

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/598/1993

Date of Decision : 18/01/2001

Mr. Kanti Soma & Ors. : Petitioner (s)

Mr. P. H. Pathak : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondents [s]

Mr. R. M. Vin : Advocate for the respondent [s]

CORAM :

THE HON'BLE MR. A.S. SANGHAVI : **MEMBER (J)**

THE HON'BLE MR. G. C. SRIVASTAVA : **MEMBER (A)**

JUDGMENT

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

- 1) Kanti Soma
- 2) Association of Railway
& Post Employees
through its Treasurer
R.C. Pathak
Having office at
Alap Flats, Opp. Anjali
Cinema, Vasna Road,
Ahmedabad - 380 007.

- Applicants -

Advocate : Mr. P. H. Pathak

Versus

1. Union of India,
Notice to be served through
General Manager, W. Rly.,
Church gate, Mumbai.
2. Divisional Railway Manager
Western Railway,
Bhavnagarpara, Bhavnagar.

- Respondents -

Advocate : Mr. R. M. Vin

ORAL ORDER
O.A 598 of 1993

Date : 18.01.2001

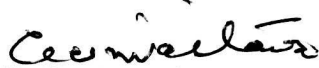
Per Hon'ble Shri. A. S. Sanghavi : Member (J).


The applicants who are working as a casual labourer with the respondents have moved this O.A seeking extension of the benefits of continuity of service and temporary status and also complaining that they are not been paid the transfer and packing allowance and the respondents could be directed to pay them the transfer and packing allowance after the award of the temporary status. The applicants have submitted that even though they had put up more than 200 days of continuous service they had not been

awarded the temporary status. They had also made a grievance that they had been transferred from one place to another and they had not been paid the transfer and packing allowance.

2. Mr. R. M. Vin, learned advocate for the respondents has pointed out from the reply that the applicants were subsequently screened and regularised as Gangman under PWI-SVKD and DLJ vide orders dated 19.3.93 and 30.4.93. It is also stated in the reply (para 4) that the applicants are screened as permanent gangman and their pay is also fixed and they had already earned regular increments. Mr. Pathak for the applicant has submitted that when the applicants are awarded temporary status and are considered to be regular gangman as per the relevant circulars of the railways, they should be paid transfer allowance as well as packing allowance. He has made a grievance that in spite of the respondents stating that applicants having been given temporary status w.e.f. 19.3.93 and 30.4.93 respectively, no transfer allowance or packing allowance is given to the applicant thereafter. Mr. Vin, learned advocate for the applicant has referred to the para 8 and para 10 of the reply of the respondents and has submitted that all the benefits of the permanent gangman as well as of a temporary status gangman are extended to the applicants. In para 8 of the reply it is stated that the applicants are screened and regularised as gangman and all admissible benefits within the rules are extended to them regularly. It is further stated that the question of Transfer Allowance and packing allowance does not arise in the case of person who remained as casual labor without attaining temporary status as per the extent

rules and regulations. The reply is however silent about the extension of the benefit of the transfer allowance and the packing allowance and nowhere states that the applicants have been paid the transfer allowance and the packing allowance. However, it is conceded by the respondents that the applicants would be entitled to all the benefits admissible to the temporary status employee and therefore the respondents are now required to be directed to pay the transfer and packing allowance to the applicants as admissible under the rules from 1993 onwards. Since the details regarding the incidents of the transfers of the applicants are not on record, we direct the respondents to pay the transfer and packing allowance admissible as per the scheme and the rules to the applicants who are the holders of the temporary status on the receipt of the representation in this regard from the applicant. The applicants are also directed to prefer the claim of the transfer allowance as well as packing allowance as admissible from 30.4.93 onwards within two months of the passing of this order and the respondents are directed to decide the claim and make the payment of the same as per the rules within two months of the ^{receipt} ~~reply~~ of the claim applications. With this direction the O.A stands disposed of. No order as to costs.


(G.C. Srivastava)
Member (A)


(A.S. Sanghavi)
Member (J)

~~95/95~~
OA ~~225/95~~
59889

Mr. J. J. Dose

LDES. ~~no necessary a~~
~~depend on~~
~~control for long term~~

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OA 149/88 - against Hermit

John - Hermit set aside

15/5/88 - report for day

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Treasurer
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CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

598

of

1995

Miscellaneous Petition No:

of

Shri

Kanti Soma, 2005

Petitioner(s)

Versus.

0012005

Respondent(s).

This application has been submitted to the Tribunal by

Shri

PA Panik

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the ^{check} check list. The applicant Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O. (J):

D.R. (J):

KNP24492.

*Y. O.A. no. 4/1
2. Date 4/3 & 4/4 intercheck in index
3. Request for permission to file joint application
07/10/93 not filed.
Palk
7-10-93
07/10/93
Letter issued
on 08/10/93
08/10*

P T O

Submitted

Kindly see order on overleaf.

