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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 11-10-1996

CA No.457/1995 & MA No. 345/96

Rajeshwar and Mahipal Singh

.. Applicants

Versus

Union of India and Others

.. Respondents

Mr. P.V.Calla, counsel for the applicants

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr. O.F.Sharma, Administrative Member

Hon'ble Mr. Eatan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.F.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, S/Shri Rajeshwar and Mahipal Singh have prayed that the order dated 6.9.1995 (Ann.A1) by which the applicants, amongst others, have been transferred by the Chief Project Manager, Jaipur and posted under Deputy Chief Engineer (C), Falna, may be declared illegal and respondent No.1 the Union of India/General Manager, Western Railway, may be directed to instruct respondent No.3 the Divisional Railway Manager, Western Railway, Kota to consider the cases of the applicants for permanent absorption from the date on which their juniors were absorbed and to treat the applicants as permanent railway employees. There is a still further prayer that respondent No.2 i.e. the Chief Project Manager, Western Railway, Jaipur may be directed to pass an appropriate order in view of the contents of document Ann.A2 dated 14.5.1992 wherein an assurance had been conveyed that on completion of broad gauge

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conversion work they should be directed to go back to Kota Division for their absorption in the said Division.

2. On 29.9.1995, the Tribunal had issued an interim direction staying the operation of the order dated 6.9.1995 (Ann.A1) by which the applicants were transferred and posted under the Deputy CE (C), Falna in Ajmer Division, provided they had not already been relieved and they had not also proceeded on transfer.

3. The facts of the case, as stated by the applicants, are that they were initially appointed to Group-D posts in Kota Division in R.E. (Railway Electrification), Kota on 3.3.1986 and 1.4.1986 respectively to work under I.O.W. (R.E.), Kota, on a regular basis. They were granted temporary status w.e.f. March, 1987 and April, 1987 respectively. They are not liable to transfer from one Division to another although their services can be utilised in other Divisions subject to their eventual repatriation to the original Division in which they were appointed. They hold their lien in Kota Division. On account of the ongoing guage conversion work in Jaipur Division, the authorities in Jaipur Division requested other Divisions of Western Railway to send employees from their Divisions to work on the project. By letter dated 14.5.1992 (Ann.A2), the applicants, amongst others, were deputed by the office of the C.F.M. (RE), Kota to report for duty to Deputy Chief Engineer (C) III/Jaipur. In the said letter it was stated that on completion of the guage conversion work, the employees concerned should be asked to report back to Kota Division for absorption. In view of the terms and conditions in the above communication, it was incumbent upon the authorities in Jaipur Division to

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send these employees back to Kota Division once the guage conversion work in Jaipur Division had been completed. However, instead of sending them back to Kota Division as per the terms and conditions mentioned in Ann.A2, the applicants, on completion of work in Jaipur Division, were asked to give option for working in other divisions vide Ann.A3 dated 30.9.1994.

4. Thereafter, vide communication dated 6.9.1995 (Ann.A1) the applicants, amongst others, declared as surplus in the project at Jaipur, were transferred and posted under Deputy C.E. (C), Falna. (It is this order the operation of which was stayed by an interim direction issued by the Tribunal on 29.9.1995).

5. Further, according to the applicants, some of the other employees mentioned in Ann.A2 dated 14.5.1992 had filed an OA, No. 650/94, before the Tribunal seeking transfer back to Kota Division so that they do not lose their seniority and opportunity of permanent absorption in Kota Division. The OA was disposed of by the Tribunal by order dated 28.3.1995 (Ann.A4) in which the Tribunal observed that the employees, being casual labours, were not liable to transfer from one division to another in the ordinary course and it was in extra-ordinary circumstances and also in the interest of administration that their transfer has been effected. The respondents were asked to grant transfer allowance to the applicants. It was further held in the said order that the employees may be continued to work on the projects on which they have been employed after transfer from Kota Division but on completion of the work in these projects they should be transferred back to Kota

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(16)

Division in terms of the directions contained in the communication dated 14.5.1992 (Ann.A2). It was further held by the Tribunal in the said order that the applicants would continue to retain their seniority in Kota Division where they have been granted temporary status and they shall also be considered for regularisation in Kota Division as per the existing policy, rules and instructions.

6. Therefore, according to the applicants, it was expected from the authorities in Jaipur Division that they would direct the employees concerned to go back to Kota Division if work in Jaipur Division has been completed. However, this had not been done and they have been further transferred to Palna falling in Ajmer Division. It is the grievance of the applicants that a number of casual labours were called for screening as per the list prepared on 27.11.1991 but the result of the screening has not been declared. Both the applicants had appeared in the said screening and they were found suitable. However, on account of their transfer from Kota Division to Jaipur Division they were not made permanent. Meanwhile, employees junior to the applicants, who also appeared in the screening in 1991 were absorbed on a regular basis. The applicants have given names of 10 employees who, according to them, were junior to them and have been absorbed in Kota Division and made permanent. It is also their grievance that 'freshers' were engaged directly in scale Rs. 750-940 in Kota Division although this scale is provided to temporary status holder casual labours after their permanent absorption. The applicants have mentioned the name of one Shri Mohammed Ali who was directly appointed

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to scale Rs. 750-940, as seen from Ann.A5. The applicants have accordingly sought quashing of the order dated 6.9.1995 (Ann.A1) by which they have been transferred from Jaipur Division to Falna in Ajmer Division.

