

10

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 419/89
F.A.NO.

DATE OF DECISION 27-3-98

Fatesinh Balvantsinh & Others **Petitioner**

Mr. P.H. Pathak **Advocate for the Petitioner [s]**
Versus

Union of India and Others **Respondent**

Mr. N.S. Shevde **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

ND

Pr

11

1. Fatesinh Balvantsinh
2. Mansukh Makandas
3. Kuka Hari

at Post Bhatia

Taluka Kalyanpura

Dist: Jamnagar

... Applicants

(Advocate: Mr. P.H. Pathak)

VERSUS

1. Union of India
Notice to be served through
The General Manager &
Western Railway,
Churchgate, Bombay
2. Divisional Railway Manager (WR)
Kothi Compound
Rajkot
3. Deputy Chief Engineer (WR)
Railway Station
Ahmedabad

... Respondents

(Advocate: Mr. N.S. Shevde)

JUDGMENT

O.A./419/89

Dated: 27-3-98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicants have filed the above OA under Section 19 of the Administrative Tribunals Act, 1985 claiming following reliefs:-

- (A) That your lordships be pleased to declare the inaction on the part of the respondent No.2 nonallowing the applicants to resume their duties and/or nongiving the posting orders to the applicants as arbitrary, illegal

Pr

Contd...3

and inoperative in law.

- (B) Be pleased to direct the respondents to regularise the services of the applicants and to give them benefits of temporary status etc. as per the direction of the Hon'ble Supreme Court in Indrapal case.
- (C) Be pleased to declare that the petitioners are entitled to get the transfer allowance and joining time etc. for their each transfer as mentioned in the petition and be pleased to direct the respondents to pay the arrears of the same to the applicants with 12% interest.

The case of the applicant is that they were working as Casual labours under the Respondents from the year 1984 or so and the main grievance of the applicants is that they were posted from place to place without offering regular employment and wages including transfer allowance under the respondents. The applicants have also submitted in detail the frequent orders of transfer from place to place under different railway divisions and stated that even after a number of transfer from time to time, the applicants were not paid any transfer allowance. The applicants therefore challenged their frequent transfer without offering transfer allowance.

2. The respondents in their reply had stated that the applicants being casual labourers were posted to different places as per exigencies of work in the railways. Even though the casual labourers were ordinarily not liable to transfer, in accordance with the directions given by the Supreme Court in the case of Indrapal Yadav vs. UOI, the respondents were under an obligation to shift such casual labour from one place where the work ceases to exist, to another place where the

pn

work is available. The applicants being engaged by the Construction organisation of the Western Railways, they have worked in all the eight divisions of the Western Railway and the applicants have to be shifted from place to place keeping in view the availability of work at different places. The respondents denied that the applicants were given any posting orders but they were only directed to work at different places from time to time where the work was available. The respondents therefore denied the liability to pay any transfer allowance to the applicants, who are only casual labourers.

3. Heard Shri Pathak, counsel for the applicant and Shri Shevde, counsel for the respondents. At the hearing of the case, Shri Pathak stated that the applicants have since been regularised and he confined his arguments only to the grant of transfer allowance. He referred to certain instructions issued by the respondents as contained in the Railway Establishment Manual. The relevant instructions reads as follows:

// It is admissible to all classes of rly. servants in all eventualities involving transfer (e.g. Promotion, demotion or simple transfer) except transfer on employee's own request provided:

- (i) The transfer is not within the same Municipal area and
- (ii) it involves a change of residence. 'Change of residence' condition is fulfilled if in the case of transfer to a station more than 20 km from the old station the officer makes some residential arrangements at the new station even if he does not shift

his family to the new station even Payment of Transfer allowance whould not be linked with vacation of quarters at old station.

(F(E) 1-70/AL-28/6 dt.4-12-80, NR7916 Pc iii/78
TA/1 dt. 20-4-79 NR 7276) //

4. Mr. Shevde, counsel for the respondents produced a copy of the Railway Board's letter dated 16.9.92 addressed to the General Managers of the Railways with regard to payment of transfer allowande. The relevant portion of the instructions are as follows:-

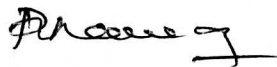
- (i) Casual Labour are not ordinarily liable to transfer. However in accordance with the directions given by Supreme Court in the case of Indrapal Yadav vs. UOI, the seniority of the project Casual labour is to be maintained division-wise/Category-wise for purpose of engagement/discharge/re-engagement. This direction thus casts an obligation on the railways to shift such casual labour from one place (where the work ceases to exist to another place (where the work is available within the Division. This shift from one place to another within the divisional seniority unit is now permissible in accordance with Para 2001(i) of IREM revised edition.
- (ii) Casual labour are not entitled to transfer and packing allowance as the same is admissible only to regular staff in the event of their transfer.
- (iii) wherever Casual labour is thus shifted to facilitate them to move from one location to another they may be provided with free travel facility by way of a


Second Class pass for self and family to the place of posting and daily allowance for the period of journey. They are not entitled to any daily allowance for the periods spent at the new place of posting as their headquarters stand automatically shifted from old place to the new place of working nor to any other benefits of Travelling Allowance.

5. We have carefully considered the submissions made by the counsel. Rule 1642 of the Railway Establishment Code ~~states~~ ^{governs} the grant of transfer allowance and the same reads as follows:-

"Travelling allowance shall not be drawn under the following rules by railway servant on transfer from one station to another unless he is transferred in public interest and is entitled to pay during the period occupied by the journey."

6. In terms of Rule 1642 of the Establishment Code, a railway servant is not entitled to transfer allowance unless he is transferred in public interest. Admittedly, the respondents have issued orders for shifting the applicants from one place to another on the ground that work was available to them so that they may be gainfully engaged. It is in these circumstances, the applicants have to be shifted from place to place where work is available. In the circumstances the transfer of the applicants may not be regarded as public interest. The requirement of Rule 1642 of the Code has not been fulfilled in this case. The application therefore fails and is dismissed accordingly. No costs.


