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Reserved
Central Administrative Tribunal, Allahabad.
Registration O.A.No.263 of 1986

Chhangu Lal Petitioner

Vs.

Asstt. Engineer, Cross
Bar Sansthanan, Allahabad,

2. District Manager, Telephones
Allahabad.

3. Divisional Manager, Phones,
Allahabad.

Respondents.

4. Govt. of India

Connected with

(1) Registration O.A.No. 264 of 1986

Brij Mohan Petitioner

Vs.

Asstt. Engineer, Cross
Bar Sansthanan, Allahabad and
3 others Respondents.

(2) Registration O.A.No.266 of 1986

Chandra Kumar Petitioner

Vs.

Asstt. Engineer, Cross Bar
Sansthanan, Allahabad and
3 others Respondents.

(3) Registration O.A.No.275 of 1986

Ashok Kumar Petitioner

Vs.

Asstt. Engineer, Cross Bar
Sansthanan, Allahabad and
3 others Respondents.

(4) Registration O.A.No.279 of 1986

Anil Kumar Malviya Petitioner

Vs.

Asstt. Engineer Cross Bar
Sansthanan, Allahabad and
3 others Respondents.

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(5) Registration O.A.No.280 of 1986

Munna Lal Petitioner
Vs.

Asstt. Engineer Cross Bar
Sansthan, Allahabad and
3 others Respondents

(6) Registration O.A.No.333 of 1986

Hirday Kishore Tiwari Petitioner
Vs.

Asstt. Engineer Cross Bar
Sansthan, Allahabad and
3 others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

These are 7 petitions under section 19 of the Administrative Tribunals Act XIII of 1985 challenging the retrenchment order dated 1.4.1986 of the petitioners and as common questions of facts and law arise in these cases, they were heard together and are being disposed of by this single order.

2. Briefly stated, the facts of these cases are that on their names being sponsored by the Employment Exchange, the petitioners were appointed as casual labourers by the Telephones Department, Allahabad in 1981. On their completing 720 days service, the petitioners were placed in category II of Muster Roll employees and their emoluments were also increased. They also became entitled to get bonus. It is alleged that all the

petitioners come under the definition of 'worker' and despite the petitioners being in continuous service of the Telephone Department for more than 5 years' uninterrupted service, they were retrenched by the respondent no.1 by issuing order/notice dated 1.4.1986 stating that as expansion work of 1000 lines of cross bar telephone at Allahabad has been completed, their services were no more required after 30.4.1986. The validity of this order has been challenged by the petitioners on the grounds that some work is still going on in different units of Allahabad Telephone Department and as several persons junior to the petitioners, more particularly the seven persons named in paragraph 6(vii) of the petitions, are still working in the Allahabad Telephones, the petitioners should not have been retrenched under the law. The respondents did not pay any retrenchment compensation to the petitioners and the retrenchment being contrary to the provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D.Act) is void ab-initio and the petitioners continue to be in service. It is also alleged that on 10.2.1986, the Government and the trade union of the employees of the Telephone Department had entered into an agreement ^{under} in which the casual labourers, who had worked upto 7.5.1985, could not be retrenched and the retrenchment of the petitioners being in contravention of the said agreement, is illegal. The petitioners have, therefore, prayed that the retrenchment orders dated 1.4.1986 be set aside and the respondents be directed to retain the petitioners ~~on~~ in service and pay the wages of the petitioners becoming due after 30.4.1986.

3. The petitions have been contested on behalf of the respondents and in the counter affidavit filed on their behalf by Sri D.N.Singh, Divisional Engineer, Telephones II, Allahabad, it has been stated that the installation work of 1000 lines in cross-bar exchange, Allahabad was taken up under the supervision of the General Manager (Project) Calcutta and casual labourers on daily wages were employed for that work locally in 1981 and after the completion of the work, their names were struck off from the rolls. Later on some casual labourers were appointed in Nov.1984 when some other work was taken up by the General Manager (Project). The petitioners were appointed locally under the instructions of the Central Government for the said work. The mere reclassification of the casual labourers and the payment of bonus to them does not entitle them to acquire any superior status. The petitioners are only casual labourers and they do not come under the definition of 'workers' and there was no retrenchment in their case. The petitioners had not worked continuously and they are not entitled to any protection under the law. The respondents also denied the fact that the petitioners had worked in Allahabad Telephones department as according to them, the General Manager (Project), Calcutta, who had undertaken the installation of 1000 lines in the cross bar exchange in Allahabad, does not belong to Allahabad Telephones department. The seven persons alleged to be juniors to the petitioners are working in different units and no person junior to the petitioners in the section in which the petitioners were working, has been retained. It is

alleged that instead of approaching this Tribunal, the petitioners should have moved the President of India or the Member, Post and Telegraph Board by filing an appeal or representation against the impugned orders and their petitions ^{are} liable to be rejected on this ground alone.

