(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

COMMON JUDGMENT

O.A. No. / T.A. No. as per attached sheet. 198

DATE OF DECISION 16.2.1987

As per attached list. Petitioner

As per attached list. Advocate for the Petitioner(s)

Versus

UNION OF INDIA (W.RLY) & ORS. Respondents.

As per attached list. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

C. A. T.
Ahmedabad Bench

(a) Serial [illegible] of the 'Application'.
(b) Name [illegible]
(c) Date [illegible] of application for copy
(d) [illegible]
(e) [illegible]
(f) [illegible] for deposit [illegible]
(g) [illegible] of copying fee
(h) [illegible] of copy
(i) Date of [illegible] of record for copy
(j) Date of preparation of copy
(k) Date of Delivery of copy to the applicant.

S.No.	Case No. and Name of the Petitioners.	Adv. for the Petitioners.	Adv. for the Respondents.
1.	O.A.No. 331/86 Sukumar Gopalan.	Y.V.Shah	R.P. Bhatt
2.	O.A.No. 150/86 (P.8)* Dhanshukhlal Nihalchand & Ors.	"	"
3.	O.A.No. 44/86 (P.22) Ashokkumar N. Ravel & Ors.	"	"
4.	O.A.No. 427/86 Arjan Natha.	"	"
5.	O.A.No. 432/86 Raju Govindswamy.	"	"
6.	O.A.No. 433/86 (P.12) 14 Narsinhbhai Dungarbhai & Ors.	"	"
-	O.A.No. 48/86 Amrudpamji Chellamuthu.	"	R.M. Vin
8.	O.A. No. 236/86 (P.10) Dhanesh M. Atit & Ors.	P.H.Pathak	R.P. Bhatt
9.	O.A.No. 206/86 (P. 2) Haji Mohmad & Ors.	"	"
10.	O.A.No. 62/86 (P.2) Rail Mazdoor Panchayat & Misru Vazira.	"	"
11.	O.A.No. 58/86 (P.2) Rail Mazdoor Panchyat & Karshan Daya.	"	"
12.	O.A. No. 95/86 (P. 3) Swaisingh Jawaharsingh & Ors.	"	"
13	T.A. No. 186/86 Jagdishadan J. Ghadavji	D.M. Thakker for P.M. Thakker.	R.P. Bhatt
14.	T.A.No. 188/86 (P. 4) Raila Gambhir & Ors.	"	"
15.	T.A.No. 197/86 (P. 3) Karubha Devsingh & Ors.	"	"
16.	O.A. No. 37/86 (P. 6) Shantilal Ravji & Ors.	"	"
17.	T.A.No. 32/86 (P. 4) Balmukund Ramchandra & Ors.	P.S. Chari	R.M. Vin
18.	T.A.No. 65/86 (P. 4) Balvant Virsingh & Ors.	"	R.P.Bhatt
19.	T.A.No. 37/86 (P. 107) Shri Pavadal Munnusamy Mate & Ors.	"	"
20.	T.A.No. 87/86 Surendra Ramkishor (Babulal).	"	"

contd..... 3/-

21.	O.A.No. 275/86 Shri Govind Chana.	C.D. Parmar	R.P. Bhatt
22.	O.A.No. 276/86 Lakhubai Rammal.	"	"
23.	O.A.No. 278/86 Shri Kalu Laxman.	"	"
24.	O.A.No. 279/86 Saring Lakhdhir.	"	"
25.	O.A.No. 280/86 Shri Devraj Sajan.	"	"
26.	O.A.No. 281/86 Shri Dudhar Lakhdhir	"	"
27.	O.A.No. 270/86 Smt.Sunita D.Joshipura.	M.D. Rana	"
28.	O.A.No. 292/86 (P. 28) Budhabhai Mathurbhai & Ors.	D.K.Pancholi	"
29.	T.A.No. 98/86 (P. 5) Smt.Rukshmanibhai & Ors.	K.G.Vakharia (Absent)	"
30.	T.A.No. 99/86 Khimji Manji.	H.L. Patel	R.M. Vin
31.	O.A.No. 235/86 Smt. Sanwal Ratna	B.B.Gogia	R.P. Bhatt
32.	T.A.No. 575/86 (P. 3) Smt.Jyostna Omprakash Vora & Ors.	"	"
33.	T.A.No. 148/86 (P. 2) Shivprakash V. Nayanar & Ors.	S.M. Shah (Absent)	"
34.	T.A.No. 427/86 (P. 36) Jaggannath Munian & Ors.	A.Khureshi	R.M.Vin
35.	T.A.No. 649/86 (P. 3) Kanji Kehaji & Ors.	"	"
36.	T.A.No. 1354/86 (P.8) Signal & Tele-Communication Staff Association, on behalf of its Members.	J.C. Sheth	R.P. Bhatt
37.	T.A.No. 77/86 (P. 7) Sunderlal V. & Ors.	H.P. Sompura (Absent)	"
38.	T.A.No. 916/86 (P.11) Gunvantbhai Jayantilal & Ors.	A.A. Vyas	D.K. Vyas
39.	O.A.No. 226/86 (P. 2) Ramesh Govind & Ors.	P.H. Pathak	R.P. Bhatt