(P.C. Kannan)
Member (J)


27/3/99
(V. Ramakrishnan)
Vice Chairman

151

DATE	OFFICE REPORT	ORDER
04.01.99	<p>As per directions given on High Court's letter, by Registrar/D.R.(5), this matter was placed before Hon'ble J.C.</p> <p>12.1.99</p> <p>only O.A. is to be placed for final hearing.</p>	<p>We find that R.A/27/98 IN O.A/419/89 had already been disposed of on 27.07.98. It is not clear as to why the registry has placed it on the board today.</p> <p>However, we find that O.A/419/89 has been set aside by the Hon'ble High Court and the matter has been remanded to the Tribunal to decide the O.A after considering the provisions of rule 1642 as a whole. This O.A which has been remanded to the Tribunal may be fixed before this bench on 18th inst. Mr. Pathak and Mr. Shevde who are present in the court are informed of the same date.</p> <p>Adjourned to 18.01.99.</p> <p><i>DN</i> (P.C. Kannan) Member (J)</p> <p><i>VR</i> (V. Ramakrishnan) Vice Chairman</p> <p>mb</p>

18.01.99

Date

Office Report

We have heard for some time and also gone through the directions of the High Court dated 13.10.98 which was transmitted by the High Court registry by a letter dated 17.11.98. The High Court had remanded the matter with a direction to decide the O.A after considering the provisions of Rule 1642 of the Railway Establishment Code as a whole instead of the sub-rule (1) of Rule 1642. We would like to hear submissions of Mr. Pathak for the applicant and Mr. Shevde for the Railway Administration on this point. Mr. Shevde prays for time. Treat it as part-heard. Adjourned to 03.02.99.

DN
(P.C. Kannan)
Member (J)

VR
(V. Ramakrishnan)
Vice Chairman

mb

17

88/11/1988

DATE	OFFICE REPORT	O R D E R
3.2.99	<p>Mr. Shevde is absent today.</p> <p>Adjourned to 15.2.99.</p> <p><i>PC</i></p> <p>(P.C. Kannan)</p> <p>Member (J)</p>	<p>(V. Ramakrishnan)</p> <p>Vice Chairman</p>

DATE	OFFICE REPORT	ORDER
15.2.99	Copy collected by M.S.S. on 19-2-99 P.S. 413	<p>We have heard Mr. Pathak. He says that under Rule 1642 of IREM a transfer shall be taken to be in the public interest unless it is certified otherwise giving reasons with a copy to the Accounts Officer. He says that no such reasons were given in the case and the present transfer should be treated as in the public interest. He also contends that the Railway Board circular dated 16.4.92 which debars payment of transfer and packing allowance to casual labourers will not apply to the applicant's transfer in 1989 and when the rules required reasons to be given and such reasons were not given at the time of transfer, the same can not be made good in the reply statement.</p> <p>Mr. Shevde prays for time to make submission. This is a very old matter, which has been remanded back from the High Court.</p> <p>Adjourned to 5.3.1999.</p> <p>A copy of the order may be given to Mr. Shevde.</p> <p><i>PM</i></p> <p>(P.C. Kannan) Member (J)</p> <p><i>OK</i></p> <p>(V. Ramakrishnan) Vice Chairman</p>
5.3.99		<p>vtc.</p> <p>Adjourned to 19.3.1999.</p> <p><i>PM</i></p> <p>(P.C. Kannan) Member (J)</p> <p><i>OK</i></p> <p>(V. Ramakrishnan) Vice Chairman</p> <p>vtc.</p>

Date

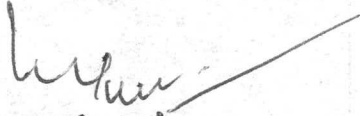

Office Report

ORDER

15.10.97

Seen sick note filed by Mr. Pathak.

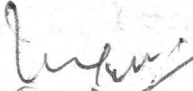

Adjourned to 20.11.97.


(T.N. Bhat)
Member (J)
(V. Ramakrishnan)
Vice Chairman

SNS*

20.11.97

Heard Mr. Pathak, counsel for the
applicant. Mr. Kyada for the respondents
absent. Judgement reserved.


(T.N. BHAT)
Member (J)
(V. RAMAKRISHNAN)
Vice Chairman

hki

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O.A. 419/89

Office Report

ORDER

19.3.97

Place before the Division Bench on 7.5.97.

(V.Ramakrishnan)

Vice Chairman

ssh*

7x58

7.5.97

Seen sick note filed by Mr.Pathak. Adjourned to 7.7.97.

(T.N.Bhat)

Member (J)

(V.Ramakrishnan)

Vice Chairman

ssh*

7.7.97

None present for the parties. Place before the Division Bench on 3.9.97.

(V.Ramakrishnan)

Vice Chairman

ssh*

3.9.97

Adjourned to 15.10.97.

(T.N.Bhat)
Member (J)

(V.Ramakrishnan)
Vice Chairman

vtc.

DATE	OFFICE REPORT	ORDER
19.3.99		<p>We have heard Mr. Pathak and Mr. Shevde at length and have gone through the relevant records. <u>Rule 1642 of IREC deals with admissibility admissibility of transfer travelling allowance/ facility in respect of Railway servants. The definition of Railway servant in the Code excludes casual labourer. Para 2005 of IREM (Vol.II) provides that casual labourers with temporary status are entitled for rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of the Manual (This is now Chapter XV of IREM 1989 Edition) ⁱⁿ for this Chapter, a temporary railway servant has been defined to exclude casual labourer including casual labourers with temporary status (Para 1501(1)). However by virtue of para 2005 the ^{of} benefits as available to a temporary railway servant will be admissible to a casual labourer with temporary status. Para 1504 says that in respect of compensatory allowance a temporary servant shall be entitled to the same scale as may be admissible to a permanent railway servant placed in similar circumstances. Compensatory allowance as defined, specifically includes travelling allowance.</u></p> <p>2. In the Code Chapter 16 deals with Travelling Allowance Rules and Section IX of this Code refers to Transfer Travelling Allowance and this Section contains Rule, 1642 & 1643.</p> <p>..... 2/-</p>

04/14/98

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OFFICE REPORT ORDER

In this section, Rule 1643 - VII deals with admissibility of transfer grant and packing allowance.

3. From the above narration, it would be seen that casual labourers with temporary status will also come within the provision of Rule 1642 & 1643 unless the operation is excluded by an order. While there is an order which denies admissibility of transfer and packing allowance, the same has been issued by the Railway Administration on 16.4.1992.

4. Both Mr. Pathak and Mr. Shevde request for time to make further submissions.

5. Adjourned to 12.4.1999.

6. A copy of this order may be given to both counsel.

Copy of order given to both counsel on 5.4.99
9.4.99

P.C. Kannan
(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
(V. Ramakrishnan)
Vice Chairman

vtc.

At the request of Mr. Pathak adjourned to 16.4.99.

P.C. Kannan
(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
(V. Ramakrishnan)
Vice Chairman

nsh

Mr. Pathak not present. Adjourned to 10.5.99.

P.C. Kannan
(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
(V. Ramakrishnan)
Vice Chairman.

nsh

16.4.99

12.4.99

23

O.A.419/89

10.5.99

At the request of both sides
adjourned to 14.6.99.

Ph
(P.C. Kannan)
Member (J)

W
(V. Ramakrishnan)
Vice Chairman

nsh

14.6.99

part heard matter. place before appropriate
Bench on 28.6.1999.

W
(V. Ramakrishnan)
Vice Chairman

vtc.

