IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI

OA NO. 1192/87 DATE OF DECISION: 21.5.90

SHRI PREM NARAIN & ORS. APPLICANTS

SHRI B.S. MAINEE ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS RESPONDENTS

SHRI O.N. MOOLRI ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

[Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A)]

Shri Prem Narain and four others who were working as Substitute Khalasis in Loco-shed, Saharanpur, Northern Railway since 1985, aggrieved by the respondent's order No. Vig./CT/3/87(P) dated 25.6.1987 terminating their services with immediate effect have filed this application under Section 19 of the Administrative Tribunals Act, 1985.

2. The case of the applicants is that they were appointed as Substitute Khalasis in the Loco-shed, Saharanpur, in 1985 and that their appointments were made after due selection and medical examination etc. The copies of the appointment letters issued to them are at Annexure-III (pages 19 to 22 of the paperbook). They had worked to the full satisfaction of the respondents till they

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were discharged from service on 25.6.1987. During their service, they were enjoying all facilities and privileges like passes, PTOs etc. and were subscribing to the Provident Fund. No reason has been given for discharging them from service in the order dated 25.6.1987. The applicants preferred an appeal to the D.R.M, New Delhi on 1.7.1987 which was followed by a notice served on the respondents through their Advocate on 18.7.1987. There was, no response. They have averred that the impugned order terminating their services is illegal, unconstitutional, malicious and void ab initio. By way of relief, the applicants have prayed that the impugned order discharging the applicants from service should be quashed and that the respondents be directed to reinstate the applicants in service from the date they were discharged with consequential benefits.

Shri B.S. Mainee,learned counsel for the applicants cited a catena of judicial pronouncement* in support of his contention that the service of the applicants should not have been terminated without following the principles of natural justice and/or without following the provisions of Industrial Disputes Act, 1947.

3. The sole contention of the respondent is that the applicant had procured the employment on the basis of forged appointment letters and that they were discharged from service,

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*1. 1988(1)ATLT CAT 427,Bhagwan Dass Vs. UOI & Others
2. ATR 1988(1)CAT 207, Hardyal & Ors. Vs. UOI & Ors.
3. 1988(1)CAT 441, UOI & Ors. Vs. Pradip Nath
4. 1986(1)SCC 675, UOI & Ors. Vs. Arun Kumar Roy
5. ATR 19881(1) CAT 464, Satbir Singh Vs. UOI & Ors.
6. 1981(3)SCC 225, Mohan Lal Vs. Management of Bharat Electronics Ltd.

when the forgery was brought to notice by the Vigilance organisation. While the respondents affirm that neither the advertisement for inviting applications was issued nor any test and/or interview was held for recruitment, it has been admitted that the applicants worked for the period from 1985 to the date of discharge i.e. 25.6.1987 as Tube Cleaners and Khalsis in the Loco-shed, Saharanpur. It has been further pleaded that the applicants are liable for cheating and forgery but they were spared in view of the consideration that they were low-paid employees. The fact that the employees enjoyed various privileges like passes and PTOs for travel as per the Railway Rules is also admitted. Notwithstanding, the respondents have very vehemently contended that the appointments were obtained fraudulently and, therefore, the discharge of the applicants from the service was justified.

4. We have carefully considered the arguments of the learned counsel of both the parties and the record before us. In our view the applicants were appointed as Khalasis against regular posts in terms of para 2315 of the Indian Railway Establishment Manual, (IREM) during the period August/November, 1985. Their services were terminated in a peremptory manner on 25.6.1987 without assigning any reasons ostensibly as an order simpliciter. On a query, if any FIR was lodged with the police in view of the alleged fraud in obtaining appointments, established by the vigilance organisation of the respondents the learned counsel answered in the negative. He, however, pleaded that this was not done on the consideration that

the applicants were low-paid employees. Admittedly the applicants worked for the period ranging from 20 to 23 months in the railway service against regular posts and were allowed benefits available normally to a railway servant. If the employment was obtained by fraudulent means and they were not considered fit persons to be retained in the railway service, the right course would have been to take action against them for forgery etc. in accordance with the law of the land. We are not impressed by the argument that the applicants were let off leniently by discharging them from service without taking any criminal or disciplinary action against them.

5. From the facts it is clear that the termination of service of the applicant is on account of the vigilance enquiry which apparently established that the appointments were obtained fraudulently. If that be so the termination is not termination simpliciter but is punitive. That being so, before one is visited with the punishment of removal/termination of service, he should not be denied a reasonable opportunity to defend himself in accordance with the principle of natural justice.

If we accept the view that there is no stigma attached to the termination of service of the applicants, the termination would constitute retrenchment in terms of Section 2(OO) of the Industrial Disputes Act, 1947. Section 2(OO) reads as under:-

> " 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

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(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

It is apparent from the above that termination by the employer of the service of a workman for <u>any reason whatsoever</u> (emphasis supplied) would constitute retrenchment except in cases excepted in the section itself. These excluded cases are voluntary retirement, retirement at the age of superannuation, termination of service as a result of non-renewal of contract of employment and termination of service on account of continued ill-health. The applicants in this case are not covered by the excepted or excluded cases. Consequently the termination order would have been effective only if they had been granted benefits due them in terms of section 25-F, as they had rendered continuous service as defined in Section 25-B of the Industrial Disputes Act, 1947. It is well settled by a catena of decision that where pre-requisite for valid retrenchment as laid down in

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Section 25-F has not be complied with, retrenchment bringing about termination of service is ab-initio void.(1962 SCR 866-872; AIR 1960 SC 610). Since the conditions precedent to valid retrenchment have not been followed in the case of the applicants it would mean that the cessation of service has not taken place and the applicants continue to be in service.

5. In the facts and circumstances of the case, we quash the order dated 25.6.1987 terminating the services of the applicants as violative of Articles 14 and 16 of the Constitution of India. Further termination of service without complying with conditions precedent to valid retrenchment as per section 25-F of Industrial Disputes Act, 1947 is void ab initio and inoperative entitling the applicants the benfit of continuous service with full back wages.

We, therefore order and direct that the applicants should be taken back on duty and treated to have continued in service from 25.6.1987 with full back wages. The respondents, shall however be at liberty to prosecute the case of forgery/fraud against the applicants under the law/Discipline & Appeal Rule in accordance with paragraph 2511 read with Chapter XXIII of the Indian Railway Establishment Manual.

There shall be no orders as to the cost.

(I.K. Rasgotra)
Member (A) 21/5/90

(Amitav Banerji)
Chairman
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