NOTE :- * this mark indicates number of petitioners.

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COMMON JUDGMENT

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

This batch of 39 applications relates to the grievances of casual labourers engaged by the Respondents Railways. As identical issues are involved therein, we have preferred to hear them together and with the consent of the parties, they are now decided by rendering a common judgment. 23 applications have come up under section 19 of the Administrative Tribunals Act, whereas out of other 16 matters, two of them are Regular Civil Suits i.e., T.A.No.734/84 and T.A.No.243/81 which are received from the Courts of Civil Judge (S.D.), Bhavnagar & Rajkot respectively, and the rest of them are Special Civil Applications, filed by the petitioners in the Gujarat High Court which stand transferred under section 29 of the said Act.

2. For the sake of convenience, the applications may be classified in three different groups.

Group No.I consists of following 27 applications of the casual labourers who are served with a notice terminating their services,

(i) O.A. 331/86	(ii) O.A. 226/86	(iii) O.A. 292/86
(iv) O.A. 270/86	(v) O.A. 236/86	(vi) O.A. 206/86
(vii) O.A. 150/86	(viii) O.A. 95/86	(ix) O.A. 48/86
(x) O.A. 44/86	(xi) O.A. 37/86	(xii) O.A. 235/86
(xiii) O.A. 275/86	(xiv) O.A. 276/86	(xv) O.A. 278/86
(xvi) O.A. 279/86	(xvii) O.A. 280/86	(xviii) O.A. 281/86
(xix) O.A. 427/86	(xx) T.A. 32/86	(xxi) T.A. 98/86
(xxii) T.A. 99/86	(xxiii) T.A. 186/86	(xxiv) T.A. 188/86
(xxv) T.A. 197/86	(xxvi) T.A. 575/86	(xxvii) T.A. 148/86

Group No.II consists of six matters filed by the casual labourers whose services are terminated without notice; They are :

(i) O.A. 432/86	(ii) O.A. 433/86	(iii) T.A. 649/86
(iv) T.A. 427/86	(v) T.A.1354/86	(vi) T.A. 65/86

contd..... 5/-

Group No.III represents the cases of the petitioners who apprehend termination of their services at the hands of the Respondents and claim absorption and permanent status. They are as under :

(i) O.A. 62/86 (ii) O.A. 58/86 (iii) T.A. 37/86
(iv) T.A. 77/86 (v) T.A. 87/86 (vi) T.A.916/86