28.06.99

Adjourned to 02.07.99.

Ph
(P.C. Kannan)
Member (J)

W
(V. Ramakrishnan)
Vice Chairman

mb

02.07.99

This was heard for quite some time on
28.06.99, but at the request of Mr. Shevde,
it was adjourned to today. Neither Mr. Pathak,
nor Mr. Shevde ~~was~~ present today and as it is
very old matter, and we have heard the counsel
at length and as Mr. Shevde has not appeared
today, the O.A reserved for orders.

Ph
(P.C. Kannan)
Member (J)

W
(V. Ramakrishnan)
Vice Chairman

mb

(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
Vice Chairman

nsh

10.4.99

1.5.99

(V. Ramakrishnan)
Vice Chairman

(P.C. Kannan)
Member (J)

nsh

(17)
15/12/98

Submitted Hon'ble Vice Chairman &
Hon'ble Mr. V. Radhakrishnan, Member (A)
Hon'ble Mr. P.C. Kannan, Member (J)
~~Hon'ble Mr. Laxman Jha, Member (J)~~

Certified Copy of order dtd 17.11.98 in
CA/Spl. CA No. 7291 & — of 1998
passed by the Supreme Court/High Court against the
judgement/order passed by this Tribunal in OA/419/98 '17
is placed for perused please. RA/27/98

15/12

SO-CD
Rajiv DK (J)

Hon'ble Vice Chairman
Hon'ble Mr. V. Radhakrishnan, Member (A)
Hon'ble Mr. P.C. Kannan, Member (J)
~~Hon'ble Mr. Laxman Jha, Member (J)~~

Assn

A 3/1/99
As the Registrar
has already discussed
this matter with the
Hon'ble V.C. and
and he has told him
to place before
V.C. as per P.C. Kannan
on fresh name
Bench hence
circulation is
is not necessary
S. 2
15/12/98

URGENT

24

gohil

Decree Despatch No.
Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 7291 of 98
(Under Article(s) 14,16,226,227 of the Constitution of India)

1. FATESINH BALVANTSINH & ORS.
Vs
1. UNION OF INDIA & ORS.

Petitioners

Respondents

To

1. UNION OF INDIA

2. DIVISIONAL RAILWAY MANAGER-WR

THRO' GENERAL MANAGER
WESTERN RAILWAY
CHURCH GATE, BOMBAY.

KOTHI COMPOUND
RAJKOT.

3. DY CHIEF ENGINEER (WR)
RAILWAY STATION
AHMEDABAD.

4. THE CENTRAL ADMINISTRATIVE
TRIBUNAL, STADIUM ROAD,
USMANPURA, A. BAD. (REF. REVIEW
APPLN. NO. 27 OF 1998).

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 04/09/98 praying to grant the prayers and etc....

And whereas upon the Court ordered "Rule" to issue on 13/10/98

And Whereas Upon hearing
MR PH PATHAK for the Petitioner no. 1-3
NOTICE UNSERVED for the Respondent no. 1
MR JC SHETH for the Respondent no. 2
NOTICE SERVED BY DS for the Respondent no. 3
Court passed the following order :-

CORAM : C.K. THAKKER AND A.M. KAPADIA, JJ.
DATE : 13.10.98

Rule. Mr. C.P. Jadav for Mr. J.C. Sheth.....
.....from the date of receipt of the writ.

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

D.R.(J) to
place the
matter before
the bench at earliest
convenient

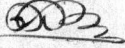
14/12/98

CO. (C) before
Place before
the bench consisting
of three i.e. C & J & one more
or person on
22/12/98 circulation
not necessary
14/12/98

Original Return
15/12/98

Witness K.G.BALAKRISHNAN, Esquire Chief Justice at Ahmedabad
aforesaid this 13th day of Oct, 1998.

By the Court


For Deputy Registrar
This 12/15 day of Nov 1998

Note : This writ should be returned
duly certified within 2 weeks.
(610) 121198



सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FATESINH BALVANTSINH
Versus
UNION OF INDIA

Appearance:

MR PH PATHAK for Petitioners
MR CP JADAV FOR MR JC SHETH for Respondents

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA
Date of decision: 13/10/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Rule. Mr. C.P. Jadav for Mr. J.C. Sheth appears and waives service of rule. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed for an appropriate writ, direction or order quashing and setting aside an order passed by Central Administrative Tribunal, Ahmedabad in OA No. 419 of 1989 and also in Review Application No.27 of 1998, being illegal, arbitrary and unlawful and by declaring

(27)

that the petitioners are entitled to travelling allowance and by directing respondent authorities to pay the same with 18% interest.

The case of petitioners was that they were employees of Railway Administration. They were transferred to various places. According to them, said transfer was not at the request of petitioners and hence they were entitled to transfer allowance. For this purpose, reliance was placed on Rule 1642 of the Indian Railway Establishment Code.

The Tribunal, no doubt, considered the provisions of Rule 1642. But the grievance of the petitioners is that only sub-rule (1) of Rule 1642 was considered by the Tribunal which states that travelling allowance shall not be drawn if the transfer is at the request of the employee. It was submitted that the transfer was not made at the request of the petitioners and in none of the orders it was mentioned that transfer was at the request of the employees. Hence, not sub-rule (1) but sub-rule (2) of Rule 1642 would apply. The Tribunal, contended the learned counsel for petitioners, did not consider the provisions of sub-rule (2) and decided the matter considering sub-rule (1) only. Hence, a Review Application was filed but it also met with the same fate. The Tribunal rejected the same observing that no error of law apparent on the face of record can be said to have been committed.

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In the facts and circumstances of the case, in our opinion, the point requires consideration. The petition is, therefore, allowed by quashing and setting aside the orders passed by the Tribunal in OA No.419 of 1989 and Review Application No.27 of 1998 and remanding the matter to the Tribunal to decide the same after considering the provisions of Rule 1642 as a whole. The petition is accordingly allowed to the above extent. In the facts and circumstances, no order as to costs. //

Since the question pertains to travelling allowance only, the Tribunal is directed to decide the same as expeditiously as possible, preferably within three months from the date of receipt of the writ.

(karan)

TRUE COPY

To the
High
Ahmedabad
Judge,
Gujarat.

BY ORDER OF THE COURT

DEPUTY REGISTRAR

TRUE COPY

DEPUTY REGISTRAR
HIGH COURT OF GUJARAT
AHMEDABAD.

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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 419/1989

T.A.NO.

DATE OF DECISION 18/9/99

Mr. Fatesing Balvantsing & others Petitioner

Mr. P.H.Pathak Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondent

Mr. N.S. Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. Mr. P.C. Kannan : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

PM

...2...