The office objections have been
complied with. The matter if approved
will be handed over to the Council
for necessary action.

AO
12/10

S. O. (T)

ashraf
12-10-93

DR (J) Prabir
12-10-93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. Stamp No. 553/93

Kanti Soma & ors.

..applicants

vs

Union of India & ors.

..respondents

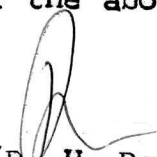
Application under Rule 4(5) of the
Administrative Tribunals Rules

MAY IT PLEASE THE HON'BLE TRIBUNAL :

1. The present application is filed by the applicants in the representative capacity. That the cause of action and the law point involved in the present application is the same for all the employees. That the union is representing the cause of its members who are casual labour and not extended the benefits as directed by this Hon'ble Tribunal.
2. It is submitted that the applicants requesting the Hon'ble Tribunal to allow the applicants to file the present application under rule 4(5) of the Administrative Tribunal Rules. That allowing such an application will not any way adversely affect the right of the respondents. On the contrary, it will avoid multiplicity of the proceeding and the applicants will get the implementation of their fundamental right through the help of the union.
3. That the applicants are class IV and therefore also the legal expenditure etc. required to be avoided and therefore looking to the overall circumstances, the present application may be allowed to be filed under rule 4(5). I rely my contention in the Original Application for the above prayer.

Date : 12/10/93

Ahmedabad


(P. H. Pathak)
Advocate for the applicants

OA No. 553/93

Court-I

Filed by Mr. P. H. Pathak
Learned Advocate for Petitioners
with second set & 2 spares
copies copy served/not served to
other side

Pathak
Dt. 01/10/93 By Registrar AHMEDABAD
A Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
ORIGINAL APPLICATION NO. 598 OF 1993

Kanti Soma & or.

..applicants

vs

Union of India & or.

..respondents

I N D E X

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1.	-	Memo of the application	1 to 9
2.	'A'	Details of the employees	10
	'A/1	Copy of the order in O.A. NO. 149/88	11
3.	A/2	Copy of the letter dt. 23.1.89	12
4.	A/3	Copy of the letter dt. 25.4.90	13
5.	A/4	Copy of the letter dt. 23.6.90	14
6.	A/5	Copy of the letter dt. 30.4.93	15
7.	A/6	Copy of advocate's notice dt. 20.5.93	16/17

-o-o-o-o-

Date: 1/10/93
Ahmedabad

Pathak
(P. H. Pathak)
Advocate for the applicants

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO.

OF 1993

- I. Applicant : 1) Kanti Soma
2) Association of Railway & Post Employees through its Treasurer R. C. Pathak having office at Alap Flats, Opp. Anjali Cinema, Vasna Road Ahmedabad-380007
- II. Respondents : 1) Union of India Notice to be served through General Manager Western Railway Churchgate, Bombay
2) Divisional Railway Manager Western Railway Bhavnagarpara, Bhavnagar
- III. Order under challenge : Non extending the benefits of Temporary Status to the applicants in light of the judgement of the Hon'ble Supreme Court and non granting of the benefits of continuity of service to the applicants as per the direction of this Hon'ble Tribunal and thereby the applicants are deprived of the benefits of Transfer, Packing Allowance, incremental benefits etc. treating them as fresh casual labourers.

IV. Jurisdiction
& V. & Limitation

: The applicant declare that the subject matter of this application is within the jurisdiction of this Tribunal and limitation prescribed under sec.21 of the Administrative Tribunal Act.

VI. Facts of the case:

1. The applicant No.1 here is one of the affected employee and the applicant No.2 is registered trade union, registered under the provisions of Trade Union Act, 1926 and representing the cause of its members, whose names are mentioned at Annexure 'A' to this application. That the main grievances of the applicants before this Hon'ble Tribunal are that after the judgement of this Hon'ble Tribunal, setting aside the order of termination, the Hon'ble Tribunal has directed the respondents to reinstate the employees concerned with continuity of service, but the said benefits are not extended to the applicants and they are treated as fresh employees and thereby the applicant employees are deprived of the benefits of increment, benefits of temporary status and transfer, packing allowance etc.

2. It is submitted that most of the applicant employees have joined the service in 1979-80 and thereafter they were without following any procedure of law terminated by the respondents. That the applicants were constrained to approach to this Hon'ble Tribunal by filing O.A. No. 149/88. That the Hon'ble Tribunal has directed the respondents to reinstate the applicants with their continuity of service without any break. Copy of the order of the Hon'ble Tribunal in O.A. 149/88 is annexed and marked as Annexure A/1 to this application.

