5

(A) 6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 15 of 1986
T.A. No.

DATE OF DECISION 20.11.1986

MISS NEELAM GOPAL MOHAN VIJ Petitioner

SHRI G.K. MASAND Advocate for the Petitioner(s)

Versus

GEN. MANAGER, W. RLY. Respondent

SHRI R.M. VIN 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 ? Yes
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. Yes

O.A. No. 15/86 20.11.1986

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

JUDGMENT

This is an application under Section 19 of the Administrative Tribunals Act, filed in July 1986, by the applicant, Miss Neelam Gopal Mohan Vij, working as a temporary female Khalasi/ temporary typist at W. Rly., Valsad, challenging, inter-alia, the impugned Notice of Retrenchment no. E/E/615/1/1 dated 21.2.'86. Per her application, the applicant has averred that she was appointed to do the work in the office of Asst. Engineer (TT), W. Rly., Bombay Division at Valsad by respondent no. 4 on 22.2.'79. The applicant was designated as a female Khalasi and was paid her salary on daily wages basis. It was further averred that though she had originally been taken on work as a female Khalasi, she was made to work as a Typist throughout. The applicant worked as such, intermittantly, with a small break in between till she was given a temporary status vide W.Rly order of 22.2.'84 (Exhibit A). This temporary status in scale of Rs. 260-400 was conferred upon her with effect from 21.9.'83. The applicant continued to receive her salary in the pay scale of Rs. 260-400 till August 1985, when it was suddenly reduced to the scale of Rs. 196-232. The applicant claimed that she had been reduced from Class III to Class IV, in matters of her salary without any formal order or service of notice upon her. Being aggrieved, she took up the matter with Asst. Labour Commissioner, Ahmedabad, and continued to agitate, without avail, the matter that she had been reduced in rank and punished by way of reduction in pay without any notice. Without replying to her representations, respondent no. 4 issued the impugned notice for termination. To be precise, the notice issued on 21.2.'86, had cancelled the former notice dated 11.2.'86 (Exhibit K). The copy of the notice dated 21.2.'86

25/11/86

has been produced as'Exhibit M'. It transpires from the rejoinder filed that on receipt of the termination notice, the applicant had filed a writ in the High Court of Judicature at Bombay, and obtained a stay against the operation of the termination notice. It was stated at the Bar by the learned counsel for the applicant that this petition filed in the High Court has since been withdrawn by the applicant. Now the applicant has approached the Tribunal, with the prayers that the termination notice of 21.2.'86 be quashed, being illegal and void, and that she be treated in the scale of Rs. 260-400 retrospectively from 22.12.'79.

2. In their reply, the respondents have maintained that the employment of the applicant was of a casual nature and her services were properly terminated after following the procedure [illegible]. It was averred that the applicant was appointed as a Casual Female Khalasi under Asst. Engineer (TT) at Valsad from 5.3.'81. Her services as Casual Khalasi were terminated on 20.5.'83. It was further stated that the applicant's casual employment was done on the basis of Extra Labour Allocation (ELA), which is sanctioned for a specific period for the purpose of completion of specific work. It was admitted by the respondents that the applicant was granted temporary status on completion of 120 days of continuous service and that she was also medically examined. It was further stated that the work for which she was employed as a casual typist had come to an end on 31.3.'86, and so the applicant was given one month's retrenchment notice on 21.2.'86. They denied that she was appointed to Class III post, appointment to which class can be made either through Railway Recruitment Board or by selection test. It was denied that there was any sanctioned post of typist.

3. In the rejoinder filed by the applicant, it was stated that the respondent had failed to comply with the directions issued by the Labour Enforcement Officer. The applicant denied

..... 3

that her employment was done on the basis of Extra Labour Allocation (ELA) sanctioned only for a specific period. The applicant maintained that the post of typist was sanctioned on ELA for Asst. Engineer (TT) Valsad, as revealed in his letter no. E/141/1 dated 9.10.'84 from Asst. Engineer (TT) Valsad to Senior Divisional Accounts Officer, Bombay Central. The applicant further averred that her services were terminated by the impugned notice of 21.2.'86, since she had reported against her illegal reduction in rank, Class III to Class IV, and reducing her salary from scale of Rs. 260-400 to Rs. 196-232. The applicant further claimed that she had spent the best part of her life with the Railways from 1979 and when she has passed the maximum age required for seeking any employment elsewhere, her services were sought to be terminated with malafide intentions. The applicant maintained that the work of ELA had not come to an end and a post of typist continued to be sanctioned with the post of Asst. Engineer (Tie Tamping). The applicant averred that the post of Clerk was co-terminus with the post of Asst. Engineer/Foreman, and as long as the post of Asst. Engineer/Foreman continued, the post of typist/clerk could not be wound up as someone had to do the clerical work for Asst. Engineer/Foreman.