1. Fatesinh Balvantsinh
 2. Mansukh Makandas
 3. Kuka Hari
- At Post Bhatia
Taluka Kalyanpura
Dist : Jamnagar.

--- Applicant ---

(Advocate : Mr. P.H. Pathak)

Versus

1. Union of India
Notice to be served through
The General Manager,
W. Rly., Churchgate,
Mumbai.
2. Divisional Railway Manager (WR)
Koti Compound,
Rajkot.3.
3. Deputy Chief Engineer (WR)
Railway Station,
Ahmedabad.

--- Respondents ---

(Advocate : Mr. N.S. Shevde)

JUDGEMENT
O.A 419 of 1989

Date : 18/8/99

Per Hon'ble Shri. P.C. Kannan : Member (J).



This O.A which was disposed of by our judgement dated 27.07.98, was remanded by the order of the Hon'ble High Court dated 13.10.98 with a view to decide it after considering the provisions of Rule-1642 as a whole.

2. The observation of the High Court reads as follows :-

“ The case of petitioners was that they were employees of Railway Administration. They were transferred to various places. According to them, said transfer was not at the request of petitioners and hence they were entitled to transfer allowance. For this purpose, reliance was placed on Rule-1642 of the Indian Railway Establishment Code.

The Tribunal, no doubt, considered the provisions of Rule-1642. But the grievance of the petitioners is that only sub-rule (1) of Rule-1642 was considered by the Tribunal which states that travelling allowance shall not be drawn if the transfer is at the request of the employee. It was submitted that the transfer was not made at the request of the petitioners and in none of the orders it was mentioned that transfer was at the request of the employees. Hence, not sub-rule (1) but sub-rule (2) of Rule-1642 would apply. The Tribunal, contended the learned counsel for petitioners, did not consider the provisions of sub-rule (2) and decided the matter considering sub-rule (1) only. Hence, a Review Application was filed but it also met with the same fate. The Tribunal rejected the same observing that no error of law apparent on the face of record can be said to have been committed.

In the facts and circumstances of the case, in our opinion, the point requires consideration. The petition is, therefore, allowed by quashing and setting aside the orders passed by the Tribunal in O.A No. 419 of 1989 and Review Application No. 27 of 1998 and remanding the

AN

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matter to the Tribunal to decide the same after considering the provisions of the Rule-1642 as a whole. The petition is accordingly allowed to the above extent. In the facts and circumstances, no order as to costs."

3. In the light of the above directions of the High Court, the matter was heard on 04.01.99, 18.01.99, 15.02.99, 19.03.99 and 02.07.99.

4. The applicants have filed the above O.A under Section 19 of the Administrative Tribunals Act and claimed the following reliefs :-

- (A) That your Lordship be pleased to declare the inaction on the part of the respondent No.2 non-allowing the applicants to resume their duties and / or non-giving the posting orders to the applicants as arbitrary, illegal and inoperative in law.
- (B) Be pleased to direct the respondents to regularise the services of the applicants and to give them benefits of temporary status etc., as per the directions of the Hon'ble Supreme Court in Indrapal's case.
- (C) Be pleased to declare that the petitioners are entitled to get the transfer allowance and joining time etc., for their transfer as mentioned in the petition and be pleased to direct the respondents to pay the arrears of the same to the applicants with 12% interest."

5. The case of the applicant is that they were working as casual labours under the respondents as Artisan staff over five years. The grievance of

Dr

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the applicants is on the unfair approach towards them and that they were tossed from place to place without offering them the wages and allowances payable under the provisions of Railway Establishment Manual. That within one month the applicants were shunted from Bhavnagar to Jamnagar and Rajkot to Ahmedabad and Bhavnagar about more than six times. They were also not paid their salary for the said period.

6. The applicants no. 1 and 2 initially joined at Jamnagar and the applicant no. 3 joined at Viramgam. In October '86, the applicants 1 and 2 were transferred from Jamnagar to Ajmer. At that time, the applicants 1 and 2 were informed that their transfer to Ajmer was only for a temporary period and after a short period, they will be repatriated to their parent division, i.e. Rajkot division. However, the applicants were continued in the Ajmer division upto 11.01.1989. By order dated 11.01.1999 (Annexure A), the applicants were directed to report to the Divisional Engineer, Bhavnagar. The Divisional Engineer vide letter dated 17.01.1989 (Annexure A-1) transferred the applicants 1 and 2 to the Assistant Engineer, Junagadh (Annexure A-1). The applicants 1 and 2 continued to work under Assistant Engineer, Junagadh upto 06.09.1989 and thereafter they were transferred to respondent no.2 (KRM, Rajkot) (Annexure A-2). The DRM Rajkot in turn

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d. The applicants no. 1 and 2 initially joined at Jamnagar and the applicant no. 3 joined at Vitaran. In October 86, the applicants 1 and 2 were transferred from Jamnagar to Ajmer. At that time, the applicants 1 and 2 were informed that their transfer to Ajmer was only for a temporary period and after a short period, they will be retransferred to their parent division, i.e. Rajkot division. However, the applicants were continued in the Ajmer division upto 11.01.1989. By order dated 11.01.1989 (Annexure A), the applicants were directed to report to the Divisional Engineer, Bhavnagar. The Divisional Engineer vide letter dated 17.01.1989 (Annexure A-1) transferred the applicants 1 and 2 to the Assistant Engineer, Junagadh (Annexure A-1). The applicants 1 and 2 continued to work under Assistant Engineer, Junagadh upto 06.09.1989 and thereafter they were transferred to respondent no. 2 (KRM, Rajkot) (Annexure A-2). The DRM Rajkot in turn

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directed the applicants to work under DRM, Bhavnagar on the ground that they cannot be accommodated. Thereafter DRM, Bhavnagar by letter dated 11.09.1989 (Annexure A-IV) transferred the applicants to the XEN, Jamnagar for their engagement. Thus the applicants were tossed up. In the facts and circumstances, the applicants filed the above O.A seeking a direction that respondent no.2 should allow the applicants to resume duty and also give them the benefit of temporary status regularisation etc., as per the scheme. The applicants also prayed for the grant of transfer allowances for each transfer as mentioned in the O.A.

7. The respondents in their reply stated that the applicants being casual labourers, have to be utilised as per the exigencies of services in the Railways. The applicants were directed to work wherever the services are required and therefore, it cannot be said that they were tossed from place to place. The casual labourers, are not entitled to ask any posting order and they have to utilise all available work and therefore, the question of their posting to a particular place does not arise. The respondents further stated that the applicants along with thousands of other casual labourers were engaged by the Construction Organisation which is a separate unit. The Construction Division of W. Rly., works in all the eight divisions of the W.

