

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.No. 4 OF 1993

in

O.A. No. 508/1989.
TAX No.



DATE OF DECISION 10-5-1993.

Union of India & Ors.

Petitioners
(Orig. Respondents)

Mr. N.S. Shevde,

Advocate for the Petitioner(s)

Versus

Cellamuthu Ayyakanny & Ors.

Respondents
(Orig. Applicants)

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 ?

Union of India & Ors.

..... Applicants
(Orig. Respondents)

(Advocate: Mr. N. S. Shevde)

Versus.

Cellamuthu Ayyakanny,

Kaliya Perumal Ayyakanny & Ors..... Respondents.
(Orig. Applicants)

Decision by circulation.

O R D E R

R.A.No. 4 OF 1993

in

O.A.No. 508 OF 1989

Date: 10-5-1993.

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

The original respondents in O.A. 508/89 have filed this Review Application to review the order passed by me in O.A. 508/89 on 25th March, 1992. This Review Application can be disposed of by circulation.

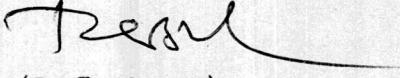
2. I have perused the grounds mentioned by the applicant in para 5 of the Review Application. The contention of the respondents that this Tribunal has erred in holding that Bharuch is the headquarter of the original applicants in the absence of ~~the~~ any documentary evidence produced by the applicant has no substance because I have referred to the journey pass filed by the applicants with the rejoinder at Ann.A-7 and I have also referred to that ~~decision on that~~ point. The respondents' learned advocate in O.A. 508/89

had submitted that the headquarter of casual labourers is the place of their working and the passes for performing the duties were not issued from Bharuch and that contention is not upheld by me, hence the ground No.3 has no substance. So far ground No.4 is concerned, the contention was taken by the learned advocate Mr.N.S. Shevde for the respondents, at the time of hearing of Original Application, that the application having been filed by the applicant within three months from the date of notice dated 4th September, 1989 without waiting for the reply of the authorities, the same was premature and liable to be dismissed ~~and~~ ^{but} ~~the said statement~~ ^{Submission} was rejected by me by my detailed order and there is no error apparent on the face of the record. Similarly the grounds 5,6,7 & 8 taken by the original respondents in this review application have no substance because the said points have also be discussed by me in my judgment. So far ground No. 1 & 2 are concerned, they are general in nature and there is no ~~error~~ ^{in fact} in those grounds at all. Similarly I find no error apparent on the face of the record in my judgment for which ~~these~~ respondents have taken grounds No. 10 to 14. So far ground No. 10 is concerned, it is true that I have held that the claim of the applicants prior to 13th November, 1988 is barred by limitation and ~~they are~~ ^{hence there} seems to be a typographical error in my order that the applicants would be entitled to the allowance admissible under the claim of para 6(b) from 27th September, 1988

per

(1)

to 1st June, 1989 so far the applicant No.1, ~~80~~ 39 are concerned. Therefore, instead of the date "27th September, 1988" appearing in para 9, the date 13th November, 1988 requires to be substituted. I have considered all the grounds and I have given all the reasons in my judgment regarding the submissions taken by the applicant and ~~except the contentions of the~~ ^{mistake in date as above} ~~respondents~~, there is no error apparent on the face of the record and hence the review application deserves to be dismissed except for the correction of the date in para 9, where instead of the word "27th September, 1988 to 1st June, 1989" the words "13th November, 1988 are to 1st June, 1989" ~~is~~ substituted. The Registry to make this corrections in the judgment and to show it to the undersigned and then that corrected portion be sent to the parties concerned. The review application is disposed of.



(R.C.Bhatt)
Member (J)

vtc.

M.A.S.T 167/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
REVIEW APPLICATION NO. 141 OF 1992-1983
IN

O. A. NO.508 OF 1989

Union of India & Ors.....
V/s

...Applicants
(Original
Respondents)

Sellamuthu Ayyakanny,

- Kaliya Perumal Ayyakanny & Ors....
- Opponents
(Original
Applicants)

APPLICATION FOR REVIEW
OF JUDGEMENT OF 25.3.92
IN O.A.NO.508 OF 1989.