4. In the rejoinders filed by the petitioners, it was stated by them that they were appointed by the Assistant Divisional Engineer, Telephones, Allahabad and they never worked under the General Manager (Project), Calcutta. They reiterated their earlier stand that they had completed the minimum continuous service for claiming benefit under section 25-F of the I.D. Act and they being 'workers', they cannot be retrenched without paying retrenchment compensation to them. They also refuted the allegation of the respondents that some persons junior to the petitioners are not working in different units.

5. At the time of arguments before us, Sri Ashok Mohiley, Additional Standing Counsel on behalf of the respondents raised a legal question challenging the jurisdiction of the Central Administrative Tribunal to entertain claims based under the provisions of the I.D. Act. According to him, the Tribunal has no jurisdiction to decide any dispute based on any provisions of the I.D. Act. In support of his contention, he placed his reliance on two decisions of the Hon'ble Supreme Court in the Premier Automobiles Ltd. Vs. Kamlakar Shanta Ram Wadke (A.I.R. 1975 SC-2238) and Rohtas Industries Ltd. Vs. Rohtas Industries

Staff Union (A.I.R.1976 SC-425). On the other hand, the petitioners have maintained that in the absence of any plea taken by the respondents in their counter affidavits, they should not be allowed to raise such plea at such a late stage and the Tribunal is fully empowered to adjudicate the claims based on the provisions of the I.D.Act.

6. As the point raised by Sri Mohiley challenges the very jurisdiction of the Tribunal, we had allowed him to raise this point and it has now to be seen whether the present petitions are maintainable before a Bench of the Central Administrative Tribunal. For the proper appreciation of the controversy in this case, we would like to reproduce below the relevant parts of some of the provisions of the I.D.Act. Clauses (oo) and (s) of Section 2 of the I.D.Act define retrenchment and workman as follows :-

" (oo) "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

(s) "workman" means any person(including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, including any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute , or whose dismissal, discharge or retrenchment has led to that dispute,.....

7. Section 25-F of the I.D.Act on the basis of which the validity of the impugned order has been challenged by the petitioners, runs as follows :-

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"25.F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette)."

8. Section 25-G of the I.D. Act which provides the procedure for retrenchment is also quoted below :-

" Procedure for retrenchment- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

9. We may also reproduce below sub-section (1) of Section 18 of the I.D. Act :-

"Persons on whom settlements and awards are binding- (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."

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10. The respondents have disputed the character of the petitioners as 'workmen' in their counter affidavits and according to them, the petitioners were merely casual labourers on daily wages. The petitioners have placed their reliance on a decision of the Division Bench of ~~the~~ Calcutta High Court in Tapan Kumar Jana Vs. General Manager Calcutta Telephones (1981 Lab. I.C. (NOC) 68), in which it was held that Calcutta telephones is an industry within the meaning of Section 2(j) of the I.D. Act and casual labourer is a 'workman' within the meaning of Section 2(s) of the said Act. They further placed their reliance on a decision of the Gujarat High Court in Sharabhai Chemicals Vs. Shubhas N. Pandya (1984 (49) F.L.R.-244), in which Badli workers were held to be 'workmen' under section 2(s). It is an undisputed fact that ^a position of Badli workers is ~~worse~~ than a casual labourer as he has to work as substitute of some other worker.

11. In Management of Karnataka State Road Transport Corporation Vs. M. Boriha (A.I.R. 1983 SC-1320), it was held that retrenchment as defined under section 2(oo) of the I.D. Act covers every case of termination of service except those which have been embodied in the definition. Discharge from employment or termination of service of a probationer would also amount to retrenchment.

12. Similar view was taken by the Hon'ble Supreme Court in Gammon India Ltd. Vs. Niranjan Dass (A.I.R. 1984-SC-500) and it was held that it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be ipso facto retrenchment.

13. The certificates filed by the petitioners go to show that since 1981 upto the date of their retrenchment, the petitioner Chhagan Lal had rendered the continuous service of 1430 days and other petitioners had rendered continuous service of 1170, 1767, 1237, 1237, 1425 and 419 days respectively. According to ^{the} Section 25-B of the I.D.Act, for the purpose of applicability of Section 25-F, a workman shall be deemed to be in continuous service for a period of one year if the workman during a period of 12 calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. In this way, all the petitioners had rendered continuous service for a period of more than 1 year in ~~these~~ cases before they were removed from service. As on the own showing of respondents, the services of the petitioners were terminated on account of the completion of the expansion work of the Telephone Exchange at Allahabad, their termination will come under the definition of 'retrenchment' and according to the provisions of Section 25-F of the I.D.Act, they could be retrenched from service

only on one month's notice under clause (a) and on payment of requisite compensation under clause (b) and on the sending of the notice to the Central Government under clause (c) of Section 25-F. The respondents admittedly did not pay any retrenchment compensation payable to the petitioners under clause (b) of Section 25-F and as such, their retrenchment being contrary to the specific provisions of Section 25-F of the I.D.Act, is void ab-initio.

