

R C Bhatt

(R C Bhatt)
Member (J)