

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. 687/93

Date of Decision: 7.4.94

ANWAR AHMED

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. J.K. Kaushik

: Counsel for the applicant.

Mr. Manish Bhandari

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

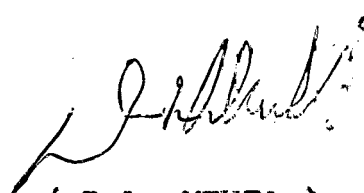
The applicant is working as Driver for a pretty long time exceeding a decade and on 1.1.84, he was given a temporary status. The applicant is the employee of the Kota Division and was working in the Construction Project. The respondents have now issued the order dated 22.11.93 (Annexure A-1) transferring him from Kota Division to Patlam Division on the ground that the Project work in Patlam is also in progress. Mr. Manish Bhandari submits that it seems that there is no vacancy. The applicant has invited my attention to Annexure A-5 and submitted that there is a vacancy and the notification has been issued on 17.2.93 inviting applications for trade test of Class 'D' employees. Mr. Bhandari submits that Class 'D' employees will get the promotion and the applicant cannot claim any right against that vacancy. Whatever may be a position, one thing is very clear that seniority is maintained Division-wise and not State-wise. Naturally, if the applicant is transferred from Kota Division to Patlam Division, he may likely to loose the seniority. Even if it is assumed he may continue his lien as Mr. Bhandari submits, even then the question of transferring from one Division to another Division may also create number of problems. The applicant who has served for more than 10 years and he is a temporary status holder, should have been regularised by now. To keep an employee for more than 10 years as a

temporary status holder and not to give him a permanent status is against the fundamental principles of law enunciated in Article 37 of the Constitution. We cannot think in a Social Welfare State that a person who has served for more than a decade and who is declared as a temporary status holder before 10 years, now he is again told that is not a regular employee. It is a fit case for regularisation. The respondents are directed to consider the case of the applicant for regularisation taking the humanitarian approach in the matter and should pass necessary orders within a period of three months from the receipt of this order. If the applicant feels aggrieved against the order passed by the respondents, he will be at liberty to move a fresh application.

2. As far as the question of transfer from Kota Division to Ratlam Division is concerned, it is directed that the applicant may be retained in the Division in which he was appointed and where he is working since his appointment.

3. The respondents will be at liberty to take action according to law if no vacancy is available. In the matter of regularisation and absorption, the preference should be given to the applicant as far as practicable looking to the number of vacancies and seniority position of other employees, if any, in Kota Division.

4. The C.A. is disposed of accordingly, with no order as to costs.


(D.L. MEHTA)
Vice-Chairman