14. It has now to be seen whether the Tribunal can grant any relief to the petitioners, which is based on Section 25-F of the I.D.Act. In the case of Premier Automobiles Ltd. Vs. Kamlakar Shanta Ram Wadke (Supra), the Hon'ble Supreme Court had held that if the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the said Act. It further held that if the right which is sought to be enforced is a right created under the I.D.Act such as chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be. On the basis of this pronouncement of the Hon'ble Supreme Court, Sri Ashok Mohiley had contended before us that only the Labour Court or Industrial Tribunal constituted under the I.D.Act can entertain the claims of the present nature and no other Court or Tribunal can entertain such claims. In

Rohtas Industries Ltd. Vs. Rohtas Industries Staff Union (Supra), the Hon'ble Supreme Court had considered its aforesaid decision and it was held that the I.D. Act is a comprehensive and self-contained code as so far/it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein. Neither the civil Court nor any other Tribunal or body can award relief. In the case before the Hon'ble Supreme Court, the validity of the award given by the Arbitrators under the provisions of the I.D. Act was considered and the word 'Tribunal' was used by the Hon'ble Supreme Court for the arbitrators. It has now to be seen whether the word 'Tribunals' used in that case will apply to the Central Administrative Tribunal and on the basis of these observations of the highest Court of the country, we have no jurisdiction in such matters.

15. It is apparent that the Administrative Tribunals Act XIII of 1985 was not in existence when the aforesaid decision was given by the Hon'ble Supreme Court in 1976 and as such, Central Administrative Tribunal constituted under this Act could not be in the mind of the Hon'ble Judges of the Supreme Court at that time. Now coming to the history of Act XIII of 1985, we will like to point out that the original Act XIII of 1985 specifically barred the jurisdiction of the Central Administrative Tribunals

in respect of any person governed by the provisions of the I.D.Act. This was done by providing clause (b) of Section 2 which ran as under :-

" 2. Act not to apply to certain persons-

The provisions of this Act shall not apply to -

(a)....

(b) any person governed by the provisions of the Industrial Disputes Act, 1947 (14 of 1947), in regard to such matters in respect of which he is so governed."

16. This clause (b) of Section 2 was omitted by Administrative Tribunals (Amendment) Act, 1986 and section 28 was also suitably amended, which now runs as follows :-

"28. Exclusion of jurisdiction of courts except the Supreme Court under Art.136 of the Constitution - On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post (no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have), or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

17. In view of the amended provisions of Act XIII of 1985, we are of the opinion that as clause (b) of Section 2 barring the jurisdiction of the Central Administrative Tribunal in respect of the persons governed by I.D. Act has been ~~deleted~~ removed and Section 28, as it stands now, provides for the concurrent jurisdiction of the Central Administrative Tribunal, Supreme Court and the Industrial Tribunal or Labour Court in respect of service matters of the employees of the Central Government, the contention raised by Sri Ashok Mohiley cannot be accepted. As the Central Administrative Tribunal was not in existence in 1976 and Section 28 of Act XIII of 1985 specifically saves the jurisdiction of the Central Administrative Tribunal in the service matters of even such Central Government employees, who are governed by the I.D. Act, we see no bar to our jurisdiction to entertain the present petitions based on the rights conferred on the petitioners under the I.D. Act. The contention to the contrary is, therefore, repelled and cannot be accepted.

18. Now coming again on merits, we find that ^{as} all the petitioners had completed the continuous service of more than 1 year as casual labourers in laying down the 1000 lines of cross bars at Allahabad Telephones, they became entitled

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to the protection and benefits guaranteed by Section 25-F of the I.D.Act. As the respondents did not pay them the retrenchment compensation on removing them from service after the completion of the work, their retrenchment is illegal and ineffective in the eye of law. It now does not appear necessary to examine whether any person junior to the petitioners has been retained by the respondents while retrenching the petitioners or there was any agreement between the Government of India and the trade union of the Telephone Exchange Employees regarding non-retrenchment as alleged by the petitioners or to see whether the petitioners were in the service of Telephone Department, Allahabad or the General Manager (Project) Calcutta and there is any vacancy for them in any unit of the department at Allahabad or not, as they can be granted adequate relief in these cases merely on the basis of Section 25-F of the I.D.Act.

19. All the petitions are accordingly allowed and the orders dated 1.4.1986 removing/ retrenching the petitioners from service are hereby quashed and they are reinstated on their respective posts with all consequential benefits. We, however, direct the parties to bear their own costs.

[Signature]
10.12.1986
Member (A)

[Signature]
10.12.1986
Member (J)

Dated 10.12.1986
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