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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH,  
JODHPUR.

Date of decision: February 24, 1989.

(1) O.A. No.754/88

S/SHRI MAKADAM & OTHERS.

... Applicants.

Versus

UNION OF INDIA & OTHERS.

... Respondents.

(2) O.A. No.734/88

S/SHRI SVERAMANIAM & OTHERS.

... Applicants.

Versus

UNION OF INDIA & OTHERS.

... Respondents.

(3) O.A. No.753/88

S/SHRI ARMUGAM & OTHERS.

... Applicants.

Versus

UNION OF INDIA & OTHERS.

... Respondents.

Mr. R.C. Gaur, Advocate, for the applicants.

Mr. R.N. Mathur, Advocate for the respondents.

CORAM:

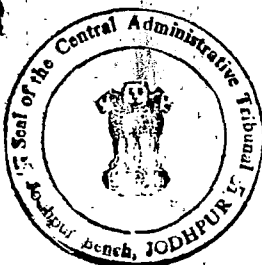
The Hon. Mr. B.S. Sekhon, Vice Chairman.

The Hon. Mr. G.C. Singhvi, Admn. Member.

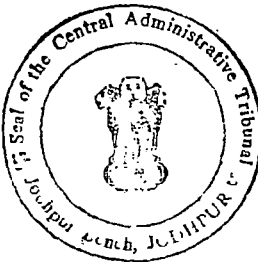
B.S. SEK

As common questions of law and fact are involved in the captioned Applications, all these O.As. have been consolidated with the consent of the learned counsel for the parties.

2. The applicants are casual labourers who were initially employed in Rajkot Division. Most of them were employed as far back as 1979 and the remaining 5-10 years/ ago back. They were, however, transferred to Phulera in Jaipur Division in 1986 and have been continuously working since then under P.W.D. (Construction) Western Railway, Phulera. Aggrieved by what the applicants term as 'en masse' and at random transfer of casual labourers out of Jaipur Division, several



casual labourers approached the Tribunal and obtained stay orders, saying that the respondents started dubious methods with a view to exploiting the casual labourers and verbally instructed the applicants to move to Kota-Chittorgarh Project (KCP) failing which they would not be taken on duty, ~~transferring~~<sup>aver</sup> the applicants, that their transfer from one division to another, besides being illegal, not only uproots them from one place but also renders them junior most in the other division and as such susceptible to frequent transfers and even retrenchment. The applicants have also averred that despite directions by the High Court and the matter having been agitated through several applications by casual labourers neither proper screening has been done nor a seniority list for Jaipur Division has been prepared and that if any reduction in the establishment is required 40% of the casual labourers have to be absorbed. The applicants have prayed; (i) by a suitable order, writ or direction issued to the respondents they be allowed to continue on their duties in Jaipur Division, (ii) the respondents be directed not to give effect to the verbal instructions given by P.W.I. Phulera, respondent No.4, who is restraining the applicants from resuming their duties and (iii) the respondents be directed to protect their services as they have been continuously working for the last several years.



3. The respondents appeared to contest the Applications. The defence, as disclosed in the reply filed by the respondents, is that they have no intention to transfer the applicants out of Jaipur Division, the applicants are only sought to be sent on duty to KCP, which is one of the most important and vital <sup>project for</sup> development and exploitation of national resources. In support of their stand the respondents have placed reliance upon

communication No.E.615/1 dated October 25,1983 (copy Ann.R.1) from XEN (S&C),Jaipur to PWI(C),Phulera and communication dated October 24,1988 (copy Ann.R.2) stated to be an order for movement on duty. The other pleas set up by the respondents are that since it is not a case of transfer, the question raised by the applicants with regard to section 2(j) and section 9A of the Industrial Disputes Act,1947 has ~~no relevance~~ no relevance for the purpose of controversy involved in these Applications and that these Applications have no similarity with O.A. No.327/88 pending before the Tribunal.

4. Pursuant to a request for interim relief, the following ad interim order was passed in the first instance :-

' Ad-interim order restraining the respondents from transferring the applicants or sending them on duty outside Jaipur Division as also preventing the applicants from performing the duties of a casual labourer within the Jaipur Division is issued till December 2,1988.'

The aforesaid order dated November 25,1988 was modified and substituted by the following order:-

' The respondents are restrained from transferring the applicants or sending them on duty outside Jaipur Division as also preventing the applicants from performing the duties of casual labourers within Jaipur Division till the decision of the Application.'