3. The main grievance of the petitioners is that after having completed more than 120/180 days, they have acquired temporary status and even though they are working for more than one year, their services are being terminated by the Respondents. They all are working with the Western Railways at different stations including, Ahmedabad, Gandhidham, Rajkot, Jamnagar, Khambhalia, Porbandar, Dahod, Bulsar, Morbi, etc. in the State of Gujarat, in either open lines or on project or on other departments. It is their common complaint that the Railway Administration adopt unfair labour practice by creating artificial break and do not provide "equal wage and pay" available to Class IV employees of the Railway and thereby deprive them of their legitimate benefits. It is alleged inter-alia that the action of the Respondents in terminating the services of the petitioners they have violated the provisions contained under section 25 of the Industrial Disputes Act and Rule 77 of the Industrial Central Rules 1947 which cast and obligation on the part of the employer to declare the seniority list before 7 days of actual retrenchment and at the same time, flouted the well known principle of Industrial Jurisprudence that the man with longest service shall have priority over those who have joined later on, i.e., "the principle of last come first go or to reverse it first come last go". According to them, the "Division-wise seniority list" as directed to be prepared within two months vide order dated 11th August, 1986 passed by the Supreme Court in Indrapal Singh vs. Union of India and follow up instructions issued by the Railway Board in their letter dated 11.9.1986, has not been done. It is therefore vigorously urged by the learned counsels for the petitioners that the impugned action is bad in law.

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4. The Respondents however maintain that the "Seniority list" prepared by the Executive Engineer under whom the labourers are working, is already published and prepared long back and the action of termination of their services is taken strictly in accordance with the same and all the benefits under the I.D. Act and as per Railway Rules are given to them. According to them, casual labourers are sought to be retrenched due to the completion of the projects undertaken by the Railway and even on completion thereof efforts are being made to divert surplus labourers to other units in case there is a demand thereof and it is in the last resort a final decision is taken to terminate the services of such casual labourers as done in the case of the petitioners. In some cases including O.A. 427 of 1986, it is the defence of the Respondents that the action for termination is envisaged as the petitioners are employed during the "Ban" period (i.e. from 14.7.81). However, no documents are produced in support of their defence. It is straneously urged by M/s. R.P. Bhatt & R.M. Vin, the learned counsels for the Respondents Railway, that when the petitioners have acquired temporary status they are all given benefits admissable under the provisions contained in para-2512 of the Indian Railway Establishment Manual. According to them such casual labourers will however not be brought to permanent establishment till they are selected through regular Selection Board for Class IV staff. It is, therefore, submitted that the actions taken by the Respondents in the matter of termination of the services of the petitioners are quite legal and their claim of absorption for permanent employment is not tenable at law.

5. We have heard the learned counsels for the parties. We are extremely grateful to them for their valuable assistance given to us. It is too well known that the Railways Administration employ a large number of casual labourers on open lines or on projects and on other departments. They are engaged in the task of constructions, maintainence, repairs and they look upon the matters which vitally ensure the safety and the security of the Railway

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properties and large segment of people travelling during day and night by Railroad. Thus, they play very important role in the efficient management, growth and development of Railway Services. Their labour strength represent the real backbone of the big Railway organization. But it is a matter of misfortune that this class of casual labourers are treated just casually. The Supreme Court in "Indrapal Singh & Others", with a view to ameliorate or redress their many-fold sufferings, have issued directives which may afford adequate legal protection against the arbitrary discharge and secure "equal pay for equal work" (enshrined under Article 39 of the Constitution) which is vital and vigorus Doctrine accepted through out the world particularly by all Socialist countries.

6. A study of the provisions contained in para 2501 to 2513 of Chapter XXV of the Indian Railway Establishment Manual reveals that they furnish a code that regulate the employment of casual labourers and provide conditions which confer upon them a status known as "temporary status", and make them eligible for getting certain benefits including absorption in the regular employment as Class IV employees.

7. Relevant for our purpose are the provisions contained in para 2512 which enjoin a duty to maintain register by Divisions or Districts. The names of casual labourers who acquire temporary status are required to be entered to ensure their prior claim for being considered by the Selection Board. It is stated that such seniority list is prepared and maintained Ex.E.N. wise, I.O.W wise or Projectwise. In the whole gamut of transfer of a casual labourer from one project to another or from one Division to the other, his seniority is disturbed, with the result he is always at a great disadvantage as he is easily deprived of all the benefits admissable to him. The Supreme Court (in the case of Indrapal Yadav, 1985 S.C.C. (L&S) 526) therefore, in order to avoid violation of Article 14, held that the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare a list of project casual labour with reference to each division of each

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railway and then start absorbing with their longest service. Moreover while approving the scheme submitted by the Railways it was reiterated in the order dated 11.8.1986 by the Supreme Court (in Indrapal Yadav) as under :

> "We are of the view that the Scheme prepared by the Railways setting out the list of project casual labourers with reference to each department in each Division and also in regard to each category, namely, skilled, semi-skilled and unskilled, is in compliance with the judgment and order dated 18.4.1985 and that absorption of these with the longest service be made in accordance with such list".

