RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1176 of 1988

Arvind Kumar & 3 others .... Applicants.

Versus

Union of India & others .... Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

The four applicants in this case, viz. S/Sri Arvind Kumar & Ganesh Pratap Singh, Smt. Geeta Devi, and Km. Shikha Mitra, have, by this application under Section 19 of the Administrative Tribunals Act,1985, challenged the order dated 7.1.1988 terminating the services of each of them, issued by respondent no.2, the Divisional Railway Manager (DRM), Northern Railway, Allahabad. The Union of India through the General Manager (GM), Northern Railway, Baroda House, New Delhi; the Senior Divisional Commercial Superintendent (Sr.DCS), Northern Railway, Allahabad; and the Station Superintendent (SS), Northern Railway, Allahabad are the other respondents.

2. The case of the applicants is that they were recruited as "Casual Typist" by respondent no.2 from various dates, as shown below :

	Name of the Applicants	Date of appointment as Casual Typists.
1.	Sri Arvind Kumar	11.4.1983
2.	Sri Ganesh Pratap Singh	20.1.1984
3.	Smt. Geeta Devi	15.4.1985
4.	Kumari Shikha Mitra	11.1.1985.

Applicant no.4, Km. Shikha Mitra, was in fact appointed as Casual Labour (Steno.) with effect from the year 1980 and had continued to work in that capacity till she was engaged as Casual Typist on 11.1.1985. Copies of the orders of appointment have been annexed to this application as Annexures 'A-1' to 'A-5'. The applicants aver

they they have worked continuously for more than 120 days and acquired temporary status and were consequently given CPC scales of pay in the grade of Rs.196-232 with effect from 8.7.1985, 9.8.1985, 27.2.1986 and 31.7.1985 respectively and had been enjoying the rights and privileges admissible to temporary Railway servants, as laid down in Chapter XXIII of the Indian Railway Establishment Manual (IREM). Copies of letters, authorising award of CPC scales and recommendation of the Chief Reservation Supervisor (CRS) for preparation of service records of all the applicants for consideration of their empanelment in future, have been annexed to this application as Annexures 'A-6' to 'A-11'. While such was the position, the services of all the four applicants, who had worked for more than three years continuously, were terminated with effect from 7.1.1988 by the impugned order dated 7.1.1988 (Annexure 'A-12'). It is alleged that this was done without any prior notice, arbitrarily and in an illegal manner. The applicants contend that the impugned termination order has been issued violating the principles of natural justice. They have also alleged violation of Articles 14 and 21 of the Constitution of India. They have referred to the decision of the Hon'ble Supreme Court in regard to such termination of services of Casual Labourers and asking the Railways to prepare a scheme for their absorption against regular vacancies. One of the points mentioned is that having worked for quite a long time with the respondents, the applicants have reached the "brink of overage" for Government appointment in future and have been thrown out of service with no hope of getting such employment elsewhere. They have referred to Rule 2512 of Chapter XXV of the IREM for absorption of Casual Labour in regular vacancies and stated that the respondents have completely ignored these mandatory provisions of the IREM, even though they were fully eligible for being regularised in service.

3. One of the points urged in this application is that the applicants fall under the category of "workman" and the provisions of the Industrial Disputes Act,1947 apply to them and that the impugned order of termination issued without compliance with the requirements of Section 25-F of the I.D.Act,1947 is bad in law.

4. The applicants have referred to a recommendation of the CRS for retention of the applicants in public interest and for management of the work, and stated that in reply, the respondents directed that the work was to be done by employing persons on payment of honorarium. They have also referred to a circular letter dated January,1988 issued for the purposes of recruitment of Typist, and in such recruitment, existing class IV and class III staff working in different sections were made eligible for consideration for such recruitment. The applicants, therefore, contend that there was need for their services and the impugned order wrongly stated that their services were not required from 7.1.1988. Further, they contend that they were eligible for being considered for regular appointment as Typist in pursuance of the recruitment circular, referred to above.

5. One of the other contentions of the applicants is that even though they had been performing the duties of "Casual Typist" through out their employment and had acquired temporary status, they were not paid the same salary and allowances, as were paid to regular employees. They have argued that they are entitled for "equal pay for equal work", in terms of several decisions of the Hon'ble Supreme Court.