The applicants- original respondents
humbly beg to submit as under:-

1. That the original applicants Kaliya Perumal Ayyakanny & 72 others filed O.A.NO.508/89 stating inter alia that the original applicants are working as casual labours under the original respondent No.4 since last several years and their headquarter is at Bharuch, that they have been granted temporary status but are not called for selection till the filing of the O.A., that in view of provisions of para 2501 of IREM they are not liable to transfer, that the original applicants Nos.1 to 39 were

A.S.Y/
29/6/92

transferred/deputed/shifted by the original respondent
No. 4 from Bharuch headquarter to ^h Koshad and then
to KRIBHCO Siding from 17.3.87 to 20.12.87 and
thereafter from 27.9.88 to 1.6.89 from Bharuch to
Baroda on duty 8 Km away from their Bharuch Headquarter,
that the applicants No. 40 to 72 were transferred/
deputed/shifted from 21.7.86 to 20.12.86 from
Bharuch to Kim Koshad KRIBHCO Siding and thereafter
from 18.5.87 to 5.7.87 from Bharuch to Sayan Bridge
and thereafter from 25.3.89 to 30.3.89 from Bharuch
to Vasad and thereafter from 25.5.89 to 2.6.89 from
Bharuch to Baroda on duty 8 Km away from their head-
quarter but they have not been paid various admissible
allowances as envisaged in para 2508 of IREM, that
the applicants of O.A.No.8/88, who had claimed similar
benefits have been paid the arrears of such allowances
but only the applicants though similarly situated
have been denied such benefit despite their repeated
requests, the last representation dated 4.9.89 by
Registered Post AD has not been complied with by the
original respondents and hence the impugned action of
the original respondents is arbitrary, and violative
of Articles 14 & 16 of the Constitution of India,
that the applicants have filed O.A.NO.560/88 against
their transfer and obtained stay but they are not paid
wages of one month from 22.8.88 to 21.9.88, that the
original respondents are bound to follow their own rules

and regulations and cannot depart from the same, that there are no justifiable reasons for the respondents to deny and to discriminate only the applicants when such allowances are paid to other similarly situated casual labourers and prayed for an order directing the respondents to pay admissible travelling allowances to the applicants for the aforesaid period.

2. The original respondents filed written statement stating inter alia that the present application filed by more than one applicant~~s~~ is not maintainable at law and under the rules, that the copy of order dated 9.10.89 is not produced by the applicants it was denied that the respondents had neglected to pay travelling allowance to the applicants and also neglected to comply with the provisions of para 2508 of IREM and rules 202 & 203 of R I, that the present application claiming travelling allowance for the period prior to 15.11.88 is time-barred, it is denied that the headquarter of the original applicants is at Bharuch, it is denied that in view of para 2501 of IREM the applicants are not liable to be transferred, that the casual labour working under respondent No.4 have to work on the entire section under his control, that the Organisation PQRS is purely a temporary establishment and there is no fixed headquarter as such for the labour working under the said organisation, that no passes have been issued to the applicants for

performing their journey from Bharuch to the site

of the work viz. KRIBHCO, Vasad, etc. that the headquarter of the casual labours is the place of their working, the casual labours are recruited accordingly to requirement and availability of work and are discontinued on completion of work, that on completion of work at one place the labours are either required to be retrenched or deployed or transferred as no useful purpose is served by continuing them at the same place without any work, that the applicants have not produced any documentary evidence in support of their say that the Bharuch was their headquarter, that the applicants were recruited against work-charged post in the temporary organisation PQRS, that the headquarter of the applicants was not fixed at Bharuch and were they required to work wherever work of similar nature was available under respondent No.4, that the muster roll/attendance register is maintained by the respondent No.4 at the place of work, that as per para 2508 of IREM when a casual labour is deputed on duty away from his headquarter daily allowance payable to him is paid to him, that the applicants are not entitled to any daily allowance/travelling allowance under para 2508 of IREM and whenever the applicants or any of them is deputed on duty beyond 8 Km from the place of their work they or any of them would have been entitled

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to daily allowance under para 2508 of IREM, that the applicants are of O.A. NO.8/88 and the present application are not similarly situated, that the applicants have not produced any representation except the one sent through their advocate on 4.9.89, there is no continuous cause of action to the applicants and ultimately prayed for dismissal of the original application.