3. It is submitted that pursuance to the order of the Hon'ble Tribunal, the applicants have reported for duty and vide order dt. 14.4.88 the applicants were taken on duty with effect from 20.4.88 under the Permanent Way Inspector (C), Rajkot. It is pertinent to note that thereafter the applicants were sent for medical examination on 17.5.88 and the applicants were declared as fit. That the applicants were continued from 18.5.88 to 20.7.88 at Sukhpur and thereafter were continued under the Permanent Way Inspector (C) Rajkot. That from Rajkot, the applicants were transferred to Bhavnagar on 17.1.89. That at that time, the office of Permanent Way Inspector was at Bhavnagar. That the applicants were posted under the control of Divisional Railway Manager, Bhavnagarpara, Bhavnagar. That Sr. DEN (II), Bhavnagar i.e. subordinate to the respondent No.2 has directed the applicants to work under the Permanent Way Inspector, Bhimnath under DEN Botad vide his letter dt. 23.1.89. Copy of the letter dt. 23.1.89 is annexed and marked as Annexure A/2 to this application whereby the applicants were posted to work under the Permanent Way Inspector, Bhimnath. It is pertinent to note that while transferring the applicants from Sukhpur to Bhavnagar and from Bhavnagar to Bhimnath, the applicants are not extended the benefits of transfer and packing allowance by the respondents. That simply like transferrable goods, the applicants were shunted from pillar to post. So far the casual labourers are concerned, the respondent department is acting in total arbitrary manner and they do not consider the existence of the casual labourers as the human existence.

4. It is submitted that the applicants were continued at Bhimnath and Dholka upto April '90. That the Permanent Way Inspector, Dholka has vide his letter dt. 25.4.90 transferred the applicants to work under the Permanent Way Inspector, Anreji. Copy of the letter dt. 25.4.90 issued by the Permanent Way

Inspector, Dholka is annexed and marked as Annexure A/3 to this application. That the Permanent Way Inspector, Amreli has continued the applicants under him upto 23.6.90 and thereafter has transferred the applicants to Savarkundla. Copy of the letter dt. 23.6.90 issued by the Permanent Way Inspector, Amreli to Permanent Way Inspector, Savarkundla is annexed and marked as Annexure A/4 to this application.

5. It is pertinent to note that for transfer also the applicants are not paid transfer or packing allowance by the respondents. That again on 30.4.93, the Permanent Way Inspector, Savarkundla has transferred the applicants to Permanent Way Inspector, Dhola Junction. Copy of the letter dt. 30.4.93 is annexed and marked as Annexure A/5 to this application, which shows that the applicants are really treated like cattle or transferable goods. That the Permanent Way Inspector, Dhola Junction state that he has received the following casual labourers today afternoon. That for the transfer from Savarkundla to Dhola Junction also the applicants are not paid transfer allowance by the respondents. Now again the applicants are transferred from Dhola to Savarkundla. That as per the Railway Establishment Manual and as per the judgement of this Hon'ble Tribunal, if the casual labourers are transferred from one place to another, they are entitled to get transfer and packing allowance as they get all the benefits available to temporary employees of the respondent Railway on completion of their 120 days of service. That if the applicants are treated as not transferred then they are entitled to get the benefits of daily allowance. Thus the action on the part of the respondents non payment of transfer and packing allowance to the applicants as well as denying them daily allowance etc. is contrary to law and is being ex facie arbitrary and

in contravention of Art. 14 & 16 of the Constitution of India.

6. It is submitted that after reinstatement of service of the applicants, it is first duty of the respondents to grant temporary status to the applicant employees. That the Hon'ble Supreme Court has clarified the situation that the casual labourers working ~~under~~ on the Project are also entitled to get the benefits of temporary status on their completion of 120 days of service because on the length of service, the employees cannot be denied the benefits of temporary status only on the ground that they are working on Open Line or Construction. That the applicants are entitled to get the benefits of temporary status on their completion of 120 days of service. That the respondents are treating the applicants as fresh employees and they are deprived of the benefits of continuity of service which result into deprivation of increment etc. of the applicant employees. That the applicant employees should be awarded temporary status and its consequential benefits on their completion of 120 days of service by the respondents.

7. It is submitted that the Hon'ble Tribunal has specifically mentioned in its order that the employees will be entitled to get the benefits of continuity of service. When the benefits of continuity of service is considered, the respondents are duty bound to consider the employees in continuous service from their initial date of appointment and considering that aspect of the matter, the applicant employees are required to be granted the benefits of temporary status, increment and all other benefits. That here the respondents are not considering the applicant employees in continuous service from the initial date of appointment. That if the applicant employees are considered in continuity of service, they will get about 6-8 increments and benefits of

temporary status from the retrospective date.

That it is a very huge amount which is required to be paid to the applicant employees by the respondents.

