

C.L. Transfers

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

(u)

O.A. No. 519 OF 1989  
~~TAX NO.~~

DATE OF DECISION 09-04-1992.

Shri Kanji Suratan & 20 Ors. Petitioner

Shri R.K.Mishra Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Judicial Member

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 ? ✗



1. Kanji Suratan
2. Tersing Bhura
3. Hemehandra Kaliya
4. Lalchand Guma
5. Ramsu Sadiya
6. Magan Sadiya
7. Bachu Bhura
8. Smt. Jitri Kaliya
9. Kasma Bhavan
10. Smt. Saturi Valji
11. Smt. Pangali Mansing
12. Smt. Jitri Kasna
13. Smt. Nandu Kamji
14. Smt. Jitri Mania
15. Smt. Noori Nagji
16. Smt. Vesti Sadiya
17. Smt. Jita Malji.
18. Bhundiya Rumal,
19. Pangla Kamla
20. Smt. Vakali Ratna
21. Smt. Kalsing Rumal.

All C/o. Kanji Suratan,  
Platform No.2 (Tents),  
Miyan Gam Rly Station, WR,  
Miyan Gam.

....Applicants.

( Advocate : Mr. R. K. Mishra )

Versus

1. Union of India  
(Notice to be served  
through the General Manager,  
Western Railway,  
Churchgate,  
BOMBAY).
2. Divisional Railway Manager,  
Western Railway,  
Pratapnagar,  
Baroda.
3. Assistant Engineer-II,  
Western Railway,  
Bharuch.
4. Permanent Way Inspector  
(PORS) WR,  
Bharuch.

...Respondents.

( Advocate : Mr. N. S. Shevde )

ORAL - JUDGMENT

O.A.NO. 519 OF 1989.

Date : 09-04-1992.

Per : Hon'ble Mr. R. C. Bhatt : Judicial Member


6

This application is filed by 21 applicants challenging the transfer order No.G/3122/35, dated 30th November,1989, issued by the IVth respondent, PWI, (PQRS) WR, Bharuch, by which the applicants were sought to be transferred from Bharuch to Maliya Miyana, It is alleged in the application that the casual labourers are not liable to transfer. The respondents have filed reply resisting the application.

2. At the time of hearing, after some argumentation, learned advocate Mr.N.S.Shevde, for the respondents submitted that the impugned order was passed by the respondent No.4, as back as on 30th November,1989, and as the interim relief was already granted by this Tribunal, on 7th December,1989, the respondents do not want to implement the said impugned order Annexure-A/1, dated 30th November,1989, against these applicants. In view of this submission,learned advocate Mr.R.K.Mishra, for the applicant submitted that the application be disposed of. Hence the following order.

ORDER

"The application is disposed of as the respondents do not want to implement the impugned order, Annexure-A/1, dated passed by the respondent No.4. The respondents at liberty to pass a fresh order if they so desire. The application is disposed of. No order as to costs."

  
( R.C.Bhatt )  
Member(J)

92-40 56/85  
T/12  
B

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD

DIST : BHARUCH

MISC. CIVIL APPLICATION NO. \_\_\_\_\_ OF 1989.

~~in~~

ORIGINAL APPLICATION NO. 519 OF 1989.

Shri Kanji Surtan & 20 Ors ... Applicants

V/s

Union of India & Ors ... Respondents

To  
The Honourable Vice President  
and other Honourable Members  
of the Central Administrative  
Tribunal at Ahmedabad.

MAY IT PLEASE YOUR LORDSHIPS :

PKM  
2/4

1. The applicants have been issued with the one transfer order bearing No.G/3122/35 dated 30.11.1989 issued by the same authority and they are sought to be transferred from Bharuch to Maliya Miyana whereof the common cause of action arises and in view of this the applicants prefer this common application for representing their cause jointly. The applicants are poor labourers. Therefore, in the interest of justice, the applicants pray that -

(A) YOUR LORDSHIP will be pleased to admit the application and permit the applicants to pursue their grievances in the aforesaid

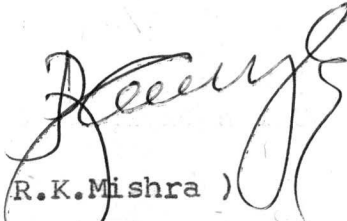
Original Application jointly in view of  
the common and single cause of action.

- (B) Be pleased to grant such other and further  
reliefs as may be deemed fit in the facts  
and circumstances of the case.

And for this act of kindness and justice,  
the applicants, as in duty bound, shall ever  
pray.

Place : Ahmedabad.

Dated : 4.12.1989



( R.K.Mishra )

Applicants' Advocate.

S/C no 567/89  
5714/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD

DIST : BHARUCH.

~~ST NO 567~~  
ORIGINAL APPLICATION NO. 519 OF 1989.

Shri Kanji Surtan & 20 Ors ... Applicants.

V/s

Union of India & Ors. ... Respondents

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565

Copy to Mr. N.S. Shinde  
be served.  
Ramesh  
5/12/89

12/11/89  
2/11/89

7-12-89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD

DIST : BHARUCH

ORIGINAL APPLICATION NO. 519 OF 1989.