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Rly., and therefore, the applicants cannot claim that they were from Rajkot division. In the facts and circumstances, the applicants were shifted from place to place where work is available. So far as the seniority of the applicant is concerned, the same were maintained as per the rules. The Railway authorities on completion of the V.O.P. project for which the applicants were originally engaged, had decided not to engage any fresh casual labourers and to fill-up the class-IV vacancies from the existing and serving casual labourers including project casual labours. Since the Construction unit was treated as a separate unit from the divisional set-up, it was decided that those casual labourers engaged by the Construction unit within the geographical jurisdiction of the division, will be absorbed in those divisions. In the facts and circumstances, it was stated that the project casual labourers are being engaged against available vacancies and were regularised in terms of the scheme formulated for the purpose.

8. We have heard Mr Pathak, counsel, for the applicant and Shri. Shevde, counsel for the respondents.

9. Mr. Pathak, counsel for the applicants submitted in terms of the Rule-1642, all transfer should be taken to be in public interest unless it is certified, otherwise, giving reasons with a copy to the Accounts Officer. In the case,

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Shvede, counsel for the respondents.

9. Mr. Patrak, counsel for the applicants submitted in terms of the Rule-

1042, all transfer should be taken to be in public interest unless it is certified, otherwise, giving reasons with a copy to the Accounts Officer. In the case,

he submits that no reasons were given, and therefore, the present transfers should be treated as transfer in the public interest. As far as the Railway Board's circular dated 16.04.92 is concerned, he submits that this circular would not apply to the applicants' transfer which was made in 1989. He further submitted that when the rules required reasons to be given and such reasons were not given at the time of transfer, the same cannot be made good in the reply statement. In the facts and circumstances, he submits that the applicants are entitled to claim transfer allowance in terms of Rule-1642. Shri. Shevde, counsel for the respondents, produced a copy of the railway Board's letter dated 16.09.1992 addressed to the General Manager of the Railways with regard to payment of transfer allowance to casual labours. The relevant portion of the letter reads as follows :-

"3. Keeping in view the provisions of para-2001 of IREM of Vol.II (revised edition) 1990. Ministry of Railways desire to clarify the position in regard to payment of TA/DA to casual labour, as under :-

(1) Casual Labour are not ordinarily liable to transfer. However, in accordance with the directions given by Supreme Court in the case of Inderpal Yadav Vs. U.O.I., the seniority of the Project Casual Labour is to be maintained division-wise/Category-wise for purpose of engagement /discharge/re-engagement. This direction thus casts an obligations on the Railways to shift such

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casual labours from one place (where the work ceases to exist) to another place (where the work is available within the Division). This shifting from one place to another within the divisional seniority unit is now permissible in accordance with Para-2001 (I) of IREM revised edition.

(2) Casual labours are not entitled to transfer and packing allowance as the same is admissible only to regular staff in the event of their transfer.

(3) Wherever Casual labour is thus shifted to facilitate them to move from one location to another they may be provided with free travel facility by way of a Second class pass for self and family to the place of posting and daily allowance for the periods of journey. They are not entitled to any daily allowance for the periods spent at the new place of posting as their headquarters stand automatically shifted from old place to the new place of working, not to any other benefits of Travelling Allowance.

(4) This issues with the concurrence of Finance Directorate of the Ministry of Railways."

10. In the light of the above clarification of the Railway Board, which dealt with the provisions of Chapter-20 & 25 of the IREM, Shri. Shevde submitted that casual labour cannot be regarded as a regular Railway employee. He submitted that the facts of the present case clearly show that in terms of the directions of the Hon'ble Supreme Court in the case of Inderpal Yadav Vs. U.O.I., the Railways are bound to shift the

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casual labour from one place to another so that they may be engaged wherever work is available, eventhough the shifting of casual labour from one place to another are not normally permitted under Para-2001 of IREM. He also contended that the Rule-1642 of the Establishment Code provides that transferring allowance shall be drawn only when a regularly appointed railway servant is transferred in public interest. In any event, he submitted that the present case clearly show that the applicants were shifted from one place to another place where the work ceases to exist to another place where the work may be available and therefore, there was no public interest involved and that the applicants are not entitled to any Transfer Allowance. He further submitted that even though the Railway Board's letter dated 16.04.92 and would have prospective effect only and may not apply in the case of applicants, as the same was issued in April'92, he urged that we have to keep in view the background in which the letter was issued and also the factual position with regard to the need for shifting of the casual labours from one place to another so that they may not be discharged on account of want of work in the place in which they were earlier engaged.

11. We have carefully considered the submissions of both the counsel and examined the pleadings. Rule 1642 of IREM deals with admissibility of

casual labour from one place to another so that they may be engaged wherever work is available, even though the shifting of casual labour from one place to another are not normally permitted under Para-2001 of IRFM. He also contended that the Rule-1642 of the Establishment Code provides that transferring allowance shall be drawn only when a regularly appointed railway servant is transferred in public interest. In any event, he submitted that the present case clearly show that the applicants were shifted from one place to another place where the work ceases to exist to another place where the work may be available and therefore, there was no public interest involved and that the applicants are not entitled to any Transfer Allowance. He further submitted that even though the Railway Board's letter dated 16.04.92 and would have prospective effect only and may not apply in the case of applicants, as the same was issued in April'92, he urged that we have to keep in view the background in which the letter was issued and also the factual position with regard to the need for shifting of the casual labour from one place to another so that they may not be discharged on account of want of work in the place in which they were earlier engaged.

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transfer travelling allowance / facility in respect of Railway servants. The definition of Railway servant in the Code excludes casual labourer. Para-2005 of IREM (Vol . II) provides that casual labourers with temporary status are entitled for rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of the Manual (This is now Chapter XV of IREM 1989 Edition). In this Chapter, a temporary railway servant has been defined to exclude casual labourer including casual labourers with temporary status (Para-1501 (1). However, by virtue of para-2005, the benefits as available to a temporary railway servant will be admissible to a casual labourer with temporary status. Para-1504 says that in respect of compensatory allowance a temporary servant shall be entitled to the same scale as may be admissible to a permanent railway servant placed in similar circumstances. Compensatory allowance as defined specifically includes travelling allowance.

In the Code Chapter – 16 deals with Travelling Allowance Rules and Section-IX of this Code refers to Transfer Travelling Allowance and this Section contains Rules, 1642 and 1643. In this Section, Rule-1643 – VII deals with admissibility of transfer grant and packing allowance.

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transfer travelling allowance facility in respect of Railway servants. The definition of Railway servant in the Code excludes casual labourer. Para-2002 of IREM (Vol. II) provides that casual labourers with temporary status are entitled for rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of the Manual (This is now Chapter XV of IREM 1989 Edition). In this Chapter, a temporary railway servant has been defined to exclude casual labourer including casual labourers with temporary status (Para-1501 (1)). However, by virtue of para-2002, the benefits as available to a temporary railway servant will be admissible to a casual labourer with temporary status. Para-1504 says that in respect of compensatory allowance a temporary servant shall be entitled to the same scale as may be admissible to a permanent railway servant placed in similar circumstances. Compensatory allowance as defined specifically includes travelling allowance.

