Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Allahabad : This the 23rd day of January, 1996.

ORIGINAL APPLICATION NO. 870 Of 1988

Hon'ble Dr R.K.Saxena, Judicial Member
Hon'ble Mr S.Dayal, Administrative Member

Prabhu Narain Chobey S/o Awadh Narain Chobey,
Substitute Baira under Station Suprintendent,
Indara Junction.

. . . . Applicant

C/A Shri N.N.Lahri

Versus

1. Divisional Railway Manager,
North Eastern Railway,
Varanasi.
2. Assistant Commercial Superintendent,
North Eastern Railway,
Varanasi.

, . . . Respondents.

C/R Shri A.K.Gaur

Judgment

By Hon'ble Dr R.K.Saxena,Judicial Member

This O.A. has been filed to seek declaration that the notice of termination of services of the applicant(Annexure 1) is illegal.

2. The facts of the case are that the applicant was appointed as casual labour on 6.4.81 under the control of the respondents. He had completed 180 days' continuous service. The respondents, however, terminated the services on 17.8.82. The applicant filed a case before the Reconciliation Officer who directed to negotiate the matter through Union. Accordingly the Union raised the matter before Railway Administration which posted the applicant afresh as Class IV employee. The termination order dated 17.3.82 was not withdrawn. The applicant,

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therefore, filed OA 1259/87 before the Tribunal. It annoyed the respondents and thus the impugned notice Annexure 1 was issued. Hence this O.A.

3. The respondents disputed the contention of the applicant by filing the written statement through Sri S.N.Verma, Assistant Commercial Superintendent. It is averred that the applicant was initially engaged as casual labour on daily rate for specific period of sanction. The period was extended from time to time in the exigencies of work due to broad gauge conversion. The applicant was discharged from duty consequent upon the availability of permanent staff which was available because of t he closure of Manduadih Transhipment Yard. The applicant alongwith others filed Suit No. 261 of 1982 in the court of Munsif Varanasi which was decided o n 30.4.83 against the applicant. Since the judgment of Munsif was not challenged in appeal, it become final between the parties.

4. Despite the decision by the Civil Court, the applicant filed an application under Section 33C-2 of the Industrial Dispute Act, 1947 which was also dismissed on 2.9.85. Not only this, the O.A. No. 1259 of 1987 was also dismissed on 17.10.88. The respondents thus say that the earlier termination order dated 17.3.82 cannot be reagitated.

5. The respondents aver that the applicant was re-engaged as substitute on 24.7.87 on the basis of agreement between the administration and Union but that agreement was found to be contrary to the Railway Board's letter No. E(NG)/II/80/CL/5 dated 18.12.80. The letter provides that such casual labours who had worked prior to 1.1.81, shall be re-engaged. Since the applicant did not work prior to 1.1.81, he could not continue in service.

6. We have heard the learned counsel for the parties and

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have perused the record.

7. The applicant has challenged the notice annexure 1. He also disclosed that previously too he was terminated on 17.3.82 and since he had filed OA 1259/87, the respondents were annoyed. The facts which have been disclosed by the respondents, go to show that the earlier order of termination was challenged by the applicant in three forum namely Civil Court, authority under Industrial Disputes Act and the Central Administrative Tribunal and he lost the case at all the places. It is, therefore not open to the applicant to raise the said issue except to show the back ground of the case.

8. The applicant has come with the plea that when the Union had raised the issue with the Railway Administration, he was given fresh appointment as Class IV employee vide letter No. Ka/Na ram/40-14/Ka/Via dated 20.7.87. It was mentioned in Para 6(IV) of the OA. The applicant did not give the date of his joining on the basis of the said order. The respondents, however, mentioned the date of joining as 24.7.87 in Para 5(h) of the Counter-reply. The fact of giving impugned notice is also admitted. The explanation given in this regard is that the fresh appointment to the applicant was given on the basis of the Union but in violation of the letter dated 18.12.80 of the Railway Board (as referred to in Para 5.(h) of the reply). Hence the impugned notice is tried to be justified. Any way, it is clear from these facts that the applicant had joined as Class IV employee on 24.7.87, and he appears to have continuously worked till the date of discharge as shown in the impugned notice dated 1.7.88, Annexure 1. The date of discharge shown in the notice was 1.8.88. There is no denial of continuous work, in that period, from the side of the respondents. The result, therefore, is that that the applicant worked on second appointment for one year and nine days. The working days are more than 240 days.

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9. The question then arises if these facts do attract the provision of 25-F of Industrial Disputes Act or not, and whether this Tribunal has got jurisdiction or not to adjudicate upon the matter. There is no doubt that the applicant stands in the category of workman and the railway in the category of an industry. When the case was pending before the Munsif between these parties and the order of termination dated 17.3.82 was under challenge, the respondents had raised the point of jurisdiction. A specific issue was framed as is evident from the copy of judgment Annexure RA-1 to the counter-reply. While deciding the issue no.5, the Civil Court held the case to be of retranchment and thus not within its jurisdiction. Admittedly, the respondents had submitted themselves under the provisions of I.D.Act. The facts of this case also establish that it is a case of retrenchment and compliance of Section 25-F of I.D.Act has not been done. The explanation that the applicant was re-engaged in violation of Railway Board's order, can be of no help to get out of the mischief of provision of Sec. 25-F of I.D.Act. No compensation for the period of service rendered by the applicant was given or mentioned. Thus, the impugned notice without compensation is bad in law.

10. So far as the jurisdiction of the Tribunal is conserned, the matters are entertained and decided in exercise of the powers under Art.226 of the Constitution. It is not a case in which there is dispute about the status of the parties or the number of working days for which investigation becomes necessary and thus attracting the jurisdiction of the authorities under the Industrial Disputes Act. The Tribunal while exercising the powers under Art. 226, can adjudicate upon the matter. Thus, we are of the view that this Tribunal has got jurisdiction to dispose of the question of retrenchment.

11. On the consideration of the facts and circumstances of the case, we come to the conclusion that the applicant had worked for more than 240 days. Since he was a workman and the

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respondents an industry, the provisions of 25-F of I.D.Act were attracted. The impugned notice by which the services of the applicant were required to terminated, did not mention the amount of compensation while the proposed termination did amount retrenchment. Any termination or proposal of termination which amounts retrenchment and is in violation of requirement of Sec. 25-F of I.D.Act, is illegal. We, therefore, hold the impugned notice illegal and set aside the same. If the notice has been given effect to and the services of the applicant are terminated, it (such termination) shall come to an end automatically. The O.A. is decided accordingly with cost.

(S.Dayal)
Adm. Member

(Dr R.K.Saxena)
Judicial Member

Typed & Compared
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