S/Shri

1. Kanji Suratan
2. Tersing Bhura
3. Hemehandra Kaliya
4. Lalchand Guma
5. Ramsu Sadiya
6. Magan Sadiya
7. Bachu Bhura
8. Smt.Jitri Kaliya
9. Kasma Bhavan
10. Smt.Saturi Valji
11. Smt.Pangali Mansing
12. Smt.Jitri Kasna
13. Smt.Nandu Kamji
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15. Smt.NOORI Nagji
16. Smt.Vesti Sadiya
17. Smt.Jita Malji
18. Bhundiya Rumal
19. Pangla Kamla
20. Smt.Vakali Ratna
21. Smt. Kalsing Rumal

All C/o Kanji Suratan,  
Platform No.2 (Tents),  
Miyan Gam Rly Station, WR,  
Miyan Gam.

... APPLICANTS

V/s

1. Union of India  
(Notice to be served  
through the General Manager,  
Western Rly, Churchgate,  
Bombay).

2. Divisional Rly Manager,  
Western Rly., Pratapnagar,  
Baroda.
3. Assistant Engineer-II,  
Western Rly., Bharuch.
4. Permanent Way Inspector  
(PQRS), WR, Bharuch. ... RESPONDENTS.

TO  
THE HONOURABLE THE VICE PRESIDENT  
AND OTHER HONOURABLE MEMBERS OF  
THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT AHMEDABAD.

The humble application of the  
applicants above named -

I. PARTICULARS OF THE APPLICANTS :

- (a) Names : As shown in the  
(~~to~~) cause title  
(b) Designation : T/S Gangmen  
(c) Addresses : As shown in the  
cause title.

II. PARTICULARS OF THE RESPONDENTS :

- (a) Name X As shown in  
(b) Designation X the cause  
(c) Address X title.

III. ACTION/ORDER UNDER CHALLENGE :

The applicants herein are sought to be transferred vide Order No.G/312/35 dated 30.11.1989 issued by the 4th respondent i.e. PWI (PQRS), WR, Bharuch, from Bharuch to Maliya Miyana, on the ground that the transfer is not the service condition and further on the ground that this Hon'ble Tribunal has in a series of decisions settled the principle that the casual labourers are not amenable

to transfers. Therefore, the whole action is illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

IV. JURISDICTION :

This Hon'ble Tribunal has the jurisdiction to entertain this application in view of the settled legal position.

V. LIMITATION :

This application is within the time limit in view of the provisions of the Central Administrative Tribunals Act.

VI. FACTS OF THE CASE :

1. The applicants herein are the casual labourers and have been legally recruited by the respondent authorities on 6.9.1983. The order of transfer No. G/3122/35 dated 30.11.1989 issued by the PWI(PQRS), WR, Bharuch alongwith the list of the applicants is annexed herewith and marked as Annexure-'A1' collectively. It may not be out of place to submit that this set of applicants had approached your Lordships by way of OA/497/1989 whereof they had requested that their transfers which were in process which came to be stayed by the Hon'ble Gujarat High Court in Spl.Civil Application No.3749 of 1989 and thereafter the Hon'ble High Court has been pleased to hold that this Hon'ble Tribunal has the exclusive jurisdiction. Therefore, the applicants moved the

Ann-A1  
Colly.

Original Application No.497 of 1989 that the stay has been extended by the Hon'ble High Court in Misc.Civil Application No.1054 of 1989 upto 24.11.89. However, for want of the order, his Lordship Hon'ble Mr.Justice M.M.Singh has been pleased to call upon the respondent authorities when the request from the Advocate for the respondents was made for time which was granted. But, his Lordship <sup>were</sup> ~~was~~ not pleased to extend the period of stay granted by the Hon'ble High Court, which was to expire on 24.11.1989. A copy of order of this Hon'ble Tribunal dated 22.11.1989 is annexed hereto and marked as Annexure-'A2'. In view of the fact that the applicants could not produce the order of transfer, they craved leave to withdraw the aforesaid OA/497/89 and, therefore, the present application is preferred producing the transfer order.

Ann-'A2'

2. Applicants submit that <sup>transfer</sup> ~~service~~ not being the service condition of the casual labourers, they cannot be affected by transfer unless it is provided under the law or the law is amended by the legislature. The provisions of para 1 of Chapter 25 of the Railway Establishment Manual is reproduced below for easy reference :

"2501(a):Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available sources. It is not liable to transfer and the conditions applicable

to permanent and temporary staff do not apply to such labour.¶

Annex-A3.

