CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

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JULY , 1989

Registration T.A. No. 357 of 1987

Mange Lal Verma .... Petitioner

Vs.

Union of India and ors ... Respondents

Hon' Mr. D.K. Agrawal, J.M.
Hon' Mr. R. Balasubramaniam, A.M.

(By Hon' Mr. D.K. Agrawal, J.M.)

This is an application registered after transfer of writ petition No. 6902 of 1979 under the provision of Section 29 of [illegible] Administrative Tribunals Act, 1985. The case of the petitioner is that, he was appointed as a labourer in Northern Railway on 6-1-1971 and since then, he has been continuously been working as such. He further alleges that he was given the revised pay scale with effect from 6-2-1978 and posted as a permanent gangman/in the permanent gang w.e.f. 19-5-1979. He was put off the duty w.e.f. 7-9-1978 in pursuance of an order dated 29-8-79 (Annex.I to the petition). The petitioner's case is that his services were put to an end without compliance of the provision of section 25-F of the Industrial Disputes Act,1947.

2. The respondents did not dispute the date of appointment of the petitioner except that it was contended that he was not appointed as a permanent gangman, but that, he was appointed in the permanent gang. It was also alleged in paragraph 6 of the counter affidavit that the petitioner was removed from the service on account of a vigilance inquiry which recorded a finding that the medical certificate submitted by the petitioner before the grant of authorised scale of post,was forged. The respondents have also taken a plea that the termination order was passed under the provisions of Rule 149 of the Railway Establishment Code treating the petitioner as a temporary Railway employee.

3. The learned counsel for the petitioner contended before us that the petitioner having served the railway administration for more than a year acquired the status

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of a regular employee and in any case, even if, he was treated as temporary employee, compliance of the provision of Section 25-F of Industrial Disputes Act was mandatory; that his services could not have been terminated simpliciter under Rule 149 of the Railway Establishment Code. We have no hesitation in making an observation that the petitioner was " a workman" within the meaning of Industrial Disputes Act. If so, the compliance of the provision of Section 25-F should have been invoked and complied with. There is no manner of doubt that the provisions of the aforesaid Sections were not observed by the railway administration before terminating the services of the petitioner. If, it was a case of retrenchment, the compliance of the provisions of the aforesaid section was mandatory as already mentioned.

4. In case, the services of the petitioner were terminated on account of a vigilance inquiry as mentioned in paragraph 6 of the counter affidavit, provision of Article 311 of the Constitution were attracted. It is also clear that no inquiry was held and the procedure followed for terminating the services of the petitioner. In the circumstances it can be said without any doubt that it was a case of retrenchment and the retrenchment was made without compliance of the provisions of Section 25-F of the Industrial Disputes Act. Therefore, it was incumbent on the railway administration for following three fundamental requirements as laid-down under section 25-F of the Industrial Disputes Act, 1947 :

(i) service of one month's notice giving reasons for retrenchment or payment of wages for the period of notice;

(ii) payment of compensation which shall be equivalent to fifteen day's average pay for every completed year of continuous service or part thereof in excess of six months; and

(iii) service of notice on the appropriate government or the specified authority in the prescribed manner.

In the case of S.K. Sisodia vs. Union of India and ors (1988) 7 A.T.C. page 852, it was clearly held that mere fulfilment of requirement of Rule 149 is not sufficient in case of the railway employee falling within the

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category of "workman". In order to a valid termination, Section 25-F of Industrial Disputes Act, 1947 has to be complied with. Non compliance would render the order non-est and the employee would be deemed to be in service.

5. The learned counsel for respondents urged that the petitioner having accepted 14 days pay is estoppel from pleading of the applicability of Section 25-F of Industrial Disputes Act, 1947. We are of the opinion that the arguments advanced by the learned counsel for respondents have no force. Firstly, because the provisions of Section 25-F of Industrial Disputes Act have to be complied with as such; secondly, there is no estoppel against the statute.

6. In the above circumstances, this petition is liable to be allowed. The impugned order of termination dated 29-8-79 (Annexure-I to the petition) is struck down. The respondents shall be at liberty either to pass an order of retrenchment in accordance with the law as observed above or draw the disciplinary proceedings as on the basis of forged medical certificate as alleged in paragraph 6 of the counter affidavit. There will be no order as to costs.

V. Balasubramanian 28/7/89
MEMBER (A)

MEMBER (J) 28.7.89

(sns)
July 28th, 1989
Allahabad.