6. The applicants state that one of them is a Graduate, another a M.A. Degree holder and the other two are qualified upto Intermediate and thus are fully eligible for being regularly appointed as Typists and Stenographers. It is stated that their joint representation dated 20.1.1988 against the termination order had not met with any success from the respondents.

7. A written statement, in reply, stated to be on behalf of respondent no.2, has been filed by the Sr.DCS, who is respondent no.3 in this case. The reply contains averments refering to orders of Headquarters or higher authorities. Respondent no.1, viz. the Union of India through the General Manager, Northern Railway, has not chosen to file any reply. In the reply it is stated that the four applicants were only class IV employees. The reply states that "it is absolutely false to say that they were engaged to work as casual typists", but each one of the appointment orders (Annexures 'A-1' to 'A-4') specifically states that the applicants had been engaged as "Casual Typists". So it is obvious that the reply of the respondents is totally wrong in this respect. In reply to para 6(c) of the application, in which the applicants have referred to having worked more than 120 days and thus acquired temporary status and having been given CPC scales, para 5 of the reply of the respondents does not deny either the length of continuous service or the acquisition of temporary status by the applicants. It is stated, however, that the applicants' basic engagement was wrong from the point of view of competency and other formalities which were required for the purpose and when this was brought to the knowledge, the competent authority ordered a reference to the Headquarters (GM, Northern Railway, New Delhi), who had rejected their continuance for further period. In para 6 it is stated that the order of discontinuance of the applicants were passed at the instance of the HQ office. In para 7 again there is a reference to some error alleged to have been committed in the case of the applicants which was later on rectified. There is no mention of what exactly was the so-called error. In regard to the contentions of the

applicants as regards Rule 2512 of Chapter XXV of the IREM regarding absorption, since they had acquired temporary status, there is a vague reply in para 11 of the written statement stating that the logic advanced by the applicants is not maintainable. In regard to the allegation that the provisions of Section 25-F of the I.D.Act, 1947, which were applicable to the applicants, were not followed before termination, in para 12 of the reply, the respondents merely state that the contents of this para are legal and argumentative in nature and shall be suitably replied at the time of hearing. No facts at all are mentioned in regard to the applicability of the provisions of Section 25-F of the I.D.Act,1947.

8. In the rejoinder affidavit, filed by the applicants, the contentions in the application are reiterated. The applicants have annexed a copy of a note dated 25.3.1988 of the Senior Divisional Personnel Officer (Sr.DPO) marked to Sr.DCS regarding the termination of the services of these applicants. A reference to this note will be made later on in this order.

9. The oral arguments in this case were heard when Sri Dev Sharma, learned counsel, submitted the case of the applicants and Sri R.R. Singh, learned counsel for the respondents, argued the opposite point of view. The learned counsel for the applicants has cited the following cases in support of his different arguments:

(i) Inder Pal Yadav & others v. Union of India & others (1985 (2) SCC 648);

(ii) Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tax Mazdoor Manch v. Union of India & others (AIR 1987 S.C. 2342);

(iii) Ram Kumar & others v. Union of India & others (AIR 1988 S.C. 390); and

(iv) S.K. Sisodia v. Union of India & others (ATR 1988 (1) CAT 680).

10. The first ground, on which the impugned termination order is challenged, is that the same has been issued in violation

of the principles of natural justice. The applicants had been working as Casual Typist continuously for about three years. The first applicant was originally appointed on 11.4.1983; the second applicant on 20.1.1984; the third applicant on 15.4.1985; and the fourth applicant from the year 1980. Having rendered service to the respondents for a substantial period, the applicants were at the very least entitled to fair play and proper notice and an opportunity to put forth their points of view against the proposed termination. Admittedly, no notice was given to the applicants and the impugned order was issued on 7.1.1988 terminating the services of the applicants from that very date. The termination order reads as follows:

> "Sub: Engagement of Four Casual Typists in Reservation Office/Allahabad.
>
> Ref: D.R.M./ALD's letter No.CM-5/Staff/Resvn./ ALD/87 dated 6.1.1988.
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> ---
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> As per D.R.M./ALD's letter quoted above the existing sanction of Casual typists has been expired on 31.12.1987. Therefore, please note that your services are no longer required from 7.1.1988."