3. It is further submitted that there is no necessity to transfer the applicants in view of the legal provisions. They have been locally recruited at the present place and cannot be transferred to Maliya Miyana. The Memorandum bearing No. E/615/1 dated 30.11.1989 issued by the AEN II Bharuch with the photograph of applicant No.1.i.e. Shri Kanji Surtan is annexed hereto and marked as Annexure-'A3'. The applicants crave leave to produce such other orders in respect of other applicants if your Lordships so direct at the time of hearing. Otherwise the contents of the memorandum in respect of all the applicants are same with no variation. A perusal of the memorandum at Annexure-'A3' shows that the applicant No.1 has been deployed under CPWI, Maliya Miyana as per the directions of Sr. DEN(ii) BRC as there is no work in Bharuch and the same unit is to be closed shortly. It is submitted that this is an ambiguous order and smacks of arbitrariness and is not at all a ground for transfer. First of all, the applicants have never been employed in the unit wherein the job was to expire or the work undertaken was to complete. In fact, they are working on the open ~~xxxx~~ line. The nature of duties and responsibilities are of repairing of tracks, cleaning and again storing the stones, laying of the sleepers and doing the work of deep screening, etc. which they have been doing continuously and such work never comes to a stand still. The ground taken that there is no work for the unit is going to be closed

6

shortly is insusceptible in view of the fact that one Shri Sharma has been given the labour contract of getting the same nature of work done by his men from altogether outside of the Rly administration. To the best of information of applicants, it is submitted that there are instructions from the Ministry of Railways that on the railway tracks persons from outside agencies cannot be employed because such persons from outside agencies are not trained and skilled and do not have the sense of responsibility, which casual labourers would have for the obvious reason that they have worked with the railway administration for a long time under the direct supervision of PWIs. This being the clear position of the policy of the Govt. with a view to avoid accidents and thereafter to avoid the causing of deaths of the passengers travelling in the railway. It is emphatically submitted that ~~down~~ line from Baradiya to Bharuch, where the labour contract has been given to one Shri Sharma, having about 300 persons under him, is of deep screening of laying of the concrete sleepers. Therefore, the grounds given are totally insusceptible that there is no work available at the present place.

4. It is further to submit that the word "deployment" used by the authorities, cannot be used in the cases when the work is to be over, which is totally a false and incorrect statement (ground) for sending the applicants from their present place where plenty of work is available and would last for the centuries to come, or, in

other words, till the Railway administration changes its mode of running the trains from the present one. The word "deployment" carries a significant meaning altogether of sending a person for a temporary period holding some skill in a particular trade, job or is far excellent in handling a particular type of machine or in other words to fill in the need of temporary requirement. Here the last ground taken that the ~~unit~~ <sup>Unit R.M.</sup> is going to close down shortly and that is why the applicants are being deployed is misnomer. In that event as and when the unit is going to be closed altogether, their services should come to an end since the posts are to be abolished. The unit is going to be closed is not a clear term. The unit comprises of the entire Bharuch Railway Administration or the Railway administration authorities are going to close down the Bharuch Railway Station because the unit word is always used in a broader sense and carries the simple meaning together with it. It is entire Section of a particular headquarters comprised of top persons holding the humble ranks, which probably is not the case. The applicants very humbly submit that since this Hon'ble Tribunal has been pleased to declare all such actions to be illegal, unjustified, unconstitutional and against the provisions of law because the authorities every time give a new name to such acts, they pray that this act should also be declared illegal, unconstitutional and against the law. If the unit is really going to close down the applicants undertake to accept the retrenchment with all statutory benefits, provided that the railway administration prepares the seniority list of the entire Division and

produces the same before this Hon'ble Tribunal, which, otherwise also have been the invariable orders of this Hon'ble Tribunal. The applicants would be ready to accept the retrenchment if they are retrenched according to the seniority. But this, the respondent Railway administration lacks and they adopt such practices with a view to see that such casual labourers are always lowly paid. They do not have the permanent place. They ~~to~~ are the human beings. They do have the children. They do need some permanent inhabitation in their life. Their children too need education, but the railways administration treats the casual labourers as 'goods' and transport at their whims and pleasure.

5. Attention is once again invited of your Lordships to the memorandum at Annexure-'A3', which is totally silent about the period of deployment. The period of deployment in such orders is always specified to the effect that the person concerned would be paid the admissible allowances being sent outside the radius of 8km from their parent unit. The applicants' parent unit is Bharuch Railways Station. They are being sought to <sup>be</sup> sent to Maliya Miyana, which is almost 200 kms. away from Bharuch. There is no such mention with regard to the deployment allowances. Therefore, it is emphatically submitted that it is a misnomer and a new terminology for defying the orders of this Hon'ble Tribunal, nonetheless the rules <sup>has been used</sup> Therefore, the order at Annexure-'A1' collectively deserves to be quashed

and set aside.

6. It is also worthwhile to note that the date of appointment as casual labourer has been shown in the memorandum at Annexure-'A3' in respect of the applicants as 5.10.1984 at Bharuch, whereas the date of appointment as T/S Gangmen has been shown as 6.3.1984. The date of appointment as casual labourer and T/S G/men in respect of Shri Pangla Kamla, the applicant No.19 herein, is totally incorrect. He is one of the persons amongst the 21 persons, the applicants herein, who were recruited at the same time. So is the case with Smt.Vakli Ratna, the applicant No.20 herein. All the applicants herein were recruited together. It is also not understood and is best known to the railways authorities as to how the date of appointment as T/S G/men i.e. 6.3.'84 can be earlier in the point of time than the appointment as casual labourer i.e. 5.10.1984. This shows how the authorities are irresponsible towards the illiterate and innocent labourers and the applicants have always been coming to the Hon'ble Court against such treatment. The authorities even then justify their actions. It is submitted that the applicants are citizens of India. The acute unemployment problem, shelter and inhabitation in life, and the education of the children, their nourishment is also the duty of the parents much less of the Govt. to which they are invariably made destitute of. The applicants pray from your Lordships to allow them to appear before the Hon'ble Tribunal and their mere look, clothing, inhygenic condition and living standard would show that they are not ever treated as human

