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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD
██████████

O.A. No. 277
XXXXXX

1986

DATE OF DECISION 26-7-1989

SHRI JIVA RANMAL

Petitioner

SHRI C.D.PARMAR

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ANOTHER

Respondent

SHRI B.R.KYADA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI

: VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI

: JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

Shri Jiva Ranmal
UVA, Taluka: Dwarka
District, Jamnagar.

14
: Applicant

VERSUS

Union of India
Through:
General Manager,
Western Railway,
Churchgate, Bombay.

: Respondent

Coram : Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Hon'ble Mr. P.M. Joshi

: Judicial Member

O R A L O R D E R

OA/277/86

26/7/1989

Per: Hon'ble Mr. P.M. Joshi

: Judicial Member

The petitioner, Shri Jiva Ranmal of village "UVA" of Dwarka Taluka (Jamnagar district) has filed this application on 7/8/1986, under Section 19 of the Administrative Tribunals Act, 1985. According to the case set up by the petitioner, he was engaged as casual labour, in 1979 in Western Railway (Construction), Morbi and thereafter for three to four months in every year ^{as such} he had worked ~~but~~ later on, he was engaged on 5.10.1983, and when he was sent for screening, he was found medically 'unfit' vide certificate dated 20.12.84 and on that basis his services are terminated by oral order. It is alleged that the action of the Respondent - Railway Administration in terminating his services is bad in law. He has therefore prayed that the respondent be directed to put the petitioner in initial position i.e. casual labourer in duty at Dwarka declaring that the termination of service on medical grounds is illegal and without jurisdiction.

2. When the matter came up for hearing, we have heard Mr.C.D.Parmar and Mr.B.R.Kyada, the learned counsel for the petitioner and the respondent respectively. We have also perused the materials placed on record.

3. At the outset, we should note in this case that the respondents have not cared to file their reply even though several opportunities were afforded to them.

Mr.B.R.Kyada, the learned counsel who appeared on behalf of the respondents was permitted to argue on record. He contended that the application is barred by limitation and even the petitioner has not completed six years of service to enable him to get the benefits of relaxed standard for examination.

4. With regard to the question of limitation it may be stated that the petitioner is a casual labourer and no order of termination in writing has been passed by the Railway Administration and the present petition has been filed on 7.8.86. Before the 'Administrative Tribunals Act, 1985', came into force, the petitioner could challenge the action of the respondent terminating his services within a period of three years from the date of the ^{cause} ~~case~~ of action. However, provisions contained under Section 21 of the Act ^{(2)(a)} put certain limitation in this regard. ~~This Act has come~~ ^{Tribunal has} jurisdiction to entertain the application from the appointed day i.e. ~~into force on 1.11.1985 and six months provided under~~ Section 21 in the case of cause arising three years preceding the date on which the jurisdiction of the Tribunal becomes exercisable, there would be a delay of only three months in filing the present application. Under these circumstances, Mr.C.D.Parmar, learned counsel for the petitioner requested us to condone the delay. We find great substance in his submission and the objection raised by Mr.Kyada, the learned counsel for the respondent, is over ruled.

5. While coming to the merits of the case, the main grievance of the petitioner is that even though he has worked at different times in the year 1979 and

thereafter he had put in more than six years of service. According to Mr. Parmar, the petitioner is entitled to the benefits of the provisions contained in para 2601 of the IREM (Indian Railway Establishment Manual). He has also cited the case of Shri Rakesh Chandra Purwar v/s. Union of India (1986 Administrative Tribunals cases 268). It is pertinent to note that reliance sought in this regard is not well founded. In the case of Shri Rakesh Chandra Purwar, there were special Regulation pertaining to the IFS which was the subject matter of controversy. The instructions contained in para 2601 only applied to a regular railway servant and do not apply in the case of a casual labourer. The casual labourer even after acquiring temporary status, when he is called for screening for selection or empanelment in class IV service, he has to fulfil the requirement of medical examination as it is for the first appointment to regular service. However, an exception has been made and a relaxed standard has been provided for in the case of a casual labour who has put in six years service (under ^{see} the circular dated 8/6/1981 issued by the Govt. of India (Ministry of Railways) Railway Board. Para-6(f) Clause IX,

6. It is borne out from the service card placed on record by the petitioner that he was engaged as casual labourer on 5/10/1983 to 20/9/1984 and 24/9/1984 to 19/12/1984. Thus, there is a gap of four days between his initial engagement i.e. 5/10/1983, ^{which} that seems to be, as a result of his transfer from one station to another. Further, an attempt has been made by the petitioner in relying on one note dated 21/6/1988, which is ofcourse not an authenticated document and therefore no reliance can be attached to it.

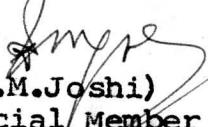
7. Thus the materials brought on record do not permit us to hold that the petitioner is entitled to any relaxed standard prescribed for re-examination for alternative category which required lower medical classification. However, the fact of the matter is that the petitioner has worked for more than one year as a casual labourer and having completed one year of service as a casual labourer would attract the applicability of Section 25 (f) of the Industrial Disputes Act, 1947. In this regard, Mr.Parmar has invited our attention to the case of Shri Surya Kant Raghunath Darole and others v/s. The Divisional Railway Manager, Central Railway, Bombay (ATR 1988(1) C.A.T. 158 New Bombay) and unreported judgment dated 11.8.1988 of this Bench in O.A.204/87 wherein after examining in details the rules governing a casual labourer, we have held that verbal order or a simple discharge will be illegal if a workman has completed more than one year. Admittedly in the instant case, no notice as a matter of fact has been served upon the petitioner. Only by a verbal order he has been discharged and that too on the ground of 'medical unfitness'. It amounts to 'retrenchment' as defined under Section 2(00) of I.D.Act. Now, the provisions of Section 25 (f) are mandatory and the requirement of giving notice and retrenchment compensation are required to be strictly complied with by an employer. In the present case, as there is no valid order of termination passed by the Respondent - Railway Administration, the action of discharging the petitioner, even on the ground of medical 'unfitness' can not be sustained.

8. For the reasons stated above, the action of the Respondent - Railway Administration in terminating the services of the petitioner with effect from 20/12/1984

is hereby quashed and set aside. Consequently, the petitioner continuous to be in the service of the respondents and they are directed to reinstate the petitioner with backwages within four months from the date of this order.

With the aforesaid order and directions, the application stands disposed of with no order as to costs.


(P.H.Trivedi)
Vice Chairman


(P.M.Joshi)
Judicial Member

a.a.bhatt