The assurance was given to the Supreme Court that this process will be completed within two months. Even the Railway Board under it's letter No. E(NG)II/84/CL/41 dated 11.9.1986 addressed to the General Managers, have issued instructions to prepare list of project casual labourers with reference to each division of each railways on the basis of the length of services. A mandate was also issued to prepare the seniority list of project casual labourer engaged by project organisation in the manner indicated in the said letter as on 1st April, 1985 to cover all project casual labourers who have been in employment at any time from 1.1.81 onwards and such process must be completed within two months from 11th August, 1986 as per the order dated 11.8.1986 of the Hon'ble Supreme Court. It is conceded that so far, the Railway Administration has not been able to prepare such seniority list as envisaged. The plea of the Respondents that they had taken the action of termination of services of the petitioners on the basis of ExEN wise can hardly meet the requirement. Thus all the actions of termination of services either by serving a notice or otherwise, are not sustainable.

8. However with a view to examine the validity of the notice, it will be useful to advert to the contents thereof, which reads as under:

> "Consequent upon the reduction in work, your service is no longer required, as such your service will stand terminated with effect from 25-3-86 A.N. in terms of para 25/F(a) of Industrial Dispute Act. Your retrenchment benefits as due will be paid to you on or before 25.3.86 at PBR by cashier (C) Rajkot and you should receive the same through your subordinate.
>
> This may be treated as one month's notice".

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More or less similar or identical notices are served upon the respective petitioners in the cases covered under Group No. 1. However, no such notices are served upon the petitioners representing Group No. II. Petitioners in T.A.No. 427 & 649/86 are discharged on 25.5.1985. The petitioners in O.A.No. 432/86 are discharged with effect from 29.12.85 and in O.A.No. 433/86 on 23.12.85; whereas petitioners in T.A.No. 1354/86 were discharged some time prior to 8.10.1985 (i.e. the day on which they filed the Special Civil Application No. 5602/85) and petitioners in T.A.65/86, were not allowed to work with effect from 21.8.80. It is said that some of them were discharged due to the non-availability of sanction E.L.A. It is also stated that such petitioners were paid one month's pay and extra pay. No records whatsoever are forthcoming to show that any retrenchment compensation as contemplated under section 25 of Industrial Dispute Act, was paid to them.

9. It is undisputed that casual labourers of Railways projects and other departments, are governed by the Industrial Disputes Act 1947. Hence the mandatory provisions of the Act have to be followed while retrenching them. A workman who has completed one year i.e., who has worked during the preceeding 12 months (counted back from the date of proposed retrenchment) for a period of 190 days in case he is employed below ground, or 240 days in other employment shall be entitled to the benefits under the said Act. Such workman must be given a notice of retrenchment for one month or pay in lieu thereof. He must be also paid retrenchment compensation at rate of 15 days average pay for every completed year of service or any part thereof exceeding six months. Nothing is shown on record as to how much compensation was determined and on what basis and whether such payment was paid as a matter of fact or not. In Union of India & Ors. Vs. Ram Kumar, (1986(3) (C.A.T) Allahabad Bench) it has been held that in accordance with the para 149 of the Indian Railway Establishment Manual, a temporary employee (casual labourer who has attained temporary status), can not be discharged without being given one month's notice and since no such notice was given to the plaintiff, when he was discharged, the order of the discharge,

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was illegal. The services of a casual labourer who has acquired a "temporary status", can be determined by the rules applicable to temporary Railway Servants. (see Note to para 2505 in Chapter XXV of the Indian Railway Establishment Manual).

10. In H.D. Singh Vs. Reserve Bank of India & Ors. (1985 SCC (L&S) 975) it was held that "striking off the name of a workman from the rolls by the employer amounts to "termination of services" and such termination is retrenchment within the meaning of Section 2(00) if affected in violation of the mandatory provision contained under Section 25 F and is invalid.