beings. The applicants submit that it appears to them that they are born for exploitation and to suffer the miseries and pass away by meeting the premature death for want of proper nourishment, medical facilities, hygienic conditions, etc. This cycle of their life does not end and goes with them in grave but also shadow ~~is~~ is cast upon their children to meet the same fate in their life.

7. Your Lordships are requested to appoint a Court Commissioner and to get the independent report and thereafter to arrive at a decision as to whether the respondent railway administration is genuinely doing or meting out such inhuman treatment to these poor employees who live on this earth only for survival. The wages what they get is shown at Annex-A1 collectively. However, this they can beg from the judiciary only and that is why they are before your Lordships to call upon the respondent authorities and to say whether they are justified in their action or not, if not, their action must be declared to be illegal and the applicants be protected until then. The applicants have to their credit the decision of INDRA PAL YADAV delivered by the Hon'ble Supreme Court of India and also a decision of the Division Bench of this Hon'ble Tribunal, which they crave leave to produce at the time of hearing, if your Lordships so direct.

8. The applicants crave leave to add, amend, alter or substitute any of the grounds as and when necessary to do so.

9. The applicants have no other prompt, adequate or equally efficacious alternative remedy at law except by way of the present application to remedy their legitimate grievances.

10. The applicants have not preferred any other application or appeal in this Hon'ble Tribunal or in the Hon'ble Supreme Court of India or in any other Court in respect of the subject matter of this application.

11. On the aforesaid premises and those that may be urged at the time of hearing, the applicants approach this Hon'ble Tribunal and pray from your lordships that -

VII .

PRAYER

(A) YOUR LORDSHIPS will be pleased to quash and set aside the order bearing No.G/3122/35 dated 30.11.1989 at Annexure-'A1' collectively by declaring the same to be illegal, arbitrary, unconstitutional, & perverse to decision of this Hon'ble Tribunal. Therefore, null and void.

(B) YOUR LORDSHIPS will be pleased to hold that ~~the~~ transfer not being the service condition of the casual labourers, they

cannot be transferred from the present place and that they should be given the work and be paid their salaries regularly without any intervention whatever at the present place of work i.e. Bharuch.

VIII. INTERIM RELIEFS:

During the pendency, hearing and final disposal of this application, the Hon'ble Tribunal may be pleased to stay the execution, operation and implementation of the order dated 30.11.1989 at Annex-A1 collectively with a further direction that the applicants be given the work and be paid their salaries regularly without any intervention whatsoever.

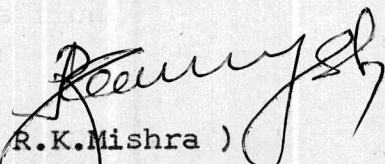
IX. PARTICULARS OF THE POSTAL ORDER :

Postal Order No(s) : 194280  
Amount (Rs.) : 50/-  
Dated : 5-12-89  
Name of the issuing post office : High Court

And for this act of kindness and justice, the applicants, as in duty bound, shall ever pray.

Place : Ahmedabad.

Dated : 4.12.1989

  
( R.K.Mishra )

Applicants Advocate

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VERIFICATION

I, **Ramsu Sadiya**, the applicant No.5 herein, adult, working as a T/S Gangman under the Assistant Engineer-II, Western Railway, Bharuch, resident of Bharuch, do hereby verify that the contents of the application are true to the best of my information, knowledge and belief and I believe them to be true and I have not suppressed any material fact.

The contents of this application are as per my instructions to the Advocate.

Verified today, the 4<sup>th</sup> day of December, 1989.

Place :

Dated : 4.12.89.



*L.H.T.I. of Shri Ramsu Sadiya*

L.H.T.I. of Sh.Ramsu Sadiya  
Applicant No.5

*I identify the Applicant  
who has affixed his thumb  
before me Dawood  
-ADW*

Witnessed by Mr. R.K. Mishra  
Advocate for Petitioners  
Number of sets &..... spares  
Served/not served to  
other side

*C.S. Bhatt*  
Dt: 5/12/89 Dy.Registrar C.A.T.O. 5/12/89  
A'bad Bench



Statement showing the List of Deployed TIS gangman of PNI (R) & RD & H  
To PNI-MALB from

