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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 159 of 1986
T.A. No.

DATE OF DECISION 21.11.1986

SHRI NAROTAM KACHARA & ORS. Petitioner

SHRI P.H. PATHAK Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent

SHRI R.P. BHATT Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. BIRBAL NATH ... Administrative Member

The Hon'ble Mr. P.M. JOSHI ... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Per: Hon'ble Mr. Birbal Nath, Administrative Member

JUDGMENT

This is an application filed by the applicants under Section 19 of the Administrative Tribunals Act, challenging retrenchment of their services by order of 24th March, 1986, Annexure 'B', issued by the Executive Engineer (Construction), W.Rly., Rajkot, inter-alia on the ground of non-compliance of the provisions of Industrial Act and Rules and also violation of their constitutional rights under Article 14 & 16.

2. Briefly stated facts leading to the application are that the applicants who had been working as casual labourers have averred that no seniority list had been prepared nor supplied to them though the respondent railway authorities were bound to maintain such seniority list and paste it on Notice Board in a conspicuous place atleast seven days before the actual date of retrenchment. It was also averred that the applicants were senior whereas their juniors had been retained, in violation of their ~~rights~~, under Articles 14 & 16.

3. In their affidavit-in-reply, the respondents have stated that the applicants had been working as artisan casual labourers on the Viramgam-Okha-Porbandar (V.O.P.) Gauge Conversion Project and that the conversion project was completed and opened in April 1984. Due to the completion of the project, the applicants had become surplus and their service were terminated after following the provisions of the Industrial Dispute Act. It was also averred that the applicants were aware of their seniority, and six of them had accepted the

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retrenchment compensation and only two applicants, i.e. Sarvshri Dungar Mehta and Udaisingh Rupsingh had not accepted the same. It was also averred that due to completion of the project and resultant contraction of cadre, the services of the applicants and others had been terminated as per their seniority and by following the provisions of the Industrial Disputes Act.

4. At the Bar, the learned counsel for the applicants maintained that the applicants were senior and services of junior had been retained. This argument was repelled by the learned counsel for the respondents by maintaining that they had retrenched only those who were juniormost, on the Viramgam-Okha-Porbandar project whereas the learned counsel for the applicant was perhaps referring to the seniority of such workers for the whole of Rajkot Division. In addition to the contention pertaining to the seniority the learned counsel for the applicants challenged the validity of the retrenchment order by arguing that the provisions of Rule 77 of the Industrial Disputes (Central) Rules, 1957, had not been complied by the respondents and that compliance of the provisions of this Rule was mandatory and violation of the same would negate the legality of any retrenchment order in terms of Patna High Court judgment in 1983(2) LLJ 285, and Bombay High Court pronouncement in 1985(1) LLJ 475.

5. We have given careful thought to the pleadings on the file as well as the arguments advanced by the learned counsel for the parties at the Bar. There is a factual dispute about the seniority among the casual labourers and it is difficult to give any verdict in

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view of the fact that the seniority lists are yet to be prepared and complete lists have not been filed with the application or the affidavit-in-reply. There are only general averments by the opposing parties in support of their respective position. Such general affirmation cannot conclude the issue. From the arguments advanced at the Bar, it appears that the applicants seek to establish their seniority on the basis of the position prevailing in the whole of Rajkot Division whereas the respondents would like this issue to be confined to the seniority of casual labourers of the Viramgam-Okha-Porbandar project only. The issue of seniority can be decided only on the basis of documentary evidence which has not been brought on the file. The learned counsel for the applicants has raised another serious contention with regard to the non-compliance of Rule 77 of the Industrial Disputes (Central) Rules, 1957. This fact was also mentioned by the applicants in para 4 of ~~their~~ application. The respondents in their affidavit-in-reply have made no specific averment, whether the provisions of this Rule had been complied by them or not and contented themselves with a general averment only that the action was taken after following the provisions of Industrial Disputes Act. Rule 77 ibid reads as follows:

"Maintenance of seniority list of workmen:

The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated, arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

It is clear that the respondents were under a statutory

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obligation to paste a list of seniority before issuing the impugned order of retrenchment. Their averment that the applicants were aware of the seniority is of a general character and does not amount to denial/refutation of the applicants' averment on the issue. If such a list of seniority had been pasted, the respondents ought/ could have filed a copy thereof along with their affidavit-in-reply. That non-compliance of the provisions of this Rule is fatal to any retrenchment is amply borne out by the following views of Their Lordships of the Patna and Bombay High Courts. In the matter of Gaffar and Ors vs. Union of India & Ors., 1983(2) LLJ, 285, it has been observed that the requirements mentioned in Rule 77 are mandatory and their violation renders an order of retrenchment illegal (para 4). Similarly in the matter of Nav Bharat Hindi Daily, Nagpur vs. Nav Bharat Shramik Sangha & Another, 1985 (1) LLJ, 474, the High Court of Judicature, Bombay, observed that the exhibition of a list of seniority is necessary to protect the interest of workmen and to provide safeguard against contravention of the Rules of "Last come, first go". In view of the foregoing discussion of facts and law on the subject of the compliance of the provisions of Rule 77 of the Industrial Disputes (Central) Rules, 1957, we find that the impugned order of retrenchment is liable to be quashed and the same is hereby quashed. There will be no order as to costs.

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(BIRBAL NATH)
Administrative Member

JMPS
(P.M. JOSHI)
Judicial Member