4. At the Bar, the learned counsel for the applicant argued that with the conferment of temporary status on the applicant, her services could not be terminated the way they have been sought to be done. According to him, the applicant had come to acquire rights and privileges admissible to casual labour who are treated as temporary after completion of four months continuous service under Rule 2511 of the Indian Railway Establishment Manual. He further argued that in terms of Rule 2512 ibid, the applicant had become eligible to be considered for regular appointment and that is why she was got medically examined by the respondents. He challenged the impugned action of the respondents in two-fold manner, i.e.., he challenged the termination notice as well as

..... 4

reduction of salary of the applicant from scale of Rs. 260-400 to Rs. 196-232, as arbitrary and illegal. So far as the retrenchment notice under Industrial Disputes Act was concerned, it was argued that it was illegal in as much as it did not comply with clause (b) of Section 25F of the Act as there was no mention of the compensation for retrenchment and that her services could be terminated only by complying with all the provisions of this Section. In this connection, he relied upon the Patna High Court judgment in the case of Mahavir vs. D.K. Mittal and another, 1980 SLJ 218, wherein it had been held that when there was no mention of any compensation in accordance with clause (b) of Section 25F of the Act, the termination order would be illegal. He also sought reliance on the Jammu & Kashmir High Court judgment in the case of Roop Krishen Zaroo vs. Union of India & Ors., 1986 All India SLJ 78, wherein it was held that reduction in pay scale on account of some mistake without giving an opportunity to show cause was violative of principles of natural justice. The learned counsel for the respondents/repel sought to these arguments by arguing that the conferment of temporary status did not alter the basic fact that the applicant continued to remain a casual labour only. He vehemently argued that when the project was coming up to an end, there was no justification of continuing the services of the applicant as they had been engaged for a specific project.

6. We have given careful thought to the documents brought on record as well as the arguments advances on behalf of the parties. We find that the applicant had been engaged as Female Khalasi, but her services were used as Typist throughout the period. Rule 2501 of the Indian Railway Establishment Manual defines the casual labour employed on Railways. Such a labour consists both of skilled as well as unskilled, but is mainly concerned with manual work. This rule provides that the casual labours are mainly required for projects and they are paid from contingencies. We consider it unfortunate that the Railways,

..... 5

when in need of a Typist, resorted to employment of the applicant as a casual labour under Rule 2501 ibid. The Railways should have created a temporary post of typist, whatever the duration of the tenure, and employed temporary hands after due process of selection as per extant rules. Employment of ladies, skilled in office work as casual labour is an unedifying practice. We also find that the temporary status was conferred upon the applicant vide Railway order no. E/E/839/11/TT dated 22.2.'84, which places the applicant in the scale of Rs. 260-400, with effect from 21.9.'83. This has not been denied by the respondents. It is, therefore, patently unjust that her salary was reduced to the scale of Rs. 196-232 in an abrupt manner in August, 1985. No notice was served upon the applicant for the proposed reduction. No order necessitating reduction in salary was notified. The applicant agitated the matter many a time, without eliciting a response from the respondents. Since the reduction in the salary has been made without following the principles of natural justice, we cannot uphold the action of the respondents in this regard. Unilateral reduction in salary is punitive and palpably unsustainable. We therefore order that the applicant shall be treated to have continued in the scale of Rs. 260-400 with effect from 21.9.'83 and her salary will be fixed in this very scale.

Now, we revert to the validity of the termination notice dated 21.2.'86, issued to the applicant. We revert to the judgment of the Patna High Court referred to by the learned counsel of the applicant in the matter of Mahavir vs. D.K. Mittal and another (1980 All India Service Law Journal, 224), wherein it has been held that the requirements of Section 25F are imperative and mandatory and that the mention of compensation to be paid under clause (b) of Section 25F needs to be mentioned in the order/notice of the termination. The following portion of the para 8 of the judgment is extracted below to bring out the full import of the illegality of retrenchment without compensation:

..... 6

"There is nothing in the impugned order as well to show that the compensation was to be paid. However, learned counsel appearing for them, simply stated that they might have paid that compensation at the time of retrenchment, i.e., the appointed day being 11.11.1976. This argument, on the face of it, cannot be accepted, because there is no mention of any compensation in accordance with clause (b) of Section 25F of the Act in the impugned order. If the respondents wanted to pay the compensation to the petitioner, they would have certainly mentioned it in that order. The requirement of Section 25F is imperative and mandatory. The Supreme Court in the case of State Bank of India 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 services even of a casual or seasonal workman, who rendered continuous service, cannot be terminated without complying with the requirements of Section 25F, as a result of pronouncement in Mohan Lal vs. Bharat Electronics Ltd., (1981) 3 SCC 225:1981 SCC (L & S) 478. Therefore it has been held that retrenchment without complying with Section 25F would be void ab initio. Such action would entitle workman to declaration to a continuation in service with full back wages. In view of the law on the subject, we find that the impugned notice of termination is void and unsustainable, as it makes no mention of the retrenchment compensation to be paid to the applicant. The impugned notice is, therefore, liable to be quashed and the same is hereby quashed. In view of the aforesaid discussion of facts and law, the application is accepted and the respondents are directed to treat the applicant as continuing in the scale of Rs. 260-400 since 21.9.'83, the scale awarded to her vide order no. E/E/839/11/TT dated 22.2.'84 and award her all benefits admissible to those with temporary status including consideration for regular appointment subject to the applicant answering qualifications and tests prescribed. There will be no order as to costs.

2/20/11/86

(BIRBAL NATH)
Administrative Member

(P.M. JOSHI)
Judicial Member