15

SR No.	Name	Designation	Rate of PAY	P. F. Account No.
①	stbr. Kanji Suraloo	TIS (R) & RD & H	847/-	1453540
②	" Tarsing Bhura	"	847/-	1453918
③	" Hasmehanda Kaliya	"	847/-	1455235
④	" Lalehand Guma	"	847/-	1455237
⑤	" Ramen Sadiya	"	847/-	1455239
⑥	" Magan Sadiya	"	847/-	1455240
⑦	" Bachu Bhura	"	847/-	1455241
⑧	stbr. Jitai Kaliya	"	847/-	1455242
⑨	" Kasma Bhavan	"	847/-	1455243
⑩	" Salusi Valji	"	847/-	1453961
⑪	" Pangali Mansing	"	847/-	1455247
⑫	" Jitai Kasma	"	847/-	1455248
⑬	" Nandu Kanji	"	847/-	1455249
⑭	" Jitai Mania	"	847/-	1455250
⑮	" Noddi Nagji	"	847/-	1455251
⑯	" Vesti Sadiya	"	847/-	1455252
⑰	" Jita Malji	"	847/-	1455253
⑱	stbr. Bhundiya Rusal	"	835/-	1453667
⑲	" Pangla Kama	"	787/-	1457623
⑳	stbr. Vakali Ratna	"	799/-	1457624
㉑	" Kalsing Rusal	"	775/-	1457625

on  
30/11/11  
from 21True Copy  
R.K. Mishra

30/11

Sd/-

30/11

Sd/-

Sd/-

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

22.11.1989

Mr. R.K. Mishra, the learned advocate for the applicants vehemently pressed for interim relief and admission on the ground that Gujarat High Court in Misc. Civil Application No. 1054 of 1989 in Special Civil Application No. 3749 of 1989 extended the stay upto 24.11.1989. Mr. N.S. Shevde, the learned advocate for the respondents represents that he will receive instruction from the respondent and is not aware of the details of this case as he had not appeared in the High Court in the above applications.

2. The application in question seems to suffer from vagueness and contradiction. In the main body of the application, at one stage, it has been stated that the applicants have <sup>not</sup> been offered work from 25.5.1989 even though they, through their union representatives, had approached the authorities and the representatives were told that orders of transfer of the applicants are in process and they would be transferred to elsewhere. Apparently on this allegation the relief in the application can be to compel the respondents to offer work to the applicants. It is obvious from the application that no transfer order has been issued. In the proforma of the application, it has been said that;

"Impugned action seeking to transfer the petitioners....."

and no specific written or oral transfer order has been referred to.



True Copy  
R. K. Mishra

3. In view of the above situation, it will be inadvisable to extend the stay beyond 24.11.1989.

4. The matter deserves to be taken up with a sense of urgency and ten days time is given to the respondents' advocate to seek instructions and make submissions on admission and on merits. The matter should be posted accordingly.

Mr. R.K. Mishra, the learned advocate for the applicants wants permission to amend the petition to make it more clear and specific. Mr. Mishra will furnish a copy of the intended amendment to the other side whereafter the matter of amendment of the application will be posted for hearing.

Sd/  
( M. M. Singh )  
Administrative Member.

Prepared by: <sup>RKL</sup>  
29/11/89

TRUE COPY

*K. B. SANE*  
29/11/89

K. B. SANE  
Section Officer

Central Administrative Tribunal,  
Ahmedabad Bench.

True Copy  
*R. K. Mishra*  
Adv

Western Railway.

MEMORANDUM  
No. E/615/1.

Asstt. Engineer (ii)  
Bharuch's Office,  
Dated: 30/11/89

To: Shri Kunji Sarstani

Designation: T/S Gangman.

(Through CPWI (PQRS) / BHARUCH)

Sub: Deployment of T/S Labours.

Ref: Sr. DEN (ii) BRC's No.  
E/E/ CAT-561/88 dated 27-2-89.  
\*\*\*\*\*

You are here-by deployed under CPWI/~~BH~~ MALB as per Sr. DEN (ii) BRC's letter quoted above, as there is no work under CPWI (PQRS) BH, and the same unit is to be closed shortly.

Asstt. Engineer (ii)  
BHARUCH.

Copy forwarded to :

- 1) CPWI/~~BH~~ MALB for information and necessary action.
- 2) CPWI (PQRS) BH. He should relieve the said employee immediately by issuing the single journey pass, and duly filled in the following service particulars.
  1. Date of appointment as D/L: 05.10.84 (L3H)
  2. Date of Appointment as T/S G/mar 6.3.84
  3. Rate of Pay: ~~847/-~~ 847/-
  4. P.F. A/c No. 1453450
  5. Pay drawn upto ~~20.5.89~~ 30/11/89

Other particular will follow.

6. out ward duty Pass No. ~~311639~~ C 311813 dt 30/11/89

7- Relieved on - ~~20.5.89~~ 30/11/89 (ATN)

8 - LHTI/RIHTI - 6/81

9 Identification mark - Attested

① Wound mark on left-legs.

② Wound mark on stomach.

AHTD 2-



Kunji Sarstani



[Signature]

P.W.I. (PQRS) BH.

[Signature]

AEN II BH.

True copy  
R. K. Mishra

14  
1

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT  
AHMEDABAD

O. A. NO.519 OF 1989

Kanji Surtan &  
20 Ors..... Applicants

V/s

Union of India & Ors.... Respondents.

WRITTEN STATEMENT.