7. The respondents in their reply have stated that the applicants, in fact, were not appointed by Kota Division but were appointed in the office of Chief Project Manager (CPM) Railway Electrification, Kota and it was only when the applicants became surplus that they were transferred to Jaipur Division for working on the an ongoing project there. Since the railway electrification work in Kota area had come to an end, the employees working in these projects had to be transferred to other ongoing projects to avoid their being retrenched or terminated for want of work. The appointments of the applicants were not on a regular basis and if it had been so there would have been no need to grant them temporary status which was sought by the applicants. On completion of the project work in Jaipur Division, the applicants would have been transferred back to Kota Division but work in Kota Division was not available and they were deputed to work where work was available i.e. in the guage conversion work from Phulera-Ajmer and onwards upto Ahmedabad. The respondents have added that some of the employees who have been sent back to Kota Division and with regard to whom there was difficulty in providing work there, they have given their willingness to go to Abu-Poad. As regards the seniority of the applicants, the respondents have disputed their claim that they figure at Sl.Nos. 193 and 176 as stated in sub para x) page 9 of the OA.

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(18)

The correct seniority of Shri Rajeshwar is at Sl.No. 1403 and that of Shri Mahipal Singh is at Sl.No.1114. They have added that if the applicants have already been screened and found suitable for absorption, they should produce proof to this effect. The implication of this averment of the respondents appears to be that they have not been screened and found suitable. They have categorically denied that any persons junior to the applicant have either been permanently absorbed or given benefit of regularisation. The respondents, contend that the applicants have made false averments in this regard with a view to misleading the Tribunal. Further, according to them, scale Rs. 750-940 is given to temporary status holders and not only after their permanent absorption. They have also denied that any regular or permanent appointment has been made vide Ann.A5. According to them, a few employees have been appointed on compassionate grounds or otherwise as was permissible under the laws.

8. During the arguments the learned counsel for the applicants drew attention to the order Ann.A4 dated 28.3.1995 passed earlier by this Bench of the Tribunal in OA No. 650/94, Aladdin & Ors. Vs. Union of India & Ors. In that OA also, Shri P.V.Calla represented the applicants. He stated that eventually the Tribunal had directed that after the work in the project on which the applicants were then employed was completed, they should be transferred back to Kota Division and should be considered for regularisation/absorption there. He prayed that same order may be passed in the present case also. The learned counsel for the respondents stated that as already noted by the Tribunal in the order

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passed earlier on 28.3.1995 (Ann.A4), it was because of non-availability of work in Jaipur Division that they were further transferred to work on the ongoing projects in other Divisions. If the applicants are transferred back to Kota Division, there may be no ongoing projects there and, therefore, no work may be available for them. Of course, their seniority as Casual Labour is maintained in Kota Division and they would be considered for regularisation and absorption in Kota Division in accordance with their seniority as per the availability of vacancies and as per the existing rules and instructions on the subject.

9. We have heard the learned counsel for the parties and have gone through the material on record.

10. In the earlier order passed by the Tribunal on 28.3.1995, the Tribunal had observed in para 5 thereof that the applicants may be allowed to continue to work on the ongoing projects even after transfer to other Divisions from Jaipur Division, to which they had been initially transferred from Kota Division, but on completion of the ongoing projects on which they were employed now, they should be transferred back to Kota Division. In so far as the present case is concerned, the learned counsel for the applicants has insisted that the terms of the communication Ann.A2 dated 14.5.1992 should be complied with. The directions contained in the said communication, issued by the Chief Project Manager (Railway Electrification), Kota while transferring the applicants from Kota Division to Jaipur Division, are to the effect that officials concerned including the applicants should be directed to report to Kota Division for absorption on completion of the conversion work on

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which they have to be employed in Jaipur Division. Naturally, the respondents are expected to comply with the terms and conditions on which the applicants were sent from Kota Division to Jaipur Division to work on the gauge conversion projects. In these circumstances, we direct that the applicants should not be transferred and posted under the Deputy CE (C), Falna as per order Ann.A1 dated 6.9.1995 but they should be directed to report back to the authorities who had initially engaged them in Kota Division for working on the conversion work. These directions should be complied with, within a period of 2 months from the date of receipt of a copy of this order. The interim direction issued by the Tribunal on 29.9.1995 staying the operation of order Ann.A1 has therefore now become redundant and it, therefore, stands vacated. MA No.345/96 stands disposed of accordingly.

11. The learned counsel for the respondents raised the point that the applicants had been sent from Jaipur Division to Falna in Ajmer Division for the reason that no work was available in Jaipur Division on which these persons could be employed. He added that in the first instance, these persons had been sent from Kota Division to Jaipur Division because work was not available in Kota Division either. He stated that if no work is available in Kota Division on which the applicants can be employed, they would have ^{no} work on reporting back in Kota Division.


12. In the relief clause the applicants have not specifically claimed that on being transferred back to Kota Division they should also be given work, although this may be the implication of the reliefs claimed by them. The applicants had contended that persons junior

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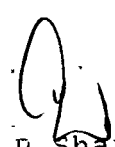
21

to them had been regularised and absorbed in Kota Division. However, this averment has been denied by the respondents and the applicants have presented no document to prove this averment. Even the document at Ann.A5 does not unambiguously establish that Shri Mohammed Ali was a Casual Labour, was junior to the applicants and has been absorbed on regular basis. We, therefore, are not in a position to give a finding that any persons junior to the applicants have been regularised and absorbed in Kota Division and, therefore, the applicants are also entitled to the same treatment. Therefore, we are not in a position to give any direction regarding work being provided to the applicants on their transfer to Kota Division. However, on their transfer back to Kota Division, they would be entitled to seniority, regularisation and absorption in accordance with the rules and we further direct that work should be provided to them in accordance with their seniority position in Kota Division.

13. The OA is disposed of accordingly with no order as to costs.


(Ratan Prakash)

Judicial Member


(O.P. Sharma)

Administrative Member