

Shri Manju Kanji Dhodia Patel,
Village Dhamdachi, Taluka Valsad,
District Valsad, Gujarat.

...Applicant.

Versus

1. The Union of India
Through :

The General Manager,
Western Railway,
Churchgate, Bombay.

2. The General Manager,
Central Railway,
Bombay. VT.

...Respondents.

Coram : Hon'ble Mr.P.H. Trivedi : Vice Chairman
Hon'ble Mr.P.M. Joshi : Judicial Member

ORAL - ORDER

11/7/1989

Per : Hon'ble Mr.P.H. Trivedi : Vice Chairman

[Heard Mr.M.Jadav and Mr.R.M.Vin, the learned advocates for the applicant and the respondents respectively. This application OA/372/86 has made under Section 19 of the Administrative Tribunals Act, 1985. In it the petitioner has sought the relief by way of reinstatement with continuation of retrenchment dated 17/2/1984 at Annexure-A by which Metropolitan Transport Project (Railways) Bombay issued a notice of retrenchment. During the hearing learned advocate for the applicant stated that it is an independent authority and it was noticed that it has not been made a party although the written statement in reply has been signed by the Chief Administrative Officer, Bombay. The petitioner therefore, has to lay foundation about his relief regarding absorption and continuity of service for reinstatement by establishing that the impugned order of retrenchment is illegal. At the outset, it was found that this order is issued by an authority over which this Bench of the Tribunal has no territorial jurisdiction under Rule 6 of the Administrative Tribunals (Procedure) Rules, 1987. The order of termination is reproduced below :

C.A.O(R)'s Office

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Notice of Retrenchment

From: Sr. DEN(C) MTP CCG

To: Shri Mangu S/o. Kanji
Machine Operator, IOW,
MTP/BAT II

No.:MTP/XEN/P/21/451

Date: 17/2/1984

It is hereby notified that your services are proposed to be terminated for the following reasons:

Work for which you were employed has been completed

Your services will stand terminated on completion of one month from the date of receipt of this letter by you.

This letter may be treated as the requisite notice in terms of section 25-F of the Industrial Disputes Act, 1947.

Sd/-

Chief Administrative Officer
(Elys.) Bombay. "

The petitioner's contention regarding this Bench of the Tribunal having jurisdiction in the case are based upon his original services in the Western Railway being at Valsad and according to him by the entries in the service card it is clear that he was working there until 20.11.78. Thereafter according to him under the orders of his superior he was asked to join at the Metropolitan Transport Project at Bandra and in view of the good opinion of his superior held upon ^{of} and his service ^{we} ~~if~~ being so required he joined there and earned further promotion in the service of that project authority. The petitioner also says that he was qualified to be absorbed in the Western Railway on account of his long service and that his going to Metropolitan Project authority was by way of verbal transfer and such a transfer ^{was} carried out under the orders of his superior cannot deprive him of the continuity of service or changes which arise on account of his absorption. He has further contended that there is no entry in his service card that there was any termination of his employment as a casual employment and no specific order was given that his services of the MRT authority would be counted as a new service. In his support he has cited 1 (1988) ATLT (CAT) (SN) 107 of the Delhi Bench

It was held that "incumbent on the respondents either to have obtained a written statement from the petitioner that he was leaving job on his own accord or to have issued a show cause notice when he was found to be absent from duty after 17.11.1982. The ex-parte entry in the register that he left his work on his own accord cannot be held out against the petitioner who was obbly a Class IV Khalasi". Further he has contended that the original service conditions do not change by mere drafting of the employee to the MTP (Rlys.) and the Tribunal having original territorial jurisdiction on the parent zonal railways, continues to exercise same jurisdiction in the service matters of such employee, even if he is drafted for employment in other projects which are under different territorial jurisdiction of other Tribunal or even if such employee is drafted abroad for the work of railways. He has stated in his rejoinder at page 40 in sub-para 'C' that "instructions were that new CLs should not be engaged and when one project is over, the surplus CLs should be sent to the other project. If none is willing to go, then fresh CLs may be recruited with personal orders of DRM I case matters specified days may be fixed in each month for the recruitment and notified to all CLs by orders dated 18/6/1989". He derives the conclusion that ^{to all} ~~all intention~~ ^{and} purpose his services in the MTP were by way of transfer. || 2. Against this the respondent have challenged inter alia that the applicant left Western Railway on account of ~~his~~ own accord and joined Metropolitan Transport Project (Railways), Churchgate, Bombay on 23.11.78 and therefore there is no continuity of service. Further the respondent states that ~~ex~~ when a casual labour leaves his old unit on his own accord and joins a new unit he loses his seniority at old unit. The respondent have also stated that the applicant at the relevant time

was working at Bombay under Chief Administrative Officer, Metropolitan Transport Project (Railways) that Bombay is in the State of Maharashtra and as such this Bench of this Tribunal has no jurisdiction.

3. Before discussing the merits of the rival contentions of the case the question of jurisdiction has to first be decided. It has been held ~~that~~ in a number of cases on the basis of the rules governing ~~of~~ the casual labourer that the casual labourers are not liable to be transferred at all. There is no warrant for the conclusion that this rule admits of any exception and the petitioner has not shown any rule or instruction supporting ^{such} this conclusion. It has also been found that the documents in support of the petitioner do not admit of the construction. The service card merely notes ^{at Valsad} that at Valsad the petitioner served ~~so~~ far as the last entry is concerned from 22.8.74 to 22.11.78 and the next entry is from 23.11.78 to 18.3.84. He worked admittedly at Valsad from where he was retrenched on 19.3.1984 due to completion of work at Valsad. The petitioner's cause for reinstatement arises from the retrenchment order dated 17.2.1983 (Ex.4) at Annexure-A. This order has been passed by the Chief Administrative Officer, Metropolitan Transport Project (Railway) Bombay and clearly the station at which the petitioner worked and the authority under which he worked are outside the jurisdiction of this Tribunal under Rule-6. The decision in 1(1988) ATLT (CAT) (SN) 107 to which the petitioner has referred is not applicable to the facts or circumstances in this case. In that case an exparte entry in the register that the petitioner left his work on his own accord ^{formed} from the basis of the authorities, ^{retrenching} his services without obtaining a ~~written~~ statement in writing from the petitioner or issuing a show cause notice upon him. This circumstances is not available in this case and the principle ~~announced~~ in that case is regarding the claim of the petitioner to continue in service without having been given show cause notice

or obtaining from the petitioner a statement of this nature.. In this case there is an order of retrenchment which may or may not have merit but if it is to be challenged it has to be pursued in the ^{form} of Tribunal which ^{has} jurisdiction, without placing the challenge against the retrenchment order, It is not possible for the relief of reinstatement claimed by the petitioner to be given to him and clearly the order of retrenchment both regarding the station and the authority issuing are outside the jurisdiction of this Bench. With this observation and conclusion, we find that this Bench of the this Tribunal has no jurisdiction in this case and accordingly rejected.

Learned advocate for the petitioner at this stage requested that the record of this case be returned to him for his presenting the same before the Bench of the Tribunal which has jurisdiction. Allowed. With this order, the case is disposed of.

P.H. Trivedi

(P.H.Trivedi)
Vice Chairman

P.M. Jeshi

(P.M.Jeshi)
Judicial Member

a.a.bhatt