The Respondents, humbly beg to file a written statement to the application as under:-

1. Contents of paras 1 & 2 need no reply.
2. Regarding para 3 of the application it is submitted that the Order No.G/3/22/35, dated 30.11.1989 is not a transfer order transferring the applicants from Bharuch to Maliya Miyana but is a letter issued by the Permanent Way Inspector (PQRS), Bharuch to the Permanent Way Inspector, Maliya stating inter alia that the applicants are deployed to work under him with effect from

copy served  
L22

1.12.1989. A list of 21 temporary status gangmen who are deployed from Bharuch to Maliya is also attached to the said letter. It is not admitted that the applicants casual labourers who have acquired temporary status are not amenable to transfer under the Rules and the transfer is not a service condition as alleged. It is denied that the action of the Respondents is illegal, arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India as alleged.

3. Contents of paras 4 & 5 need no reply.

4. Regarding para 6.1, it is submitted that

the Respondents rely on the service record of the applicants as regards their date of initial engagement. It is not admitted that the applicants were legally recruited by the Respondent Authorities on 6.9.1983. It is stated that the applicants are not locally recruited by the Respondent No.4 but they were initially engaged on Virangam-Okha Porbunder Project at a place situated in geographical boundary of Rajkot Division. On completion of the VOP Project




the applicants were rendered surplus and were required to be discontinued or retrenched. However, as the work of similar nature was available under the Respondent No.4 & 3 the applicants were offered work at a place in Baroda Division at Bharuch about five years back. Accordingly, the applicants joined under CPWI(PQRS), Bharuch. Now there is no work under CPWI(PQRS), Bharuch and the applicants are again required to be discontinued or retrenched. However, the work is available under PWI, Maliya and as such the applicants are deployed at Maliya, which is likely to continue for quite some time. As stated herein above Annexure A/1, dated 30.11.1989 is not an order of transfer. It is not disputed that the applicants had filed O.A.NO.497 OF 1989 in this Hon'ble Tribunal wherein they had requested the Hon'ble Tribunal for quashing and setting aside the transfer order which were in process and also prayed for interim relief. The applicants had filed a Special Civil Application No.3749 of 1989 in the High Court of Gujarat which was dismissed by the Hon'ble High Court. The Respondents rely on the said proceedings of O.A.NO.497 of 1989 as and when

necessary. It is not disputed that on 22.11.1989 when the said O.A.NO.497 of 1989 came up for admission Hon'ble Tribunal passed the order at Annexure A/2. The said O.A.NO.497/89 has been withdrawn by the applicants on 11.12.1989.

5. Contents of para 6.2 are not fully true and are not admitted. The Respondents rely on true and proper interpretation of para 2501 of the Indian Railway Establishment Manual and other relevant provisions applicable to the applicants. It is submitted that as per para 2501 a casual labour whose employment is seasonal, intermittent, sporadic or extends over short periods, who is normally recruited from the nearest available sources is not liable to transfer. A casual labour who acquires temporary status on completion of continuous period of 120 days is entitled to certain benefits like scale rate of pay, passes, medical, leave, etc. It is submitted that a casual labour with temporary status is not included in the definition of casual labour given in para 2501(a) of IREM and cannot be said that he is not liable to transfer. It is submitted that conditions of

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service of Casual Labour with temporary status are not the same as those of casual labour defined<sup>e</sup> in para 2501 (a) of IREM. It is stated that the casual labours who acquire temporary status are entitled to all the rights and privileges admissible to temporary railway servants as laid down in chapter XXIII of the IREM as laid down in para 2511 of IREM, which also include the benefit of the discipline and appeal rules. It is submitted that the applicants were deployed from CPWI (PQRS) Bharuch to CPWI Malia as there is no work at Bharuch under CPWI (PQRS) Bharuch and the said action is taken to avoid retrenchment. It is submitted that due to completion<sup>f</sup> of work, the organisation of CPWI (PQRS) Bharuch is to be closed shortly.

6. Contents of para 6.3 are not fully true and are not admitted. It is denied that there is no necessity to transfer the applicants in view of the aforesaid legal ~~provisions~~ provisions as alleged. It is denied that the applicants were locally recruited at the present place and can not be transferred to Malia-Miyana.

It is stated that the applicants were originally engaged on VOP Project about 5 years back and on completion of the said work were deployed and offered

work under CPWI(PQRS)Bharuch to avoid retrenchment/  
discontinuation.As the work under CPWI(PQRS) Bharuch  
has been completed the applicants are deployed and  
offered work of <sup>i</sup>similar nature at Malia Miyana.

It is denied that Memorandum No.E/615/1 dt.30.11.89  
(Ann.A/3 with the application) issued by the Asstt.