Though the impugned termination order states that the services of the applicants were no longer required from 7.1.1988 as the existing sanction of Casual Typists "has been expired on 31.12.1987", the real reason for the issue of the termination order is not the expiry of the sanction, as untruly stated in the impugned order, but, according to the written statement filed by the respondents, there was some error committed in regard to the applicants and they were wrongly appointed. The precise nature of the error in the appointment of the applicants is not divulged in the written statement. It is not even indicated whether the applicants were in any manner to be blamed for any such alleged error. In such circumstances, the impugned termination order is not, in fact, ex facie simpliciter. In such circumstances, it was all the more necessary in the interest of fair play and the principles of natural justice, that a prior notice should have been issued to the applicants stating the real reasons for the termination, so that the applicants could submit what they could against such a proposal. Failure to observe

the principles of natural justice before issue of the impugned order of termination renders the said order legally ineffective. This Bench of the Tribunal in T.A. No. 955 of 1986, Rajendra Prasad v. Union of India & another, (to which one of us (Hon. K.J.Raman, A.M.) was a party) held as follows:

> "8. The decision to terminate the services of the plaintiffs, even if an administrative one, visits the individuals with severe evil consequences. This hardly needs further expatiation. That being so, it is now well established in law, as in humane thinking, that the persons likely to be the sufferers or victims of such decision, should at least be heard their side of the matter before the decision is taken. This is not a very new rule of principle, but has been in existence for decades. Thus, the Hon'ble Supreme Court in State of Orissa v. Dr. (Miss) Binapani Dei & others (AIR 1967 S.C. 1269) has laid down as follows :
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> > "..... even an administrative order which involves civil consequences must be made consistently with the rules of natural justice after informing the respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the respondent of being heard and meeting or explaining the evidence."
>
> In the present cases too, the plaintiffs should have been heard or given opportunity, as laid down by the Hon'ble Supreme Court, before termination of their services. The defendants are entirely wrong in arguing that no notice was required in these cases."

The same principles apply in this case also. On this ground alone the impugned termination order is liable to be quashed.

11. The second ground of challenge of the impugned order is that the applicants having worked for more than three years continuously, had acquired temporary status in accordance with the rules laid down in Chapter XXIII of the IREM. In Annexure 'A-6' to 'A-11', the applicants have submitted proof that having completed 120 days of continuous service with the respondents, all the applicants were given CPC scales in the grade of Rs.196-232 in 1985 and 1986 and they were deemed eligible for consideration

of their empanelment for regular employment (Annexures 'A-10') and 'A-11'). The grievance of the applicants is that instead of affording them regularisation or empanelment in accordance with the provisions of the Chapter of IREM, referred to above, their services were done away with without any ado. As already indicated earlier, the acquisition of temporary status by the applicants has not been denied specifically by the respondents. There are vague and irrelevant observations on the specific allegation of the applicants. It has to be held that the acquisition of temporary status by the applicants has been admitted by the respondents. Consequentially, the applicants were entitled to safeguard provided by the Discipline & Appeal Rules of the respondents. They were not given the benefit of such rules before their services were terminated. In this connection the learned counsel for the applicants has referred to the case of Ram Kumar and others v. Union of India, cited above. They have also referred to the case of Indra Pal Yadav & others v. Union of India & others as also the case of Daily Rated Casual Labour employed under P&T Department v. Union of India & others, cited above, in regard to the requirement of regularisation and grant of equal pay for equal work. The contention of the applicants in regard to their acquisition of temporary status and eligibility for consideration for regularisation in the context of the judgments, referred to above, is justified. The impugned termination order has been issued in direct violation of the respondents' own regulations in regard to temporary status and eligibility for consideration for regularisation. If, as is vaguely argued in the written statement, there was any error or failure on the part of the applicants in regard to their own appointment, the correct way of dealing with that situation was to proceed under the Disci,plinary Rules giving the applicants reasonable opportunity to defend themselves. Consequently, the impugned order has been rendered bad by this

infringement of the standing regulations by the respondents themselves.

