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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1073/1988.

DATE OF DECISION: May 24, 1990.

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| Shri Dharamvir and Another | | Applicants. |
| Shri M.D. Goyal | | Counsel for the Applicants. |
| | | V/s. |
| Union of India & Others | | Respondents. |
| Shri P.P. Khurana and Shri Arun Sharma | | Counsel for the Respondents. |

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the judgement? */*
4. To be circulated to all Benches of the Tribunal? */*

P.C.
(P.C. JAIN)
MEMBER(A)

A.B.
(AMITAV BANERJI)
CHAIRMAN.

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DATE OF DECISION: May 24, 1990.

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| Shri Dharamvir and Another | | Applicants. |
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CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants have assailed confidential circular No. GM/GA-2/Vol. IV, dated New Delhi 2.6.87, issued by the Addl. General Manager (MCE), Office of the General Manager Maintenance, 'NTR', Kidwai Bhawan, New Delhi, addressed to all DEs (by name) in the Region and Shri R.P. Bansal, D.E. Satellite, Earth Station, Sikandrabad (U.P.) (Annexure 'C'), as also the impugned notice dated 30.4.88 for termination of their services with effect from 1.6.88 (Annexure 'B'). They have prayed that the impugned notice dated 30.4.88 terminating the services of the applicants with effect from 1.6.88 may be declared as null and void; the impugned circular dated 2.6.87 be declared as illegal; and the respondents may be directed to continue the applicants in service without any break and without making any change in the terms and conditions of their service. It is also prayed that the respondents be further directed to regularise the appointment of the applicants as per the rules.

2. Relevant facts, in brief, as disclosed in the pleadings, are that applicant No.1, Shri Dharamvir was

appointed as Daily Rated Mazdoor (DRM) under Respondent No.3 in October, 1985. His registration number with the Employment Exchange was 9034/85 and he was sponsored by the Employment Exchange, vide their letter dated 22.5.87. He stated to have worked for 870 days, from October, 1985 to May, 1988, and appointed and paid as skilled workman. Applicant No.2, Shri Sohan Pal Singh, was appointed as Casual Labour Mazdoor under respondent No.3 in June, 1986 and his name was sponsored by the Employment Exchange in May, 1986. He stated to have worked for about 650 days during the last about two years. By the impugned notice dated 30.4.1988, they were informed that they were recruited as casual Mazdoor (Skilled) due to contingency of work as the regular posts of Mazdoor/A.C. Tech. were not filled up and provided to the Division by the recruitment authority i.e., DET, Ghaziabad. It is further stated in the impugned notice that as per instructions contained in DET Memo No.270/6-84-STN dated 30.3.85 and GMM NTR's Memo No.GM/GA-2/Vol.IV/dt.2.6.87 (a copy of which was enclosed therewith), the Daily Rated Mazdoors recruited after 31.3.85 and who were not in the Department before 31.3.85, were required to be retrenched, and, therefore, their services would be terminated with effect from 1-6-88 after expiry of one month's period from the date of issue of that letter. In the circular dated 2.6.87 (supra), it is stated that fresh recruitment of casual labour was stopped vide orders issued by Telecom. Directorate Memo dated 30.3.1985 (supra), and as such, DRMs recruited after 31st March, 1985 and who were not in the Department before 31st March, 1985 have to be retrenched immediately after observing all necessary formalities.

3. The applicants' case is that the impugned notice dated 30.4.88 is against the statutory provisions of Section 25-F of the Industrial Disputes Act and so are the

instructions contained in the impugned letter dated 2.6.87 as it amounts to unfair/^{labour}practice. The impugned orders are stated to be arbitrary, illegal and mala fide. The plea of discrimination has also been taken as S/Shri Satyapal, Kiranpal and Rameshpal, DRMs, junior to the applicants are stated to be still continuing in service.