Engineer(II)Bharuch to the applicant No.1 shri Kanaji

Saratan~~x~~ is an ambiguous order and smacks of arbitrariness as alleged. The said order dt.30.11.89 is an order of deployment.There is no ambiguity in the said order. It is denied that the applicants were never employed in the Unit wherein a job was to expire or the work undertaken was to complete as alleged.It is stated that the applicants when were rendered surplus on VOP Project were offered the work of Track ~~Renewal~~ <sup>renewal</sup> which was in progress at that time under CPWI (PQRS)Bharuch and now the said work having been completed the labour under CPWI(PQRS)Bharuch has been rendered surplus and is idling without any work under the said Unit which causes unnecessary and un-productive expenditure which is ~~draining~~ ~~out~~ draining out the ~~country's~~ economy and loss to the tax payers money . It is not disputed



that the applicants are at present working on the Open Line . The applicants were doing the work of Track Renewal. It is denied that such work never comes to a stand still and the ground taken <sup>just</sup> there is no work for the Unit is going to be closed shortly is insusteptible in view of the fact that one shri Sharma has been given the Labour Contract of getting the work of similar nature done by his <sup>men</sup> name who are all to-gether outsiders to the railway Administration as alleged. It is denied that there are instructions from the Ministris of Railways that on the Railway Tracks persons from outside agencies can not be employed because such persons are not trained and skilled and do not have the sense of responsibility which the casual labourers having worked in Railway have as alleged. The averments of the applicants that Down Line from ~~Varadiya~~ Baradiya to Bharuch where the labour contract has been given to one shri Sharma are not relevant. The applicants can not insist that the respondents Railway Authority can not award contract of certain work to contractors. It is stated that shri Sharma has been given the contract to carry out the work on Down Line between Varadiya/Navipur and not Varadiya/Bharuch which is in progress. It is stated that the ~~was~~ said work was

is not under CPWI (PQRS) Bharuch. It is stated that the Contractor Shri Sharma is an experienced person having been carried out work of similar nature on railway in past. The said contractor has engaged about 500 labour and not 300 labours as alleged by the applicants. It is stated that the work ~~was~~ on the section of Varadiya/ Navipur is on Rajadhani Route on the main line where the time available for speed restriction is very limited and the work is to be completed within a short period.

The said contractor has been able to give maximum work with his labour <sup>force</sup> course within time available to him.

The casual labour working under CPWI (PQRS) Bharuch is not a sufficient labour and is not in a position to ~~cup~~ up the speed of the work which is required to be carried out.

It is further submitted that the awarding of work to a contractor is also ~~is~~ economical to the railway Administration. The applicants can not <sup>mix</sup> makes up or combined with the contractors' labour. The applicants were recruited for specific work of Track renewal and not for the maintenance of tracks. It is stated that for maintenance of track there is a permanent cadre of Gangman in existence and the said work can not be given to the casual labourers. If the



applicants are interested in working with the railway administration, they must carry out the order of deployment and do the work which is offered to them with a ~~view~~ view to avoid retrenchment. The applicants can not be ~~be~~ continued at a place where they were working without any work. It is stated that the Railway Administration has taken into consideration all the material factors before awarding the contract to the contractor shri Sharma

7. Contents of para 6.4 are not true and are not admitted

It is denied that the word 'Deployment' used by the authorities, ~~w~~ can not be used in the cases when the work is to be over, which is totally a false and incorrect statement for sending the applicants from their present place of work which is to last for the centuries to come as alleged. It is stated that the work of Track Renewal under CPWI (PQRS) Bharuch having completed is a fact and the applicants can not challenge the said fact. The respondents are unable to close down the said unit as there is interim order in favour of the applicant casual labourers. It is stated that the labour like the applicants is required by CPWI Malia-Miyana for the work of similar nature very urgently as the section under him is suffering very badly. The applicants are having

experience of the said work and are deployed to work under CPWI Malia Miyana to avoid termination .

It is stated that CPWI(PQRS) Bharuch is all to-gether a separate unit then CPWI(BG)Bharuch, CPWI(II)Bharuch Traffic Dept.,Loco etc. It is stated that the post of CPWI (PQRS)Bharuch is not a cadre post but is a work charge post created for the specific work of Track Renewal at Bharuch.It is submitted that no sooner the labour carry out their deployment to the place where work is available,the unit of CPWI(PQRS)BHARUCH will be closed which has over leaved its existance without any remunerative results . If the applicants are not willing to go on deployment under (CPWI) Malia-Miyana Railway Administration will be obliged to take action for termination . It is submitted that the casual labour working under CPWI (PQRS) Bharuch are not working against permanent post or cadre posts .It is denied that the Unit ~~term~~ term used in the order at Annexure A/3 is ambiguous or not clear .The word Unit used in the order at Ann.A/3 has been correctly and properly used and conveys the meaning which it should have conveyed .

The applicants are trying to confuse the issue by raising



irrelevant and imaginary points. It is denied that this Hon'ble Tribunal has declared the action of the respondents to close down the unit of CPWI(PQRS) Bharuch as illegal, unjustified, unconstitutional and against the provisions of law as alleged. If the ~~applicants~~ applicants are willing to accept retrenchment they should give so in writing so that Railway Administration can arrange their due payment. It is stated that the entire Gang has been deployed from one place to another. It is denied that the Railway Administration treats the casual labourers as 'Goods' and Transport them at their whims and pleasure as alleged. It is stated that about 375 casual labour working under CPWI(PQRS) had filed O.A.No.193/88 which was decided by this Hon'ble Tribunal on <sup>17.8.88</sup> ~~16.8.81~~. The applicants in the said petition had ~~shoed~~ <sup>shown</sup> their willingness to go on deployment at other places where work of similar nature is available. The applicants now can not make any grievence against the impugned order at Ann.A/3. The applicants having shown their willingness in O.A.No.193/88 to go to other place

where work is available, the order at Ann .A/3 is legal and proper.