That time and again the applicant employees have made representation to the respondents to extend them

the benefits of continuity of service but no fruitful result was available and therefore the applicants

have approached to their advocate and the advocate

has issued a notice on 20.5.93 pointing out the

respondents the real situation and informed to decide

the issue involved in the present application within

15 days of receipt of this notice. Copy of the notice

dt. 20.5.93 is annexed and marked as Annexure A/6

to this application.

8. It is submitted that the respondents even did not care to reply the notice of the advocate nor taken any care to meet with the end of justice and to comply with the direction of this Hon'ble Tribunal in earlier application and extend the benefits of temporary status to the applicant employees from the retrospective date

and to decide the issue of payment of transfer and

packing allowance to the applicants for their various

transfers made after the reinstatement. It is submitted

that the respondents are totally ignoring the right

of the applicant employees and acting in total arbitrary

manner with malafide intention to deny the applicant

employees of their valuable right guaranteed under

Art. 14 & 16 of the Constitution of India.

9. It is submitted that looking to the above circumstances

of the case, all the issues which are raised by the

applicants here are covered by the decision of this

Hon'ble Tribunal or decision of the Hon'ble Supreme Court.

Therefore, the applicants are having strong prima facie case

in their favour. The balance of convenience is also in favour of the applicants because at every month the applicant employees are loser of the valuable right of increment etc. as the respondents have not decided the representation of the applicants. That granting of the interim relief will not any way adversely affect the right of the respondents but it will meet the end of justice and therefore the interim relief prayed for in the application is required to be granted in favour of the applicants.

VII. Relief sought for :

In the abovementioned facts and circumstances of the case, the applicants pray that

- (A) The Hon'ble Tribunal be pleased to declare the action of the respondents not extending the benefits of continuity of service and temporary status to the applicant employees as per the direction of this Hon'ble Tribunal and direction of the Hon'ble Supreme Court, as arbitrary, illegal, unconstitutional and violative of Art.14 & 16 of the Constitution of India.
- (B) Be pleased to direct the respondents to grant the benefits of continuity of service to the applicant employees and grant the benefits of temporary status from their completion of 120 days of service considering from their initial date of appointment and further direct to grant all consequential benefits with 18% interest.
- (C) Be pleased to direct the respondents to extend the benefits of transfer allowance etc. to the applicant employees considering them as temporary status employees and direct the respondents to pay the amount of transfer and packing allowance to the applicant employees with 18% interest.

(D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

VIII. Interim Relief :

(A) Pending admission and final disposal of the application be pleased to direct the respondents to consider the applicant employees in continuous service as per the direction of the Hon'ble Tribunal in earlier application.

(B) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

IX. The applicants have not filed any other application in any other court including the Hon'ble Supreme Court of India with regard to subject matter of this application. The applicants have no other alternative remedy available except to approach this Hon'ble Tribunal by way of this application.


X. Details of Postal Order :

Postal Order NO. 801247612 Dated : 11/10/93
Issued by : NVP Post office
Amount of Rs 50/-

XI. An index in duplicate containing the documents is produced herewith.

XII. List of enclosure as per above index.

Date: 11/10/93
Ahmedabad


(P. H. Pathak)
Advocate for the applicants

: 9 :

9

VERIFICATION

I, Shri Kantibhai Somabhai, adult, residence of Limbad Village, Post Dhaki, Ta. Patdi, Dist. Surendranagar, do hereby verify that the contents of para 1 to 12 are true to my personal knowledge and I believe the same to be true and that I have not suppressed any material fact.

Date : 11/10/93


Ahmedabad

X. શ્રી કાંતિબાઈ સોમાબાઈ

Annexure - A

DETAILS OF THE EMPLOYEES.

Sr. No.	Name	Date of Birth	Date of appointment	D.O. granted	T.S. A/C No.	P.F. No.	Pay
1.	Shri Hira Narshi	6-12-43	27-2-79	20-4-88		1768334	775/-
2.	" valla Dharmshi	14-1-58	17-10-78	20-4-88		1768333	775/-
3.	" Amthu Bhava	1-4-58	17-10-78	20-4-88		1768338	775/-
4.	" Kanti Soma	1-5-59	15-6-79	20-4-88		1768337	775/-
5.	" Bhanaji Kana	1-6-55	24-4-79	20-4-88		1768336	775/-
5r	" Raghu Mohan	5-4-52	19-12-77	31-5-88		1768339	775/-
6.	" Nathu Ambaram	1-7-61	0-10-79	2-5-88		1768340	775/-
7.	" Savsi Chhonda	7-10-57	19-12-77	4-5-88		1768332	775/-
8.	" Kamar Maganbhai						

Tycoon


OA/109/88

Coram : - Hon'ble Mr. P.H. Trivedi : Vice Chairman
Hon'ble Mr. P.H. Joshi : Judicial Member