5. During the course of arguments, the learned counsel for the applicants, inter alia, contended that the respondents are resorting to the device of sending the applicants on temporary duty with a view to circumvent<sup>-ing</sup> the dicta of the Supreme Court in



Inter Pal Yadav and others v. Union of India and others  
(1), Dakshin Railway Employees Union, Trivandrum

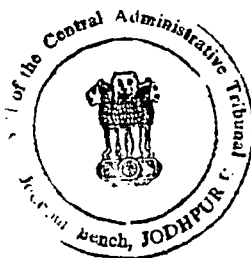
Division v. General Manager, Southern Railway and  
of the Tribunal in  
others (2) and Narayan Ala v. Union of India and

others (3). It was further submitted by the learned  
counsel that the respondents are actually transferring  
the applicants which they cannot do in view of the  
provisions of rule 2501 of the Indian Railway  
Establishment Manual and the dicta of the Supreme  
Court and the Tribunal in a catena of decisions.

The learned counsel also added that the respondents  
are not giving two way passes, advance payment and  
are resorting to transfer without following the rule  
and  
of last come first go/without preparing the seniority  
list. According to the learned counsel, seniority  
should be the guiding factor if the casual labourers  
are to be absorbed and reduction in establishment

in Jaipur Division is to be made and that the projects  
under-  
known  
taken by the Railway are not well in advance, they  
should do proper and advance planning well in time  
and that the disestablishment of the casual labourers  
interferes with their right to livelihood guaranteed  
by Article 21 of the Constitution as also with their  
right to work.

6. The learned counsel for the respondents  
countered by submitting that it is merely a case of  
sending the applicants on temporary duty and is not  
at all a case of transfer. It was also stated by the  
learned counsel that the question of preparing the  
seniority list for absorption of eligible casual  
labourers should be considered on the basis of their  
seniority in the parent division. The learned counsel  
for the respondents also harped on the vital



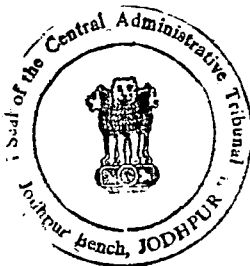
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- (1) 1983 (3) 248.  
(2) AIR 1977 Supreme Court 1153.  
(3) 1983 (3) 17.

importance of KCP stressing the need for completion thereof at the earliest. The learned counsel also canvassed that the questions of seniority as also of regularisation are not germane to the case of transfer, the applicants are being given all the benefits admissible to the casual labourers sent on temporary duty and that section 9A of the Industrial Disputes Act is inapplicable to the case of transfer.

7. After the arguments had been advanced by the learned counsel for the parties at considerable length, the learned counsel for the applicants made a sporting offer to the effect that as a good-will gesture and in the interest of all concerned, the applicants agree to be sent on duty to KCP for a spell of 30 days at one go provided that return passes are issued and there is interval of 7 days after their return to Phulera. The other conditions put forward by the learned counsel for the applicants were that Phulera be treated as head-quarters of the applicants till they are retained in Jaipur Division as also during the period they are sent on temporary duty to KCP and that payment also made at Phulera. ~~After some discussion~~, The learned counsel for the respondents fairly accepted the aforesaid conditions but stated that payment would be made to the casual labourers sent on temporary duty at the place of temporary duty. After some discussion, the learned counsel for the applicants accepted that the applicants are prepared to receive the payment at the place of temporary duty.

8. In view of the aforesaid statements, we hereby make the following directions:-

The interim order passed in these Applications shall stand vacated. The respondents would be free to send the applicants on temporary duty



to KCI for 30 days' spell at one go. They will issue return passes to the casual labourers who are sent on such temporary duty. There would be an interval of 7 days between their return and reposting on temporary duty. The head-quarters of the applicants would continue to be at Phulera so long as they are retained in Jaipur Division and the payment of their dues shall be made at the place of temporary duty.'

9. The Applications are disposed of in the terms indicated herein-above. It is clarified that the aforesaid directions have been given on the basis of consensus between the parties and should not be taken to be an expression of an opinion on the merits of either party's case. In the circumstances of the case, the parties are left to bear their own costs.



Sd/-  
(G.C. SINGHVI)  
A.M.

Sd/-  
(B.S. SEKHON)  
V.C.

Recd - 4 Copies taken  
on original decision  
16/11/88 at 254/88.