

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI. (1)

Regn. Nos. OA 892/88 &
OA 1160/88

Date of decision: 30.4.1990.

(1) OA 892/88

Shri Parasu Ram & Another

..Applicants

Vs.

U.O.I. represented by
Secretary, Railway
Board & Others

..Respondents

For the Applicants

..Shri Atul Wadera,
Counsel

For the Respondents

..Shri S.N. Sikka,
Counsel

(2) OA 1160/88

Shri Periya Swamy & two Others

..Applicants

Vs.

U.O.I. represented by
Secretary, Railway Board and
Others

..Respondents

For the Applicants

..Shri Atul Wadera
with Shri P.T.
Mathew, Counsel

For the Respondents

..Shri Arvind
Sinha, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *Y*
2. To be referred to the Reporters or not? *N*

(The judgment of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicants in these applications have worked as
Casual Labourers under the third respondent (Permanent Way
Inspector, Northern Railway, Lothian Bridge, Delhi). As
common questions of law have been raised in these applications,
On

it is proposed to dispose them of by a common judgment.

2. The applicants in OA 892/88 have worked as Casual Labourers in 1982 and 1983-85. They were re-engaged

without back wages on 27.5.1987 and 24.12.1987 respectively after the Supreme Court delivered its judgment in the case of Inder Pal Yadav Vs. Union of India, 1985(2) SCC 648.

3. Similarly, the applicants in OA 1160/88 had been engaged as Casual Labourers in 1979-80 and they were re-engaged without back wages in September, 1987 as per the judgment of the Supreme Court in Inder Pal Yadav's case.

4. The applicants in these two applications claim that they have acquired temporary status after completing

240 days of continuous service and as such, they are entitled to protection of Section 25 F of the Industrial

Disputes Act, 1947. The respondents have denied in their counter-affidavits that the applicants have acquired temporary status.

5. The reliefs sought by the applicants are that the impugned orders of termination of their services should

be quashed and that the respondents be directed to verify the service particulars from the Railway records and further to inquire through vigilance about the alleged forged certificates.

6. The applicants have annexed copy of the impugned order of termination dated 7.5.1988 on applicant No.1. in

OA 892/88, which reads as follows:-

" You are hereby given notice that your Casual Labour Certificate No.150492 is not genuine but a forged one. You have intentionally committed a fraud upon the Railway Administration. Therefore, your employment stands terminated with effect from 14.5.1988".

No such order relating to applicant No.2. has been filed as an annexure to the petition. The learned counsel of the applicants, however, stated that a similar order was served on him also.

7. Similar notices of termination were served on the applicants in OA 1160/88 (vide orders dated 27.5.88 at Annexures I to III and dated 24.5.88 at Annexures III to V, pages 12 to 23 of the paper book).

8. We have carefully gone through the records of the case and have heard the learned counsel of both parties. The learned counsel of the applicants has relied upon the order dated 19.4.1988 passed by the Supreme Court in Civil Appeal No.1518 of 1988 (Karim Vs.

Divisional Railway Manager and Others) in which the Supreme Court granted special leave filed by the appellant and directed that the notice of termination given on 21.7.1987 should not be enforced. While arriving at this decision, the Supreme Court took note of the stand of the respondents in their counter-affidavit that the appellant was still continuing in service inspite of that notice. Accordingly, the Supreme Court held that he shall be deemed to be continuing in employment and that he will be entitled to his wages from July, 1987 till date.

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9.. The aforesaid order will not apply to the facts and circumstances of the present case, where their services had been terminated and they are presently not in employment and they have not been in employment since their services had been terminated from the respective dates mentioned above.

10. The learned counsel of the applicant has also relied upon the decision of the Kerala High Court in Executive Engineer, Southern Railway, Ernakulam Vs.

K.V. Raman & Others, ILR 1975(2) Kerala Series 676.

In that case, the services of some Railway employees who had acquired temporary status in accordance with the provisions of the Indian Railway Establishment Manual had been terminated without following the procedure laid down in the Railway Servants (Discipline & Appeal) Rules, 1968. It was held that the impugned orders of termination were accordingly set aside as they had been passed in violation of the said Rules.

11. Admittedly, all the applicants have worked from September, 1987 till their services were terminated in May, 1988. All of them had worked for a period of over 7 months. In our view, they had acquired temporary status in accordance with the provisions of Rule 2501 of the Indian Railway Establishment Manual on completion of 4 months of continuous service.

12. In our judgment dated 6.4.1990 in a batch of applications (OA 305/89 and connected matters - Ratti Ram Vs. Union of India & Others through General Manager, Northern Railway, New Delhi) we had examined the legal position in detail applicable to such cases. In brief, where the respondents alleged a charge of misconduct against a railway employee and terminated his services on that ground, it amounted to the imposition of penalty by way of disciplinary action. In case he has acquired temporary status, even though the respondents alleged that his initial engagement was by fraud or misrepresentation, his services cannot be terminated without following the procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968.

13. Following the ratio in the aforesaid judgment, we order and direct as follows:-

(i) The impugned order of termination dated 7.5.1988 in OA 892/88 is set aside and quashed. The impugned orders dated 27.5.1988 and 24.5.1988 in OA 1160/88 are also set aside and quashed.

(ii) The respondents are directed to reinstate the applicants in service. In the facts and circumstances of the case, we do not, however, direct payment of back wages to them.

(iii) After reinstating them, the respondents will be at liberty to take appropriate action against them under

the Railway Servants (Discipline & Appeal) Rules, 1968 for any alleged misconduct, if so advised.

(iv) The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

(v) The parties will bear their own costs.

(vi) Let a copy of this order be placed in OA 892/88 and OA 1160/88.

(D.K. CHAKRAVORTY)
MEMBER (A)

30/4/1980

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(P.K. KARTHA)
VICE CHAIRMAN (J)