14/1/1988

Beard learned advocates Mr. K.K. Shah and Mr. B.R. Kyada for the applicant and respondents respectively. The applicant No.9 Shri Virji Kama ~~and~~ may take representation and respondent will look into and dispose of the same within 1 months of this order provided he filed representation within one month of this order. Rest of the applicants on reinstated and their continuity of service without back wages by protected as the case is covered by our judgment delivered in O.A./331/86. The reinstatement be done provided they report to the Executive Engineer, Jamnagar within a week. With this observation the case is disposed of.

sd/-

(P.H. Trivedi)
VICE CHAIRMAN

sd/-

(P.H. Joshi)
JUDICIAL MEMBER

Truecopy
R

Annexure- A/2WESTERN RAILWAY

No. E/891/7/13 (T).

To.

PWI-BNH
AEN-BTD.

DRMs Office,

Bhavnagar Para.

Date : - 23/1/1989

Sub : - Absorption of surplus VOP casual
labours - Deptt.Ref : - (i) DRM(E)-JP's letter No. G/E/615/CTR
dtd. 5/9/88.(ii) PWI(C) BVP dt. RJT's letter No. PWI/
G/E/615/3 Vol. I dtd. 18.1.1989

(iii) AEN ALWARS letter.

The following casual Labour directed to you to utilise memo on CTR Work subject to their passing medical examination B-one. They may be directed to Jaliala Road to work under PWI/BNH.

1. Shri Mohan Pramji
2. Shri Prabhu Kanji
3. Shri Raghu Mohan
4. Shri Vala Dharmshi
5. Smt. Kamar Magan
6. Shri Amthu Bhava
7. Shri Dhanji Kara
8. Shri Savshi Sonde
9. Shri Nashru Govind
10. Shri Natu Ambaram
11. Shri Hira Narshi
12. Shri Kanti Soma
13. Shri Hematsinh Dasybha

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

for Sr. DEN(II) BVP.

Trugobx
[Signature]

13 #
Annexure- A/3

Western Railway

No. E/615/VOP

PWI's Office
DHOLKA

To. PWI- Amreli

Dt. 25-4-90

Sub :- Shifting of Casual Labourers.

Ref :- As per DEN(1) of orders.

As per DEN(i) BVP's letter quoted above, the following casual labourers received with effect from 25/4/90 A/noon from this unit to report his this duty under you.

There particulars are attached list. Pay of the employees charged by this unit up by 25/4/90 and pay from. 21/4/90 to be charged at yours

Leave account and service sheets with follow.

DA/List and

Sr.	Name	Pay	Sr.	Name	Py.
1.	Naran Mana	846/-	19.	Amthu Bhava	774/-
2.	Ishwar Meru	750/-	20.	Prabhu Kanji	774/-
3.	sakra Mara	811/-	21.	Raghav Mohan	774/-
4.	Dhuda Magji	750/-	22.	Savji Janda	774/-
5.	Rajesh Mange	750/-	23.	Shambhu Shiva	750/-
6.	Viha Deva	750/-	24.	Dhanji Kana	774/-
7.	Tapu Magan	750/-	25.	Hira Narshi	774/-
8.	Bhikha Megha	750/-	26.	Bala Dharmshi	774/-
9.	Rama Vira	750/-	27.	Smt. Taku Nageshi	822/-
10.	Khoda Ganda	750/-	28.	Smt. Kamorben M	774/-
11.	Jagjiwan Zina	750/-			
12.	Hanau Baba	750/-			
13.	Satrughwan Jagantha	811/-			
14.	Girdharsinh P.	835/-			
15.	Nagesugh M	835/-			
16.	Natu Ambaram	774/-			
17.	Kanti Sama	774/-			
18/-	Mahensing Bhairavsg	822/-			

COPT TO: 2

AEN- BTD. for information PL.

Chief Permanent Way Inspector
W. Rly, DHKOLA

True copy
R

W. R.

No. /43/AE

Dated : 23.6.1990

From PWI/AE

To PWI/SVIW

Sub: Patrolling of Line Monsson 1990

Ref: AEN/ No. 10/432/SVIW dt.12.6.90

As per above quoted letter, the following WOP labour are directed to work on your station i.e. from 23.6.90 AN. They have been charged upto 20.6.90 by this office onward may be charged at you.

Sr.No.	Name	Designation	Rate of Pay	D.O.A.	PF No.	Scale
1.	Vala Dharamshi	WOP	750/-	Scale Rate		750-940
2.	Janak Baba	"	750/-	"		"
3.	Hira Narshi	"	770/-	"		"
4.	Natu Ambaram	"	774/-	"		"
5.	Kanti Soma	"	774/-	"		"
6.	Amthu Bhava	"	774/-	20.4.88		"
7.	Prabhu Kanji	"	774/-	4.5.88		"
8.	Raghu Mohan	"	774/-	4.5.88		"
9.	Savshi Sonda	"	774/-	4.5.88		"
10.	Dhanji Kana	"	774/-	20.4.88		"
11.	Smt. Kamar Magan	"	774/-	4.5.88		"

Other service condition will follow

sd/-

Permanent Way Inspector
W.Rly. AMRELITrue copy
R

W.R.