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From the above narration, it would be seen that casual labourers with temporary status will also come within the provisions of Rule-1642 and 1643 unless the operation is excluded by an order. While there is an order which denies admissibility of transfer and packing allowance, the same has been issued by the Railway Administration on 16.04.1992. This order dated 16.04.1992 has only prospective effect only and may not be applicable to the present O.A.

Rule-1642 of the Code reads as follows :-

" 1642. (1) Travelling allowance shall not be drawn under the following rules by railway servant on transfer from one station to another unless he is transferred in public interest and is entitled to pay during the period occupied by the journey. A transfer at his own request shall not be treated as a transfer in public interest unless the authority sanctioning the transfer for special reasons, which should be recorded, otherwise directs. (emphasis supplied)

(2) When a railway servant is transferred otherwise than in public interest, a copy of the order of transfer shall be sent to the Accounts Officer who will be his disbursing officer after such transfer with an endorsement stating the reasons for the transfer. In the absence of such endorsement, the Accounts Officer shall assume that the transfer is in public interest.

NOTE : - In the case of non-gazetted railway servants, a certificate from the Head of the office may be accepted in lieu of the orders prescribed in this sub-rule.

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NOTE : - In the case of non-gazetted railway servants, a certificate from the Head of the office may be accepted in lieu of the orders prescribed in this sub-rule.

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- (3) The railway servant in transit from one post to another, ranks in the grade or class in which his tenure of the lower of the two posts would place him.

NOTE :- In partial relaxation of the above rule, when a subordinate railway servant travels to another station to officiate in a post in the superior or lower gazetted service or on revision after officiating in such a post, he may, at the discretion of the General Manager be granted transfer passes (for himself as well as for his family, dependant relatives if travelling with him and kit) of the class admissible in the higher post.

- (4) A railway servant shall not be entitled to any travelling allowance, if no change of residence is involved on his transfer."

Sub-rule (1) of Rule-1642 clearly mandates that the transfer allowance shall not be drawn when the railway servant is not transferred in public interest and also not entitled to draw pay during period occupied by the journey. Sub-rule (2) provides that in case the transfer was not in public interest, a copy of the order shall be sent to the Accounts Officer. In the absence of such endorsement, it is also provided under sub-rule (2) that "Accounts officer shall assume that the transfer is in public interest."

12. The question for consideration is whether a transfer can be conclusively presumed to be in public interest on the ground that there was no endorsement in the order of transfer. Mr. Pathak, counsel for the applicant contends that when no reasons were given for the transfer and the

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order not endorsed to the Accounts Officer concerned it should be conclusively assumed that the transfer was in public interest. In our opinion, sub-rule (2) only provides for certain matters of procedure for the purpose of determining the question whether the transfer was in public interest or not. The reading of sub-rule (1) and (2) together would clearly indicate that transfer allowance shall not be granted when the transfer was not in public interest and not entitled to pay during the period occupied by the journey. In terms of sub-rule (2), where the transfer was not in public interest, a copy should be marked to the Accounts Officer and in its absence, it can be assumed that the transfer was in public interest. In our considered view, sub-rule (1) of Rule - 1642 is a substantive provision and the rule of assumption under sub-rule (2) is a rebuttable assumption. If the conditions prescribed under sub-rule (1) is not satisfied, a railway servant is not entitled to claim transfer allowance even though such transfer order is not endorsed to the Accounts Officer.

13. In the present case, the applicants have not been paid salary during the period when they were tossed up between different places including the period occupied by journey. Perusal of the correspondence (Annexure A-1 to A-11 of the O.A) show that the applicants were directed to report to

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various divisions for the purpose of their engagement as a casual labour.

For example; the letter dated 17.01.1989 from Divisional Office, Bhavanagar to the AEN, - BTD-JND (Anexure A-I) reads as follows:-

"Sub :- Absorption of surplus VOP Casual Labourers - Engg., Dept., :-

Ref :- PWI (C) FL's Letter no. PWI (C) FL/C/Sol/1 dtd 18.01.1989 and dy. CE/AII's letter no. AII/E/615/1 dtd. 11.01.1989 -

.....

The following labours directed to you to utilising them on CTR work. Sr. No.1 to be for Jalia Road for PWI/BNH AEN/BTD Sr. No.40 to 51 for PWI/JND AEN/JND.

AEN/ JND

- 48. Fatehsingh Balwantsingh - B/Smith**
- 49. Mansukh Makandas - Carpenter**

Resumption date at yours may be advised to this office without fail.

**Sd/-
For Sr. DEN (E) BVP."**

- 14. The letter dated 28.09.1989 from DPO Bhavnagar to DPO Rajkot (as at Annexure A-11) also show that the applicants were treated as surplus and the Dy. C.E. (C) West was requested to accommodate them at Rajkot or elsewhere where vacancy exists in Construction Department. It was also clearly written that the applicants were belong to seniority list of Rajkot**

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11.01.1989 -

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Sr for PWIND AENJND.

AEN JND

48. Falehsingh Balwantsingh - BSMith
49. Mansukh Makandas - Carpenter

Resumption date at yours may be advised to
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For Sr. DEN (E) BVP.

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Division and in terms of the scheme and instruction, it is the Rajkot division which should take action either to engage them or terminate their services after complying with law and instructions. The relevant portion of this letter reads as follows :-

"As desired vide your letter quoted above following three casual labours were directed to XEN (C) JAM vide this office letter No. even dtd. 11.09.1989, but returned back because that office has since been closed.

- (1) Shri. Fatehsingh Balvantsingh, B/Smith who was originally engaged by IOW (C) JAM vide Sr. No. 12 of RJT Division seniority list.**
- (2) Shri. Mansukh Magandas, CPT, originally engaged by IOW (C) KNIS vide Sr. No.19 of RJT Div. Seniority list.**
- (3) Shri. Kuka Hari, Khalasi.**

Subsequently, vide this office letter No. even dtd. 18.09.1989 Dy. CE (C) (West) ADI was requested to take suitable action to accommodate them at RJT or elsewhere where vacancy exist in Construction Department. A copy of the said letter has also been duplicated to your office.

In this connection, Dy. CE(C) West-A'bad vide his confidential letter No.E/615/1/ADI dtd. 20.09.1989 (Copy enclosed for ready reference) has advised this office that the only alternative left is to terminate their services after complying with provisions of I.D. Act.

It is again pointed out that these labours belong to seniority list of your

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Division and in terms of the scheme and instruction, it is the Rajkot division which should take action either to engage them or terminate their services after complying with law and instructions. The relevant portion of this letter reads as follows :-

"As desired vide your letter quoted above following three casual labourers were directed to ZEN (C) JAM vide this office letter No. even dtd. 11.09.1989, but returned back because that office has since been closed.