8. Contents of para 6.5 are not fully true and are not admitted. It is not admitted that the period of deployment is always specified in the order itself.

It is denied that the applicants are entitled to daily allowance as per para 2508 of I.R.E.M. as they are deployed at a place which is more than 8 k.m. away from the place where they were working. The said allowance is payable to a casual labour only when/is sent on/he duty. It is denied that the applicant's parent unit is Bharuch Rly. Station. It is stated that the originating division of the applicants is Rajkot division. The applicants at present are offered the work in Baroda division only. The applicants are not entitled to any deployment allowance. It is denied <sup>that the</sup> ~~at that~~ use of the word deployment is a misnomer and a new terminology used by the Railway Administration for ~~defying~~ defying the orders of the Hon'ble Tribunal. It is denied that the order at annexure A/1 collectively deserves to be quashed and set aside as alleged. It is stated that annexure A/1 is a letter and annexure A/3 is a



Memorandum issued to the applicant no.1 stating <sup>reasons</sup> results for deployment.

9. Regarding para 6.6 it is submitted that necessary details are given in the memorandum at annexure A/3 including pay ,P.F.Acc.No. etc. The details regarding date of engagement at Bharuch and date of granting T.S. to the applicant no.1 are mentioned in annexure A/3 as per record of CPWI(PQRS)Bharuch.If the applicants have any grievence regarding correctness of the relevant date etc. they can point out the same to the concerned ~~the~~ authority. The applicants have not produced the orders served on each of the applicant.It is denied that the dates mentioned in the Memorandum at annexure ~~A/3~~ A/3 show how the authorities are irresponsible towards the illiterate and innocent labourers .It is stated that the other averments in the said para are not relevant for the purpose of subject matter in issue involved in the present ~~the~~ case .

10. Contents of para 6.7 are not fully true and are not admitted. ~~It~~ The applicants are being paid wages as per rules. They are also paid house rent allowance also.It is denied that the respondents ~~are~~ netting

meting out in-human treatment to the poor employees who ~~is~~ live on this earth only for survival as alleged. It is stated that the wages shown in the list at Annexure A/1 are the pay drawn<sup>by</sup>/each applicant. The Respondents Railway Administration is affording all the benefits which are available to the casual labours with temporary status uniformly. There is no discrimination in the treatment given to the casual labours with temporary status. The Respondents are certainly justified in their action which legal, proper and constitutional. The applicants are not entitled to a declaration in regard to the action of the Respondents about the payment of salary etc. to be illegal. The applicants were initially engaged on VOP Project and their originating Division is Rajkot Division. The applicants can get the benefit of the judgement of the Hon'ble Supreme Court in the case of Inderpal Yadav V/s Union of India & Others and the Circular issued by the Railway Board as and when their turn comes as per their seniority. Unless and until a casual labour with temporary status is regularised he continues to be a casual labourer. However, on

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regularisation the casual labours are entitled to certain additional benefits like pension, commutation, etc. The applicants have not referred to the <sup>mentioned</sup> ~~the~~ <sup>citation</sup> ~~station~~ of this Hon'ble Tribunal and it is not possible to offer any remarks about the said judgement at this stage. It is submitted that a Court Commissioner is not required to be appointed at this stage to ascertain whether the applicants are given all the benefits which are available to them under the Rules. The applicants have not mentioned the benefits, which according to them, are not given to them by the Railway Administration. If the applicants give specific details regarding the benefits not given to them the Respondents can enquire into the same and find out actual position. It is submitted that the actions taken by the Respondent Railway Administration are bonafide, genuine and as per rules. The applicants have not made out a case for appointment of a Court Commissioner and the purpose of such an appointment.

11. Contents of paras 6.8 to 6.11 need no reply.

12. The applicants are not entitled to any of

the reliefs claimed in para 7 of the application.

13. The applicants are not entitled to the  
interim relief claimed in para 8 of the application  
and the interim relief granted in favour of the  
applicants deserves to be vacated.

In view of what is stated above the  
application may be dismissed with cost.

Baroda

Dated 8.1.1990

7/2 8.4.90

Senior Divisional Personnel Engineer  
Officer, Western Railway,  
Baroda.

T. P. Krasheek Engineer  
I, A.K. Nigam, Senior Divisional Personnel

Officer, Western Railway, Baroda, do hereby state that  
what is stated above is true to my knowledge and  
information received from the record and I believe  
the same to be true. I have not suppressed any  
material facts.

Baroda

Dated 8.1.1990

Senior Divisional Personnel Engineer  
Officer, Western Railway,  
Baroda.

Reply/Response/written submissions  
filed by Mr. M. S. Shrivastava  
learned advocate for petitioner/  
Respondent with second  
Copy served/not served other side

9/4/90 Dy Registrar C.A.T. (J)  
A'bad Bench