15
Annexure- A/5

G 30 B/CL 19

No. E/615/DLJ

Dated 30-4-93

From : OWI GRI- DHOLA JN.

TO. PWI GRI- Savarkundla.

Sub - P.R.T. of Group 'D' staff-Engg. deptt.

Ref - ~~Resruitment~~ Recruitment of Empanelled VOP casual labours

1) AEN-Dy. memo No. E891/1/VOP of 30/4/93.

With ref to the above memos the following VOP labourers are here by receive to

- Hira
- 1) Shri ~~valla~~ Narshi
 - 2) " Valla Dharmshji
 - 3) " Amthu Bhav
 - 4) " Kanod Sama
 - 5) " Dhanji Kana
 - 6) " Raghu Mohan
 - 7) " Natu Ambaram
 - 8) " savsi sanda

His complete details of pay, leave are enclosed in the statement.

Their pay for the wage period 21-4-93 to 20-5-93 may be charge ~~as~~ 25 years.

PWI- DLJ.

Copy to AEN-Dy. for ref to the above.

True copy
h

Dt. 20/5/1993

Divisional Railway Manager
Western Railway
Bhavnagarpara
Bhavnagar.

Sub - Non compliance with the direction
issued by the Hon'ble Tribunal

Under the instructions of my client Shri Kanti Soma, Amthu Bhavan Vala Dharamsinh, Hira Narsinh, Natu Ambaram, Raghu Mohan, Kamal Maganbhai, Savsinh Chhodabhai and ors. who are working at present under your jurisdiction at Dhola and now to be transferred to Savarkundla, who are the applicants before the Hon'ble Central Administrative Tribunal in O.A. No. 149/88, In the undefigned advocate inform you by this notice as under:

That my clients have approached to the Hon'ble Tribunal by filing the abovementioned Original Application. That they have challenged the arbitrary and illegal order of termination. That the Hon'ble Tribunal was pleased to allow the application vide its order and judgement dated 14.4.88 whereby my clients were directed to be reinstated with continuity of service, without back wages. Copy of the judgement and order of the Hon'ble Tribunal is annexed this notice for your kind perusal.

That pursuance to the judgement of the Hon'ble Tribunal, my clients were reinstated by the Ex. Engineer (C) Rajkot. That my clients were declared pass in the medical examination held on 17.5.88 and were posted at Sukhpur. That since then my clients are working continuously. That from Jan'89, as per the direction of the Hon'ble Supreme Court for regular - absorption of the casual labourers, my clients were transferred to you. That you have re-transferred my clients on 22.1.89 to work under the permanent Way Inspector, Bhimnath. That my clients are working satisfactorily since then without any complaint.

That as per the direction of the Hon'ble Tribunal, my clients are entitled to get the benefits of continuity of service. Thereby you are required to grant them all benefits of Temporary Status namely incremental benefits and Transfer Allowance etc. It is pertinent to note that when you have transferred my clients to Bhimnath, you have not paid them Transfer and Packing Allowance.

That similarly my clients were transferred from Bhimnath to Dholka. At that time also you have not paid them Transfer Allowance as per the rules. Non granting of the benefits of Transfer and Packing Allowance to my clients are repeated by your office while transferring them from Dholka to Amreli in November'90, Amreli to Savarkundla in June'91, ~~Dholka~~ Savarkundla to Bhimnath and Bhimnath to Dhola and now from Dhola to Savarkundla. All this time, my clients are entitled to get the benefits of Transfer and Packing Allowance. That there is no justification available to you to deny the benefits of Transfer Allowance to my clients. That your said action of denying my clients the benefits of increment of Temporary Status after their completion of 120 days,

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// 2 //

is in clear violation of provisions of Rly Establishment Manual. That there is no justification available to you for non granting of the benefits of increment etc. to my clients. It is pertinent to note that my clients are the employees appointed in the year 1979 and when the Hon. Tribunal has granted the benefits of continuity ~~xx xx~~ ~~they are working~~ of service, you are duty bound to give all the benefits as if they are working continuously since 1979.

The above action on your part non granting the benefits of continuity of service to my clients and thereby not granting the benefits of Transfer & Packing Allowance and benefits on increment etc. is in clear violation of the direction issued by the Hon'ble Tribunal. Such an action on your part falls within the purview of an offence punishable under the provisions of Contempt of Court Act, punishable for 6 months imprisonment.