11. More over, the issue of seniority can be decided only on the basis of documentary evidence, which unfortunately has not been brought on the file. The petitioners have in many cases, raised the pertinent question of non-compliance of Rule 77 of the Industrial Disputes (Central) Rule 1957 which 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".

12. It is borne out from the said provisions that the Respondents are under the statutory obligation to paste a list of seniority before issuing an impugned order of retrenchment. It is generally alleged by the petitioners that those who were junior to them are still retained by the Respondents. Now, if such a list of seniority has been pasted the Respondents ought to have filed a copy thereof alongwith their Affidavit-in-reply. In matter of Gaffar & Ors. Vs. Union of India & Ors. (1983(2) LLJ, 285) and Nav Bharat Hindi, Delhi, Nagpur Vs. Nav Bharat Sharenik Sangh & Ors. (1985(1) LLJ 742), it has been observed that the requirement mentioned in Rule 77 are mandatory and their violation rendered an order of retrenchment illegal. 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".

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13. As a matter of fact, admittedly when the seniority list as envisaged in terms of the directions issued by the Supreme Court, has not been prepared, the condition precedent to the action for retrenchment has not been fulfilled. Hence on the basis of the record, we hold that there is a clear non-compliance of the provisions of the aforesaid rule, with the result the action of retrenchment of the petitioners or termination of their services is bad in law. The petitioners covered in Group No. III, therefore, deserve to be protected by restraining the Respondents from terminating their services. It will be pertinent to note that the Respondents have so far, not taken any action to terminate their services. Suffice it to state here that their services can not be terminated unless and until, the procedure as discussed above, is followed by the Respondents. With regard to their claim of absorption and permanent status, it may be observed here that such casual labourer who acquired temporary status will not be brought on to permanent establishment unless they are selected through regular Selection Board for Class IV staff. However they will have a prior claim over outsiders and they shall be considered for regular employment without having to go through the Employment Exchange.

14. It is true, in the situation as it stands, many casual labourers are allowed to continue for many years without any selection. To avoid their hardships Railway Board has issued by and large, several instructions to the Authorities concerned. However, in this regard it is difficult to prescribe any deadlines, as ultimately, the action depends upon the actual vacancy which may occur at the relevant time. Hence, it is not possible to issue any directions regarding absorption as claimed by the petitioners covered in Group No. III. However application of the Doctrine of "equal pay for equal work" has to be adhered to by the Railway Administration. The Respondents should offer authorised scale of pay plus Dearness Allowances applicable to corresponding categories

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of Railway Staff. It is expected of the Railway Administration as an enlightened employer that they should not fail in extending such benefits enshrined in Article 39 of the Constitution.

15. It may be stated here that no interim reliefs have been given to the petitioners in the following cases ;

(i)	O.A.No. 48/86	(ii)	O.A.No. 275/86	(iii)	O.A.No.276/86
(iv)	O.A.No.278/86	(v)	O.A.No. 279/86	(vi)	O.A.No.280/86
(vii)	O.A.No.281/86	(viii)	T.A.No. 87/86	(ix)	T.A.No.197/86
(x)	T.A.No.649/86	(xi)	T.A.No. 427/86 (I.R.only against eviction)	(xii)	O.A.No.432/86
(xiii)	T.A.No.1354/86	(xiv)	O.A.No. 433/86	(xv)	T.A.No. 65/86

16. For the aforesaid cogent reasons, we hereby allow the petitions and quash the actions of the Respondents viz; terminating the services of the petitioners in the cases, covered in Group No. 1 & 2 and direct that they will continue to be in the employment of the Respondents without any break and reinstate those who are discharged or whose services are terminated and who have not been able to obtain interim reliefs. They would be entitled to full back wages. It is therefore directed that the Respondents shall calculate the back wages on the basis of the working days and pay them accordingly. The Respondents are however restrained from terminating the services of the petitioners covered in the cases referred to in Group No. III. The Respondents shall comply with the directions regarding reinstatement and back wages within a period of two months from the date of this judgment. There will be however no order as to cost.

Sd/-
(P.H. TRIVEDI)
VICE CHAIRMAN

Sd/-
(P.M. JOSHI)
JUDICIAL MEMBER