- (1) Shri. Katsen Singh, Bainsnagar, B/Smith who was originally engaged by IOW (C) JAM vide Sr. No. 12 of RLT Division seniority list.
- (2) Shri. Mansukh Magandas, CPT, originally engaged by IOW (C) KNIS vide Sr. No. 19 of RLT Div. Seniority list.
- (3) Shri. Kuka Hari, Kharasi.

Subsequently, vide this office letter No. even dtd. 18.09.1989 Dy. CE (C) (West) ADI was requested to take suitable action to accommodate them at RLT or elsewhere where vacancy exist in Construction Department. A copy of the said letter has also been duplicated to your office.

In this connection, Dy. CE(C) West- A had vide his confidential letter No. EX-151/AD-1 dtd. 20.09.1989 (copy enclosed for ready reference) has advised this office that the only alternative left is to terminate their services after complying with provisions of I.D. Act.

It is again pointed out that these labourers belong to seniority list of your

division and in terms of instructions issued vide H.Q. office letter No.E (R & T) 615/o (L) dtd. 26.02.1989 further action as necessary has to be initiated by your office."

15. In the light of the above, it would seen that the applicant were tossed from place to place only with a view to find them some work. When the DPO, Bhavnagar Para was unable to find work for the applicants, he requested Rajkot, DPO either to engage them or terminate their services as the applicants were borne on their list. The applicants would have faced retrenchment if they were not re-engaged by one of the divisions. From the pleadings, it would seen that the applicants have not been granted temporary status at the relevant time. We are not aware whether they have been conferred with the temporary status subsequently. In any case, they could not be treated with more advantageous position as compared with the persons conferred with temporary status.

16. It is argued that in terms of Rule-1642 (1), of transfer other than request transfer should be regarded as transfer in public interest. The sub-rule (1) reads as follows:-

"1642 (1) Travelling allowance shall not be drawn under the following rules by railway servant on transfer from one station to another unless he is transferred in public interest and is

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rule (1) reads as follows:-

"1642 (1) Travelling allowance shall not be
drawn under the following rules by railway
servant on transfer from one station to another
unless he is transferred in public interest and is

entitled to pay during the period occupied by the journey. A transfer at his own request shall not be treated as a transfer in public interest unless the authority sanctioning the transfer for special reasons, which should be recorded, otherwise directs. (emphasis supplied)"

The above sub-rule specifically bars request transfer from the purview of public interest. However, it does not mean all other movements should automatically be regarded as in public interest. We ^{are} ~~are~~ therefore do not agree with this contention. Admittedly, the applicants being casual labour were not paid during the period occupied by their journey. If the applicants ^{not} ~~were~~ re-engaged at the other end, they would have faced with the possibility of retrenchment. Thus the applicants did not satisfy the conditions prescribed under sub-rule (1) to make them eligible to the grant of transfer allowance. This would be the position, if the applicants had been conferred with the temporary status. In our considered view, the re-location of the applicants in this case cannot be regarded as a transfer in public interest in terms of sub-rule (1). Even though, such transfer order had not been endorsed to the Accounts Officer as required under sub-rule (2), ^{we} ~~we~~ hold that the failure to endorse such orders cannot by itself would make their re-location in public interest.

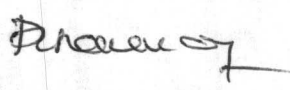
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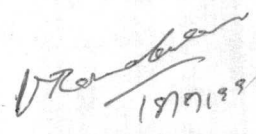
entitled to pay during the period occupied by the journey. A transfer at his own request shall not be treated as a transfer in public interest unless the authority sanctioning the transfer for special reasons, which should be recorded, otherwise direct (emphasis supplied).

The above sub-rule specifically bars request transfer from the purview

of public interest. However, it does not mean all other movements should automatically be regarded as in public interest. We are therefore do not agree with this contention. Admittedly, the applicants being casual labour were not paid during the period occupied by their journey. If the applicants were re-engaged at the other end, they would have faced with the possibility of retrenchment, thus the applicants did not satisfy the conditions prescribed under sub-rule (1) to make them eligible to the grant of transfer allowance. This would be the position, if the applicants had been contented with the temporary status. In our considered view, the re-location of the applicants in this case cannot be regarded as a transfer in public interest in terms of sub-rule (1). Even though such transfer order had not been endorsed to the Accounts Officer as required under sub-rule (2). We hold that the failure to endorse such orders cannot by itself, would make their re-location in public interest.

16. The O.A therefore, fails and accordingly dismissed. No costs.


(P.C. Kannan)
Member (J)


(V. Ramakrishnan)
Vice Chairman

mb

Sr.No. 2/2000

Dated: 03/01/2000

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 2/12/99 in CA/
Spl.C.A. No. 8420 of 99 passed by the
Supreme Court/ High Court against the Judgment/ Oral Order
passed by this Tribunal in OA/ 419/89 is placed for perusal
please.

Sr.No. 371/2000

S.O. (J)

D.R. (J)

Dated:

Hon'ble Vice Chairman

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated _____ in CA/
Spl.C.A. No. _____ of _____ passed by the
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please.

Sr.No.

S.O. (J)

D.R. (J)

Dated:

Hon'ble Vice Chairman

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

LIST OF RESTRICTED HOLIDAYS FOR - 1995

SR.No.	HOLIDAY	DATE	SAKA	DAY OF WEEK
1.	NEW YEAR'S DAY	JAN.1	PAUSA 11, 1916	SUNDAY
2.	GURUGOBIND SINGHJI'S BIRTHDAY	JAN.3	PAUSA 18	SUNDAY
3.	MAKARSANKRANTI	JAN.14	PAUSA 24	SATURDAY
4.	PONGAL	JAN.14	PAUSA 24	SATURDAY
5.	VASANT PANCHIMI	FEB.4	MEGHA 15	SATURDAY
6.	GURU RAVI DAS'S B.DAY	FEB.15	MEGHA 26	WEDNESDAY
7.	JAMAT-UL-VIDA	FEB.24	PHALGUN 5	FRIDAY
8.	MAHARISHI DAYANAND SARASWATI JAYANTI	FEB.24	PHALGUN 5	FRIDAY
9.	HOLI (HOLIKA DEHNA)	MAR.16	PHALGUN 25	THURSDAY
10.	CHAITRA SUKLADI/GUDI PADAVA/UGADI/CHETICHAND	APR.1	CHAITRA 11	SATURDAY
11.	RAM NAVMI	APR.9	CHAITRA 19	SUNDAY
12.	VAISAKHI	APR.14	CHAITRA 24	FRIDAY
13.	MESHDI	APR.14	CHAITRA 24	FRIDAY
14.	VISHU	APR.15	CHAITRA 25	SATURDAY
15.	VAISAKHADI/BAHAG BIHU	APR.15	CHAITRA 25	SATURDAY
16.	RATH YATRA	JUN.30	ASADA 9	FRIDAY
17.	RAKSHA BANDHAN	AUG.10	SHRAVAN 19	THURSDAY
18.	PARSEE-NEW YEAR	AUG.23	BHADRA 1	WEDNESDAY
19.	GANESH CHATURTHI/VINAYAK CHATURTHI	AUG.29	BHADRA 7	THURSDAY
20.	ONAM	SEP.7	BHADRA 16	THURSDAY
21.	DUSSEHRA (MAHA ASHTAMI)	OCT.1	ASVIN 9	SUNDAY
22.	DUSSEHRA (MAHA NAVMI)	OCT.2	ASVIN 10	MONDAY
23.	MAHARISHI VALMIKI'S BIRTHDAY	OCT.8	ASVIN 16	SUNDAY
24.	DEEPAVALI (S.INDIA) NARAKA CHATURDASI	OCT.23	KARTIK 1	MONDAY
25.	GOVARDHAN PUJA	OCT.24	KARTIK 2	TUESDAY
26.	BHAI DUJ	OCT.25	KARTIK 3	WEDNESDAY
27.	GURUTEG BAHADUR MARTYRDOM DAY	NOV.26	AGRU 16	SUNDAY
28.	HAZRAT ALI'S B.DAY	DEC.6	AGRU 15	WEDNESDAY
29.	GURU GOBIND SINGHJI'S BIRTHDAY	DEC.28	PAUSA 7	THURSDAY

URGENT

Decree Despatch No.
Date 2-12-99

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 8420 of 1999
(Under Article(s) of the Constitution of India)

1. FATESINH BALVANTSINH & ORS.

Petitioners

Vs

1. UNION OF INDIA & ORS.

Respondents

To

1. UNION OF INDIA

2. DIVISIONAL RAILWAY MANAGER(WR)

THRO" GENERAL MANAGER
WESTERN RAILWAY
CHURCH GATE
BOMBAY

KOTHI COMPOUND
RAJKOT

3. DY. CHIEF ENGINEER (WR)
RAILWAY STATION
AHMEDABAD

✓ 4. THE MEMBER, CENTRAL ADMINISTR-
ATIVE TRIBUNAL AHMEDABAD BENCH
AHMEDABAD. (REF: O.A. NO. 419 OF
1989)

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 25/10/1999 praying to grant the prayers and etc....

And whereas upon the Court ordered "Rule" to issue on 7 /

And Whereas Upon hearing
MR PH PATHAK for the Petitioner no. 1
Court passed the following order :-

CORAM : J.N.BHATT & H.K.RATHOD, JJ.

DATE : 27.10.1999

The only question which has surfaced in this.....
.....threshold. Accordingly, it is rejected.

(COPY OF THE ORDER/JUDGMENT IS ATTACHED HEREWITH)

ms hem
20/11/99
30/11/99

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Witness CHUNILAL KARSANDAS THAKKAR, Esquire Acting Chief Justice at Ah
aforesaid this 27th day of Oct, 1999.

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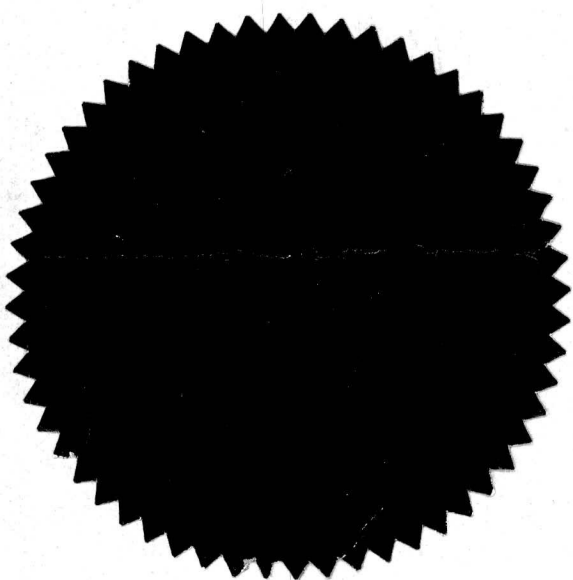
By the Court

[Signature]
2.12.99.

For Deputy Registrar

This day of Nov 1999.

Note : This writ should be returned
duly certified within 2 weeks
(659) 251119



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8420 of 1999

50

F. TESINH BALVANTSINH
Versus
UNION OF INDIA

Appearance:
MR PH PATHAK for Petitioners

CORAM : M. JUSTICE J.N. BHATT and
R. JUSTICE H.K. RATHOD
Date of Order: 27/10/1999

ORAL ORDER

The only question which has surfaced in this petition before us is as to whether the claim of the petitioners for the benefits of transfer and packing allowance, which has been denied by the Central Administrative Tribunal, is justified or not. For that, rule 1642 of the Indian Railway Establishment Manual came to be pressed into service. Since the respondent authorities did not concede to the claim, the petitioners herein had moved the Tribunal and the Tribunal in earlier original application took the same view that the petitioners are not entitled to the same as transfers as such are not there in the case of the petitioners and they were merely shifting to accommodate the casual labours with a view to avoid the process of retrenchment and, therefore, there was no public purpose also. Against that order, the petitioners came before this Court by filing Special Civil Application No. 7291/98, in which this Court directed the Tribunal to consider rule 1642 and the merits threadbare with full application of mind. Therefore, this second round of litigation.

Upon the matter being remanded, the Tribunal after having heard the parties and examining the facts and circumstances as directed by this Court analysed and evaluated the merit of the claim of transfer allowance and the Tribunal reached to the conclusion that the petitioners are not entitled to transfer allowance as the respondent authority in a benevolent gesture helped the petitioners to have the casual labours work even in another Division with a view to see that there may not be retrenchment. This finding of fact recorded by the authority below, in our opinion, does not warrant any interference as it radiates an imprint of truth from the factual touchstone.

Learned advocate Mr Pathak appearing for the petitioners has placed reliance on the following decisions of the Hon'ble Supreme Court:

1. Mohinder Singh Gill v. The Chief Election Commissioner, AIR 1978 SC 851.
2. Indrapal Yadav, 1985(2) SCC 136.

In our considered opinion, the proposition of law propounded and enunciated in the aforesaid decisions has not at all attracted to the facts of the present case. The interpretation of rule 1642 made by the respondent authority in the factual scenario emerging from the present case could not be said to be unjust or unreasonable requiring our interference. Needless to reiterate that the jurisdictional sweep of a court exercising powers under Article 22(2) of the