12. The third point for consideration is whether the requirements of Section 25-F of the Industrial Disputes Act, 1947 have been complied with before the impugned termination order was issued. There is a specific allegation in para 6(k) of the application saying that the said requirements were not complied with. Instead of replying pointedly with facts in respect of this allegation, in para 12 of the written statement of the respondents it is merely stated that "the contents of paras 6(k) and 6(l) are legal and argumentative in nature and shall be suitably replied at the time of hearing of the petition". During the hearing, the learned counsel for the respondents sought to argue that the Industrial Disputes Act,1947 does not apply to the applicant as all the appointments were for a fixed term, vide the appointment letters. Coming to the appointment letters, Annexure 'A-1' is the appointment letter dated 11.4.1983 of applicant no.1. It is stated that he has been engaged as Casual Typist and that "he is engaged till such time one vacancy of Typist in Commercial Branch is filled up as per ADRM's letter.....". This does not appear to us to be for any fixed term. Obviously either one vacancy of Typist was never filled up, as stated in the above letter till the issue of the impugned termination order, or this particular condition had no meaning at all, since it is an admitted fact that the applicants had been in continuous service till the impugned termination. No other further appointment letters had been produced and there is not even an averment that further appointment letters were issued fixing any particular date of expiry of the engagement. In the case of applicant no.2, the appointment letter is dated 19.1.1984 (Annexure 'A-2') and the appointment was said to be till 4.2.1984. As in the above case, it is a fact that this applicant had also continued for about four years in that job. Here also no further appointment letters of this applicant have been produced before us and there is no averment

that any further engagement was made for a particular period. As regards applicant no.3, the appointment order is dated 24.1.1985 (Annexure 'A-3') and was for 90 days. As in the previous cases, this applicant also, inspite of such a limitation of the period, has, as a matter of fact, worked for about three years till the impugned termination of the services. No further appointment specifying any fixed period of service has been either produced or even stated to have been issued. The appointment order of applicant no. 4 (Annexure 'A-4') is also similar to that of applicant no.3 and for the same period initially. She has also continued till 1988. No other appointment order has been cited or produced. The argument of the learned counsel for the respondents that the engagement of the applicants was only for a fixed limited period is belied by the issue of orders giving them CPC scale (vide Annexures 'A-6' to 'A-11'). If there had been a date of expiry of their engagement in any appointment order, the impugned order of termination would have referred to such an expiry and there was no need for talking about expiry of any sanction and to say that the services of the applicants were no longer required. From Annexure 'A-14' it appears that the GM felt that the appointment of Casual Typists was not permissible and should be discontinued and the work should be managed by paying honorarium. If there was an automatic expiry built in, in the appointment order, there would be no question of discontinuing the services of the applicants. The argument about fixed term of appointment has been advanced by the learned counsel for the respondents possibly with a view to bring the case under Section 2(oo)(bb) of the Industrial Disputes Act,1947 under which, "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", is excluded from the purview of the definition of retrenchment. In this case the facts adduced before

us, as discussed above, do not indicate that the services of the applicants were terminated on 7.1.1988 as a result of the non-renewal of any contract of employment between the respondents and the applicants concerned on its expiry, or of any such contract being terminated under the stipulation in that behalf contained therein. It is very clear from the averments made in the written statement of the respondents that the termination of the services of the applicants was ordered by the General Manager on the basis of some unspecified error in the engagement of the applicants and there is no whisper any where in the written statement that the termination of the services of the applicants was no more than the non-renewal of the contract of employment or expiry of the contracted period. In these circumstances, the talk about fixed term employment during the hearing is most disingenuous.

13. In the circumstances, we are of the opinion that the applicants are all workmen covered by the provisions of the I.D. Act,1947 and the termination of their appointment is covered by the definition of "retrenchment" in that Act and consequently, the provisions of Section 25-F are mandatory, to be complied with before any termination of their services could be done. There is no doubt that in this case the provisions of Section 25-F ibid were not followed at all. Dealing with a similar issue in a case of termination of services, this very Bench in T.A. No.452 of 1987, Shambhoo v. Union of India & another, observed :-

> "10. By a catena of decisions, it is by now well settled that where the conditions precedent for valid retrenchment, as laid down in Section 25-F, have not been complied with, retrenchment bringing about termination of service is ab initio void. In this connection, a reference may be made to the decision of the Hon'ble Supreme Court in State of Bombay v. Hospital Mazdoor Sabha (AIR 1960 S.C. 610). In the State Bank of India v. N. Sundara Money (AIR 1976 S.C. 1111) Krishna Iyer, J. observed :-

"Without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section 25B(2)."