3. That the original applicants filed

~~rejoinder~~ rejoinder.

4. That the said O.A. NO.508/89 was heard and decided by the Hon'ble Tribunal on 25.3.92 holding that the applicants are entitled to allowance admissible under para 2508 of IREM but their claim prior to 13.11.88 is time-barred and that the applicants would be entitled to the allowances admissible under the claim of para 6(b) from 27.9.88 to 1.6.89 so far as the applicant Nos.1 to 39 are concerned and from 15.3.89 to 30.3.89 and 25.5.89 to 2.6.89 so far as the applicant Nos.40 to 73 are concerned and directing the respondents to calculate the said allowance and to pay the same to the respective applicants. It was further directed that the applicants should furnish the details of their claim as early as possible to avoid delay and that the respondents should finalise the claim and make payment of the allowance accordingly para 2508 of

of IREM within four months from the receipt of the said judgement.

5. Being aggrieved by the said judgement dated 25.3.92 in O.A. NO.508/89 passed by this Hon'ble Tribunal, the applicant herein- original respondents humbly beg to file the present application of review and set forth following grounds of objections, viz.:-

(i) That the order passed by the Hon'ble Tribunal is against law, against facts of the case and evidence on record.

(ii) That the order of the Hon'ble Tribunal is vitiated by error of law apparent on the face of the record of the case.

(iii) The Hon'ble Tribunal has erred in holding that Bharuch is the headquarter of the original applicants in the absence of any documentary evidence produced by the applicants.

(iv) The Hon'ble Tribunal ought to have held that the O.A. filed by the applicants within three months from the date of Notice dated 4.9.89 without waiting for the reply of the authority is premature and liable to be dismissed.

(v) The Hon'ble Tribunal ought to have considered that the applicants were issued journey passes vide Annexure A/7 collectively when they were sent on duty beyond eight Kms from the headquarters

that is the place at which they were working.

(vi) The Hon'ble Tribunal ought to have held that the place of working of the casual labours is their headquarter and the distance of 8 Km is required to be considered with reference to the said headquarter of the casual labour.

(vii) The Hon'ble Tribunal has failed to consider that the applicants were not shifted from one project to another but they ~~are~~ were required to work at any place under the jurisdiction of ^{Whom} the Inspector under which they were working.

(viii) Hon'ble Tribunal ought to have held that the provisions of rule 203 & 202 of the Indian Railway Establishment Code Volume I are applicable to the railway employees working on regular basis and are not applicable to the casual labours or the casual labours with temporary status.

(ix) Hon'ble Tribunal has held that the claim of the original applicants prior to 13.11.88 is time-barred but in the later portion of the judgement it has been stated that the applicants would be entitled to the allowances admissible under the claim of para 6(b) from 27.9.88 to 1.6.89 so far as applicant Nos.1 to 39 are concerned. As such there is an error in mentioning the date 27.9.88 instead of 13.11.88.

(x) Hon'ble Tribunal has committed an

error in mentioning the date 27.9.88 on page 16 of the judgement when it has already held that the claim for the period prior to 13.11.88 is time-barred. In any case the original applicants are not entitled to claim T.A.D.A. for a period prior to 13.11.88.

(xi) Hon'ble Tribunal has erred in holding that Bharuch is the headquarter of the original applicants because casual labours are not transferrable. It is submitted that this Hon'ble Tribunal has held in some cases that casual labour who have willingly gone to other places cannot be brought back to the original place.

(xii) Hon'ble Tribunal has failed to consider that the original applicants were provided ~~tenants~~, etc., at the place of their working and as such Bharuch could not be said their permanent headquarter.

