

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.994 of 1986.

(Civil.Misc. Writ Petition No.7423 of 1985)

S.K.Sisodia Petitioner
Vs.

Union of India and
4 others Respondents.

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

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

This writ petition under Article 226 of the Constitution of India has been received by transfer from the Allahabad High Court under Section 29 of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Act).

2. The petitioner was recruited as Traffic Apprentice by Northern Railway on 1.3.1981 and after his training, he was posted as Section Controller in the Control Office, Tundla on 6.4.1984. The petitioner was once reverted and thereafter, 3 charge sheets in respect of minor punishments were served on him one after another on different dates and ultimately, his services were terminated by the Senior Divisional Operating Superintendent, Allahabad, respondent no.4, on 25.5.1985 under Rule 149 of the Indian Railway Establishment Code, Volume I treating him as a temporary railway servant. This writ

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Petition was filed for getting the said order of termination quashed by the petitioner inter-alia with the allegations that the order of termination is a camouflage for an order of dismissal and it violates the provisions of Art.311(2) of the Constitution and Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and it was passed in violation of the principles of natural justice. By way of an amendment, the petitioner added two more legal grounds : (1) the termination is violative of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the ID Act) and (2) rule 149 of the Indian Railway Establishment Code is ultra vires of Art.14 and 16 of the Constitution and Section 23 of the Contract Act. He also added one prayer for declaring the said rule 149 unconstitutional, illegal and void.

3. The petition has been contested on behalf of the respondents on various grounds of law and facts.

4. One of the points arising for determination in this petition is whether the petitioner is a workman and he is entitled to the protection granted by Section 25-F of the ID Act to a workman, and, if so, can that protection be granted by the Tribunal ?

5. In O.A.No.263 of 1986 - Changu Lal Vs.
Assistant Engineer cross Bar Sansthan, and they
decided by this Bench on 10.12.86, the

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petitioners had sought the relief on the basis of Section 25-F of the ID Act and it was contended on behalf of the respondents in that case that the provisions of the ID Act are not applicable before the Central Administrative Tribunals as the said Act is a self-contained Act. Disagreeing with this contention of the respondents and in view of the deletion of clause (b) of Section 2 and the amendment in ~~the~~ Section 28 giving concurrent jurisdiction to the Labour Court and the Industrial Tribunal under ID Act and the Central Administrative Tribunal, we had held that the Central Administrative Tribunal has jurisdiction to hear cases arising under the provisions of the ID Act. In a number of petitions filed under Section 19 of the Act (XIII of 1985) relief is claimed by the petitioners under Section 25F of the ID Act and it is being granted in proper cases. In a case Sushan Chandra Roy Vs. Union of India reported recently in ATR 1987(1) S.C (CAT)-145, the Principal Bench of the Tribunal after considering the applicability of Section 25-F of the ID Act had held that the requirements of this Section were not satisfied in terminating the services of a railway employee coming in the definition of a workman by the railway administration and his termination was

quashed.

6. After a further consideration of the relevant provisions of law, we however feel that the correctness of the view taken by us in O.A.No.263 of 1986 (Changu Lal Vs. Asstt. Engineer) is open to doubt. As the respondents did not file a review petition before us, we did not have the occasion to reconsider the matter in that case. Even otherwise, we donot feel it expedient to review our said order after a long period suo-moto. It appears that the observations made by the Hon'ble Supreme Court in the cases of Premiar Automobiles Ltd.Vs. Kamlakar Shanta Ram Wadke (A.I.N. 1975 SC-2238) and Rohtas Industries Ltd.Vs. Rohtas Industries Staff Union (AIR 1976 SC-425) discussed in our order in the said case were not correctly interpreted. In those cases, it was held that the ID Act is a comprehensive and self-contained Code so far as it speaks and the enforcement of the rights created thereby can only be through the procedures laid down therein. It was also observed that if the industrial dispute relates to the enforcement of a right or obligation created in the ID Act then the only remedy available to the suitor is to get an adjudication under the said Act. It, therefore, follows that a Central Government employee comingⁱⁿ the definition of a workman within the meaning of clause (s) of Section 2 of the ID Act has two alternative remedies before him. First, he can approach the Central Administrative Tribunal by filing a petition.

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under Section 19 of The Act complaining the breach of the relevant rules relating to his service or the violation of the principles of natural justice.

Secondly, if he feels that the special provisions of law applicable to him in his capacity as a workman enacted under the ID Act may give him more adequate, efficacious or expeditious relief, he can invoke the jurisdiction of the Labour Court or the Industrial Tribunal constituted under Section 7 of the ID Act for redress. A petition under Section 19 of the Act (XIII of 1985) for a relief based on the provisions of ID Act, in our view, cannot be maintainable and no such relief can be granted by the Tribunal. The same should be the position in the cases transferred under Section 29 of the Act (XIII of 1985) to the Tribunal.

7. As the question of the applicability of the provisions of the ID Act before the Central Administrative Tribunal is a vital question of law and may arise in innumerable cases in future, we feel it necessary that this question should be decided by a larger Bench composed of more than 2 Members. Further, being bound by our earlier view taken in ~~the~~ case of Changu Lal Vs. Asstt. Engineer, we are unable to reconsider the matter despite the doubts expressed about the correctness of that view on account of the judicial discipline. Other legal questions arising for determination in this case such as the validity of Rule 149 of the Indian Railway Establishment Code, Volume 1 are also important questions of law and it will be expedient and in the interest of justice that they are decided by a larger Bench.

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8. We accordingly direct that a reference be made to the Chairman, Central Administrative Tribunal New Delhi for constituting a larger Bench composed of more than 2 Members under clause (d) of Section 5(4) of the Act (XIII of 1985) for deciding this case.

[Signature]
18.3.1987
MEMBER (A)

[Signature]
18.3.1987
MEMBER (B)

Dated 18.3.1987
kkb