In these circumstances, by this final notice I inform you that if within 10 days of receipt of this notice, you will not extend all the benefits available to a temporary employee to my clients since their initial date of appointment, and will not pay the amount of Transfer and Packing Allowance to my clients for the abovementioned transfer from place to place, it will be presumed that you are wilfully flouting the order of the Hon'ble Tribunal and my clients shall be constrained to move the contempt of Court proceeding against you, at your cost and risk. That the allowances which are required to be paid to my clients are illegally withheld by you and therefore you are under obligation to pay 18% interest for the illegally withheld amount which is required to be paid to my clients as per rules.

I hope that you will do the needful immediately for redressal of the grievance of Class IV employees who are exploited since years by the Railway Administration and to avoid further litigation.

Date :- 20/5/1993

Ahmedabad.

(P.H. Pathak)
Advocate

CC to :- General Manager
Western Railway
Church gate,
Bombay.

-For information &
necessary action.

True copy
[Signature]

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

T
DCFH

O.A.No. 598/93

Kanti Soma & Others.....

Applicant.

V/S

Union of India & others.....

Respondents.

Respondent Railway administration files it written statement to the applicant's application as under that:

1. Application is not according to law, misconceived, hopelessly time barred and in all respect it is not tenable hence the same may be rejected.
2. Railway administration does not admit the truth & correctness of any statement, allegation, contention and suggestion set out in the application unless the truth and correctness of the same is specifically and expressly admitted.
3. Without prejudice to the above, Railway administration files it written statement as under:-
4. The contention of para III of the application is not correct. It is clarified that the applicants are not only granted temporary status but they are being screened and regularised as Gangman under PWI-SVKD & DLJ vide Sr.DEN(E)BVP's No.E/E/891/1/VOP, EE/71/13 dt 19.3.93 & AEN DLJ's No. E/891/1/VOP of 30.4.93 & they are working as permanent Gangman. Accordingly their pay is fixed and they earned regular increment also (Annexed hereto ~~was~~ true copy of letter NO.E/E/615/7/1/2 of 28.11.94 & marked 'R').
5. No comments for para IV & V of the application.

Copy
4/12/95

Annex R

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6. Contents of para VI of the application need no comments as the same is clarified here before. Even though it is reiterated that applicant & others have already attained temporary status, they are screened and regularised as Gangman and all admissible benefits within the rules are extended to them long back. Thus the cause of the present O.A. now does not survive and as such the same may be dismissed.
7. Referring to the contents of para VI(2) of the application the O.A. No.149/88 cited by him the same was pertaining to the construction Deptt. of V.O.P Jammagar which is not within the jurisdiction of Resp.No.2 of the present O.A.
8. Referring to the contents of para VI(3) it is clarified that as per annexure 'R' the applicant is screened & regularised as Gangman and all admissible benefits within the rules are extended to him regularly. The question of T.A. & packing allowance does not arise in the case of person who remained as casual labour, without attaining Temporary Status as per the extant rules & regulation.
9. Contents of para VI(4) & (5) need no comments as the working of casual labour who are totally temporary & not attained Temporary Status does not make them entitled for T.A., transfer T A & packing allowance as per extant rules.
10. Referring to the contents of para V(6),(7) & (8) it is emphatically stated that the temporary status is granted to him and he is screened and regularised as G/man as per annexure 'R' and all benefits admissible to him within the rules are given to him regularly. Thus the cause of present O.A. does not survive and as such the

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Para 10 Contd :-

the same may be dismissed.

11. Referring to the contents of para VII A to D of the application it is clarified ~~xxx~~ once again that Temporary status is already been granted to applicant and he is ~~scr~~reened & regularised as Gangman and all legal dues within the rules admissible to him are given to him. Thus the cause of present OA. does not survive and as such same may be dismissed.

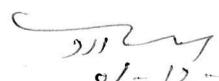
12. Railway administration craves leave to add, alter, amend, modify and correct the contents of this reply as and when required in future.

Bhavnagar.

On and behalf of Union of India,

Date :-

4.12.95
R. L. K.

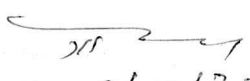

01-12-95
Sr.Divisional Personnel Officer,
Western Railway, Bhavnagar Div.

.....

: VERIFICATION :

I, G.L.Meena, Sr.Divisional Personnel Officer, Western Railway, Bhavnagar Division do state on verification that what is stated above in para 1 to 11 are based on the official record to which I am conversant. I believe same to be true to the best of my knowledge & belief. I am competent to sign this reply.

Bhavnagar.


01-12-95
Sr.Divisional Personnel Officer,
Western Railway, Bhavnagar Div.

Date :- .11.95.