4. The case of the respondents, in brief, is that the impugned notice of termination was issued in compliance of orders from higher office as a policy decision to the effect that DRMs who were engaged after 31.3.1985 were to be retrenched. It is also stated that the applicants were engaged for a period not exceeding six months or till regular Mazdoors were posted by DET, Ghaziabad, whichever was earlier and that the applicants were so informed so that they could seek employment elsewhere. Applicant No.1 is also stated to have left the services of the respondents without informing them with effect from 28.9.87, and he joined the Life Insurance Corporation; but he again joined on 9.11.87 on a temporary appointment not exceeding six months. The present sanctioned strength of Mazdoors, including regular Mazdoors for the Satellite Earth Station (MTCE & NOCC) as per norms fixed by the Department is stated to be 24 (unskilled including RMs 20 and skilled 4). It is further stated that this sanction is conditional in the respect that the DRMs engaged/^{against}this strength should have been working in the Department from prior to 31.3.85. Against the above sanctioned strength, 21 persons, including two RMs, 16 unskilled DRMs and three skilled DRMs, were all stated to be senior to the applicants and also working before 31.3.85, and they were already on the rolls, and the remaining three vacancies were to be filled by the DET, Ghaziabad, who is the recruiting authority, from amongst the senior persons available in the District / Circle. The process of selection is stated to be already underway,

but the position of both the applicants in the District / Circle is very low in the published list.

5. Some of the Daily Rated Mazdoors working on Muster Roll were stated to have been rendered surplus and, therefore, retrenched for want of vacancies in some units of the Department to accommodate senior Daily Rated Mazdoors who had been rendered surplus. It was, therefore, decided by the Department that no further Daily Rated Mazdoors are employed after 31.3.85 and those already employed after 31.3.85 shall be retrenched, so that Daily Rated Mazdoors employed before 31.3.85 and rendered surplus for want of vacancies and thereby retrenched may be accommodated. In view of this, re-employment of applicants who were recruited after 31.3.1985 will be unfair vis-a-vis those employed earlier. The respondents have further stated that as per orders of the Supreme Court, the Department is to draw a rational scheme and absorb the Daily Rated Mazdoors working for more than one year as far as possible. Such a scheme is being finalised, but the Daily Rated Mazdoors employed after 31.3.1985 may not be covered by the scheme of regularisation. The Department shall consider the applicants in the scheme being formulated and if they are covered, they shall be appointed on regular basis even if they are not in service at that time. It is further stated that in the vacancies arising out of retrenchment of applicants, the Department is going to employ only those Daily Rated Mazdoors who were employed on or before 31.3.85 and are senior to the applicants, but have been rendered surplus and thereby retrenched for want of vacancies. The allegation of mala-fide is refuted and the impugned notice of termination is said to have been served in accordance with the policy decision following the Supreme Court's orders to rationalise the absorption of DRMs. Similarly, the allegation of arbitrariness is also controverted as the retrenchment has been done

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in pursuance of a policy decision. Notice of retrenchment is said to have been served in accordance with the provisions of Section 25-F of the Industrial Disputes Act. The applicants are stated to be the juniormost persons and the three DRMs stated to be junior to the applicants had already been retrenched on 1.11.87 and 1.12.87, and they were continuing on purely temporary basis for three months like the applicants. The impugned notice is stated to be fully valid as it has been served in accordance with Section 25 F of Industrial Disputes Act and that retrenchment compensation will be paid before the applicants finally leave service as they were still continuing in service for a temporary period of three months till 31.8.88.