The decision in Mohan Lal v. M/s. Bharat Electronics Ltd. (AIR 1981 S.C. 1253) may also be referred to in this regard. We may also refer to a decision by another Bench of this Tribunal in Surya Kant Raghunath Darole v. DRM, C.Rly., Bombay (ATR 1988 (1) CAT 158)."

The above observations equally apply to the present case. In this connection, we may refer to a copy of a note dated 25.3.1988 (Annexure RA-2 to the rejoinder affidavit) of the Sr.DPO marked to Sr.DCS in regard to the termination of services of the applicants. It would not be out of place to reproduce the note here :-

"Reg: Termination of services of Casual Typist under Sr.DCS, Allahabad.

In the opening speech of URMU in the PNM meeting on 24.3.88, it was pointed out to DRM by the union officials that services of certain casual typist under Sr.D.C.S./ALD have been terminated without following the provision of Industrial Dispute Act. In this connection, this was also raised by me in the last DOM in which it was pointed out to the Officers that whenever any termination of casual labour/staff is to be done, the provision of Industrial Dispute Act has to be followed. In this case a specific note was given to the Sr.DCS/ALD advising him to follow the rules.

It appears that he had not done so. This will result that the case if agitated in the court of law, we will loose. Sr.DCS is, therefore, requested to kindly ensure that the provision of Industrial Dispute Act have been complied with before termination and if not at least it should be done now otherwise the railway will have to pay heavy amount including wages.

Sd/-
Sr. D.P.O.
25.3.88

Sr.D.C.S."

Further comments are redundant in the face of such a clear admission that the provisions of the I.D. Act were and are applicable to the applicants in this case. In view of the above, it has to be held that the impugned order of termination is ab initio void, being in violation of the provisions of Section 25-F of the I.D. Act,1947.

14. One of the claims of the applicants in this case is they were entitled for "equal pay for equal work" and they should get the pay of a typist in the grade of Rs.950-1500. In this connection they have referred to some decisions of the Hon'ble Supreme Court. The principle of "equal pay for equal work" is well recognised, where it applies. In this case, on their own admission, all the applicants were engaged as "Casual Typists" in the office of the Chief Reservation Supervisor, "to type out the reservation charts in Hindi and English". This is the work content of the job for which the applicants were engaged. It is not shown on facts how Casual Typists with such a limited function could be equated to Typists in the grade of Rs.950-1500. Admittedly, all the applicants were in the lowest grade or group (class IV or Group 'D') with the pay scale of Rs.196-232. Before the principle, referred to above, could be applied it has to be shown that the jobs, qualifications and status of a Casual Typist are identical or equal to the job, qualifications and status of a regular Typist in the scale of Rs.950-1500. Prima facie, the applicants were required to do only one kind of job, viz. typing out the reservation charts. Ordinarily, a regular Typist will have to do a variety of typing including charts of course. The qualifications for the post of Typist have also not been specified by the applicants. In the absence of such factual data it is not possible to agree to the contentions of the applicants that they were entitled to the pay of regular Typists. As a matter of fact while claiming such equality with retrospective effect, the applicants are at the sametime praying for absorption against a regular vacancy of Typist

in accordance with the recruitment circulars issued by the respondents. As observed in V.Markendeya & others v. State of Andhra Pradesh & others (1989 (3) SLJ 34 SC) the principles of equal pay for equal work is applicable amongst equals. It cannot be applied to unequals. This part of the claim is, therefore, rejected.

15. In the light of the above, the application is partly allowed and the impugned order of termination dated 7.1.1988 against each of the applicants is hereby quashed. The respondents are directed to reinstate the applicants in service within one month from the date of receipt of a certified copy of this judgment. They shall be granted full back wages from the date of termination till the date of reinstatement; the arrears of the wages shall be paid within three months from the date of reinstatement. The applicants shall be treated as having continued in service throughout without any break. The applicants will also be eligible for consideration for regularisation of appointment as well as for recruitment to the post of Typist, in accordance with the rules and regulations and circulars in this regard, as may be applicable. There will be no order as to costs.

MEMBER (A). VICE-CHAIRMAN.

Dated: March 30 ,1990.

PG.