Annex R

Western Railway

No: W/43/7/1/2

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AE's Office,
Dhola Junction
Date: 28/11/94

To : The Sr. DEN (E) BVP,

Sub: - Court case of Sh. Kanti Soma and others

Ref: - Your letter No E/615/7/1/2 of 24.11.94

The reply of the above has already been submitted to you vide this office letter even No. dtd. 20.1.94 in ref. to your No: Even dtd. 13.1.94. However, the detailed remarks of the above subject is furnished as below: Shri Kanti Soma and others VOP Casual labours have been worked on PWIs-AE & SVKD's Unit as under:-

PWI/AE's Unit:

Period from 21.4.90 to 23.6.90.

The above named VOP-Labours have been deputed to work under PWI/AE vide CPWI/DOK's letter No E/615/VOP of 23.4.90 and they have been worked on work of JHAR CUTTING on PWI/AE's Unit.

PWI/SVKD's Unit:

Period from: 24.6.90 to 06.10.90.

The above named VOP-Labours have been deputed to work on PWI/SVKD's Unit vide PWI/AE's No W/43/AE of 23.6.90 and they have worked against the work of Monsoon Patrolling on PWI/SVKD's Unit. On completion of work, the above named VOP-Labours have been returned to AEN/BTD vide PWI/SVKD's letter No: E/891/SVKD of 06.10.90. and they have worked under PWI/BNH from 07.10.90 to 25.07.91.

The above named VOP-Labours have been directed to CPWI/DLJ vide his No: E/615 of 25.7.91 in ref. to DEN (E) BVP's No E/E/R&T/615/24 Vol. II of 19.7.91 and they have worked under CPWI/DLJ's Unit as under:-

Period from: 26.07.91 to 30.04.91 A/N.

The above named have been screened vide Sr. DEN (E) BVP's No: E/E/891/1/VOP, EE/71/13 of 19.3.93 and they have been regularised as G/Man under PWI/SVKD and DLJ sec. vide AEN/DLJ's Memo. No: E/891/1/VOP of 30.4.93. Since, they are working as Perm. G/Man on this sub. divn. under PWI/SVKD and CPWI/DLJ's Unit.

All the above named have been granted T.S. prior to their regularisation on this sub. divn. i.e. under PWIs-DLJ, AE & SVKD from CPWI/DOK & AEN/BNH.

The S/Sheets of the above named VOP-Labours are received received by PWI/SVKD from CPWI/DOK and their pay have been fixed by this office after duly verified their S/Sheets and leave Account. Pay fixed vide AEN, Sanctioned Increment Roll No: E/511/SVKD of 27.11.94 & vide No: E/511/DLJ 22/03/94.

All the above VOP-Labours have been worked as Temp. Status labours under PWIs-DLJ, AE & SVKD and they have not been granted Transfer/Packing allowance while their shifting from DOK to AE, AE to SVKD and BNH to DLJ & DLJ to SVKD. The Pay fixed in favour of the following employees by this office.

- 1) Sh. Natu Amaram
- 2) Sh. Hira Narshi
- 3) Sh. Savshi Sonda
- 4) Sh. Raghu Mohan
- 5) Sh. Kanti Soma
- 6) Sh. Vala Dharmeshi
- 7) Smt. Kamal Megan
- 8) Sh. Anthu Bhav

been transferred to RJT Divn. on mutual transfer. The File No: E/K/898/93/Court of your office is returned herewith. Pl. ack. the receipt.


Copy of Court case

Assistant Engineer
Western Railway,
Dhola Junction

3. With reference to para 5 to 8 of the reply I the contentions of the respondents and reiterate what I have stated in application., I say that we are not granted the benefits of T.S. from retrospective date and therefore we are not paid the transfer Travelling allowances. It is not true that the application does not survive. I say that our services rendered in construction Dept. can not be ignored. It is misconceived, I say that casual Labour with Temporary status are entitled to get all the benefits available to temporary employees. The case is covered by the judgement to this Hon'ble Tribunal also.

4. With reference to para 9 to 12 of the reply it is not true that the application is misconceived not maintainable. It is not true that T.S holder are not entitled to get the benefits transfer and packing allowance. It is not true that the cause of original Application does not survive. I say that we are not granted the benefits of continuous service and on that basis not granted temporary status. That our juniors who were in services are granted benefits of T.S. from 1.1.1982 onward. As per the provision of Railway establishment manual, temporary status is required to be granted after 120 days. That the said benefits are delayed by the respondents hence the applicants are entitled to get interest on the arrears.

Date : 18/12/81
Ahmedabad


(P.H. Pathak)
Advocate for the applicant

VERIFICATION

I, Shri Kantibhai Somabhai, adult, residence of Bhesam, do hereby verify that what is stated above is true to my personal knowledge and I believe the same to be true and that I have not suppressed any material facts.

Date : 15/12/95
Ahmedabad

श्री कान्तिबाई सोमाबाई

I declare that
true
A
A. K. Somabhai