6. We have carefully perused the material on record and have also heard the learned counsel for the parties.

7. The impugned notice dated 30.4.1988 is a notice of retrenchment. The impugned letter dated 2.6.87 also directs retrenchment of casual workers recruited after 31.3.1985. The reply of the respondents also concedes that the applicants have been retrenched under the provisions of Section 25-F of the Industrial Disputes Act. It is well settled proposition of law that the wages in lieu of notice and retrenchment compensation have to be paid at the time of retrenchment and not on any subsequent date (STATE OF BOMBAY AND OTHERS Vs. THE HOSPITAL MAZDOOR SABHA AND OTHERS - AIR 1960 SC 610; NATIONAL IRON AND STEEL CO. Vs. STATE OF WEST BENGAL - AIR 1967 SC 1206; STATE BANK OF INDIA Vs. N.S. MONEY - AIR 1976 SC 1111). In the case before us, the question of payment of wages in lieu of notice does not arise as one month's notice was given. However, no retrenchment compensation was either paid or tendered before 1.6.88, i.e., within the notice period. Thus, the provisions of Section 25-F of the

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Industrial Disputes Act have been violated in this case.

8. The next question is whether the applicants are entitled to reinstatement or to payment of retrenchment compensation. The ordinary rule is that where an order of termination from service is found to be bad and illegal, particularly in the area of industrial relations, the workers whose services had been retrenched should be reinstated with back wages. However, in the case of *MANAGEMENT OF COIMBATORE PIONEER B. MILLS Vs. PRESIDING OFFICER, LABOUR COURT COIMBATORE & OTHERS (1979(1) LLJ 41)* where the order of retrenchment was found to be bad for non-compliance of the provisions of Section 25F, the Labour Court did not order reinstatement but awarded compensation to the employees. This order of the Labour Court was confirmed by the Madras High Court which held that the Labour Court had the discretion either to order reinstatement or to pay compensation in lieu thereof. In the facts of the case before us, admittedly, on the expiry of the impugned notice of retrenchment dated 30.4.1988, both the applicants were re-employed for a period of three months with effect from 2.6.1988. As such, they were not actually retrenched though there was a gap of one day. Further, both the applicants were recruited after 31.3.1985, which was against the direction of the Department. Moreover, the posts against which they were appointed, were sanctioned subject to the condition that only those who had been recruited before 31.3.1985 could be appointed against those posts. Applicant No.1 was appointed in October, 1985, though his name was sponsored by the Employment Exchange only in May, 1987. The seniority list of Mazdoors filed by the respondents (R-5) shows 21 persons senior to the applicants who had been engaged before 31.3.1985 (from 1979 to January 1984). The applicants' names appear at Sl. Nos. 22 and 23 in the said list. The three names of juniors, as alleged in the application, appear

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at Sl. Nos. 24, 25 and 26. The juniors at Sl. Nos. 24 and 25 were retrenched on 1.11.1987 and the one at Sl. No. 26 was retrenched on 1.12.87; but all the three are shown to be now working temporarily. Similarly, the applicants are shown to have been retrenched on 1.6.88 but kept for three months with effect from 3.6.88. It would thus appear to be not fair to order reinstatement of the applicants in the facts and circumstances of this case. However, the applicants are entitled to retrenchment compensation in accordance with the provisions of Section 25F of the Industrial Disputes Act. The following directions are accordingly issued: -

- (1) The applicants shall be paid retrenchment compensation on the total service rendered by them in accordance with the provisions of Section 25F of the Industrial Disputes Act within a period of one month from the date of receipt of a copy of this order.
- (2) The case of the applicants will be considered in the context of preparation of the scheme under the orders of the Supreme Court for absorption of casual workers who have put in 240 days or more of service in the Department and their names will be placed at appropriate places for absorption against regular posts, if they are otherwise eligible in accordance with the scheme.
- (3) If Respondents 2 and 3 engage any Daily Rated Mazdoor or casual worker recruited after 31.3.1985 against temporary sanctioned post, the cases of the applicants shall also be considered, depending on the total length of service put in by them after ignoring technical breaks, if any, vis-a-vis the total service put in

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by those who may be considered for engagement against such posts.

9. The application is disposed of in terms of the above directions. Parties to bear their own costs.

(Signature)
(P.C. JAIN) 24/5/90
MEMBER(A)

(Signature)
(AMITAV BANERJI)
CHAIRMAN.
24.5.90