(xiii) Hon'ble Tribunal ought to have considered that D.A./T.A. is not payable to employees for a continuous period beyond prescribed limit by the rules and the place where he is working becomes his headquarter after the expiry of the period prescribed by the rules. The order directing to pay D.A. for a period beyond the prescribed period under the rules is illegal.

(xiv) The order of the Hon'ble Tribunal is otherwise erroneous.

(xv) That there is a mistake or error apparent on the face of the record and there is

sufficient cause to review the judgement by the Hon'ble Tribunal.

6. The applicants- original respondents , therefore, pray that:-

(a) That the Hon'ble Tribunal will be pleased to grant this application and review the judgement dated 25.3.92 in O.A. NO.508/89.

(b) Any other order may be passed that the Hon'ble Tribunal deems fit and proper.

(c) Costs of this application be awarded from opponents.

7. This application is in time as the copy of judgement prepared on 27.3.92 has been supplied to the Advocate on 2.4.92 and the application has been filed within thirty days.

VERIFICATION

I, B.N.Meena, age about 34 years, son of Shri R.N.Meena, working as Divisional Personnel Officer, Western Railway, Baroda, and residing at Baroda, do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 26.4.1992

~~Review~~
~~Reply/Rejoinder/written submissions~~
Filed by Mr. N.S. Shinde 27.4.92
earmed advocate for petitioner /
respondent with second -
Copy served/not served & other side

28/4/92 By Registrar C.A.T (J) 28/4/
A'bad Bench

Divisional Personnel Officer,
Western Railway, Baroda.

Issued
28/4/92
At A'bad Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD

REVIEW APPLICATION NO. OF 1992

IN

O.A.No.508 OF ~~1989~~ 1989

Union of India & others ... Applicant

V/s.

Cellamuthu.A. & Others ... Respondent.

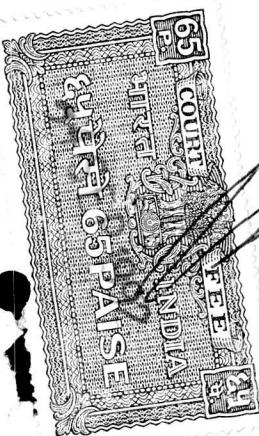
AFFIDAVIT IN SUPPORT OF REVIEW APPLICATION.

The present applicants (original respondents) have filed review application aggrieved by the Hon'ble Tribunal's order dt. 25-3-92 in O.A. 508/89 directing the present applicants (original respondents) to arrange payment of Travelling Allowance to the respondents (original applicants) within a period of four months on 27-4-92.

This affidavit is being filed in support of the review application already filed on 27-4-92.

K. R.

I, B.M. Meena aged about 35 years son of
Shri R.M. Meena, residing at Railway Banglow, Pratapnagar, Vadodara, I am competent to file this affidavit in support of review application. I hereby state this on Oath & solemn affirmation.



Vadodara.

Dated: 30 - 12 - 1992

30-12-92

DIVISIONAL PERSONNEL OFFICER,
WESTERN RAILWAY,
VADODARA.

N.S.
AR
31-12-92

Statement by me.

AB

F.R. Meena
Advocate 30/12/92

Solemnly affirmed before me
on this 30th day of December 1992
by Shri... N.S. Shevde
who is identified by Advocate
Shri... P.R. Desai
to whom I know personally

Shevde
Clerk of the Court
District Court
Vadodara.



and (stranger to family) and application of the said

petitioner before the Court

filed on 12/12/92 and will be under reference
Filed by Mr... N.S. Shevde
Learned Advocate for Petitioners
with second set & N.I.C. appears
copies copy served/not served to
other side

no objection upto 31/12/92
DL 31/12/92 By Registrar C.A.T.O (Call for hearing date)
A'bad Bench

order to be issued in due course of time

dated 30/12/92 (please hold before serving)

to the party to whom it is served. I do

hereby declare that the petition is filed in the Court

for purpose of Civil Suit and it is not filed in the Court

of Criminal Court or any other Court for the purpose of

judicial or quasi-judicial function

Shevde
Clerk of the Court
District Court
Vadodara

30/12/92 - - - - -