

(10)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

O.A. No. 386 OF 1986  
~~XXXXXX~~

DATE OF DECISION 5.8.1987.

SHRI ASHADAN NATHANIAL Petitioner

K.K. SHAH Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents

N.S. SHEVDE 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? *Yes*
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*

Ashadan Nathaniel,  
Railway Quarter No. 103/F,  
Pratapnagar,  
Baroda - 390 004.

..... Petitioner.

(Adv. K.K. Shah)

Versus.

1. The Union of India,  
notice to be served through  
the General Manager,  
Western Railway, Churchgate,  
Bombay - 400 020.

2. The Chief Medical Officer,  
Western Railway,  
Churchgate,  
Bombay - 400 020.

3. The Divisional Railway Manager (Estt.)  
Divisional Office,  
Western Railway,  
Baroda.

..... Respondents.

(Adv. N.S. Shevde)

J U D G M E N T.

O.A.NO. 386 OF 1986.

Date : 5.8.1987.

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

The petitioner, Shri Ashadan Nathaniel of Baroda, was appointed as substitute Radiographer in scale Rs.260-430(R) on adhoc basis under the following terms and conditions stipulated inter-alia under Memorandum No. E/MD/367/7/7 dated 17.2.1984 (Annexure 'A').

contd..... 3/-

"In terms of CMO(E)CCG's letter referred above CMO has accorded sanction to the appointment of Shri A.Nathanial, as substitute Radiographer in Scale Rs.260-430(R) on adhoc basis on pay Rs.260/- P.M. at PRIN Hospital against LR.X.Ray Tech.post allotted to this vide CMO(E)CCG's letter No.E/MD/633/10 dated 2.8.83 and 7.1.84, for a period of 3 months or till such time Railway Service Commission candidates become available whichever is earlier.

However, the above named should be informed that his appointment is made purely on adhoc basis and does not confer on him any claims for permanent appointment unless he is got selected through R.S.C. for regular appointment. His services will be dispensed with after 3 months or as soon as the R.C.S. candidates are made available whichever is earlier. He will have to get himself selected through R.S.C. - CCG for which he has to apply to R.S.C. as and when the posts are advertised by them."

2. The petitioner, in this application under section 19 of the Administrative Tribunals Act, 1985, initially, challenged the order contained in Memorandum dated September 12, 1986 (Annexure 'B') whereby his services were terminated with effect from 12.9.1986 A.N. The Respondents-Railway Administration in response to the notice served upon them filed Affidavit-in-reply dated 11.11.1986. It was contended inter-alia without conceding to the proposition that the petitioner is entitled to any retrenchment compensation etc., a decision was taken that the said order dated 12.9.1986 may be treated as cancelled and his services may be terminated with effect from 10.11.1986 after giving him service from 13.9.1986 to 10.11.86 plus one months wages in lieu of notice plus 45 days retrenchment compensation as per section 25(F) of the Industrial Dispute Act and accordingly a fresh memorandum is issued on 10.11.1986. A copy whereof is appended with the Affidavit-in-reply.

3. Later on, the petitioner also challenged the orders contained in memorandum No. E/MD/367/7/1 dated November 10, 1986, whereby, the services of the petitioner were terminated with effect from 10.11.1986 A.N., by seeking an amendment to the petition. The petitioner prayed that the impugned order of termination be quashed and set aside. He also prayed that the Respondents-Railway Administration be directed to call the applicant for the competitive

examination which may be held by the Railway Recruitment Board, Ahmedabad & Bombay for which he had already submitted his application.

4. It is contended inter-alia by Mr. K.K.Shah, the learned counsel for the petitioner that when the petitioner continued in service for a period of two years and 7 months, it is presumed that his services are regularised. According to him, as per the advertisement issued from Bhuvaneswar, would show that the minimum essential qualification and experience required for the post of Radiographer is "Matriculation with physics and chemistry, one year experience in routine work in X-Ray and Electrotherapy branches." Whereas the requirement of the said post, as per notice issued by Railway Recruitment Board, Bombay is "Matriculation with physics and chemistry and diploma in Radiography from recognised institutions. One year's experience in routine work on X-Ray and Electrotherapy branches is desirable. Science Graduates with Diploma in Radiography would be preferred." (see Employment Notice No.1/1986 dated 28.7.86). It is therefore contended that the prescribed requirements are discriminatory and violative of Articles 14 & 16 of the Constitution of India. It was further contended by Mr.Shah, the learned counsel for the petitioner that the impugned order terminating the service of the petitioner is bad in law, as no retrenchment compensation has still been paid to him as required under section 25(F) of the Industrial Disputes Act. It was however submitted by Mr. Shevde, the learned counsel for the Respondents, appearing for the Railway Administration that admittedly, the petitioner does not possess the Diploma in Radiography and therefore not entitled to even make an application for the recruitment with regard to advertisement of Railway Recruitment Board, Bhuvaneswar. It is stated that there appears to be some mistake in this employment news as the educational qualifications which were earlier prescribed are modified vide circular dated 22.9.1982 (Annexure II

appended with the reply) which operates the filed and in view thereof diploma in radiography is considered as an essential qualification. In view of this essential requirement there is hardly any point left to be decided regarding the contention raised by the petitioner.

5. The short question to be, however, decided in this application is as to whether the orders contained in Memorandum dated November 10, 1986 terminating the service of the petitioner with effect from 10.11.1986 is bad in law as contended? The said order reads as under :

"With reference to the above memo, service of Shri Ashadan Nathaniel adhoc Radiographer appointed on adhoc basis has been terminated w.e.f. 12-9-86, is now treated as cancelled and his services will now be terminated w.e.f. 10-11-86 A.N. after giving him his wages from 12-9-86 to 10-11-86 plus one month's wages in lieu of notice plus 45 days retrenchment compensation as per Sec. 25-F of I.D.Act 1947.

The services of the above named has been terminated as he was appointed on adhoc basis for a period of 3 months till such time Railway Recruitment Board candidate is available as he was appointed against vacancy of R.R.B. candidate. On available of RRB candidate for above post Shri Nathaniel has therefore, become surplus.

6. Now the fact that the petitioner was appointed purely on adhoc basis i.e., "a clear stipulation that service will be dispensed with after three months or as soon as RSC candidate are available whichever is earlier," is not in dispute. The petitioner has raised the plea that he does not remain an adhoc employee when he has served nearly for 2 years and 7 months on the post in question. In this context, reading the terms and conditions of the appointment order as a whole, it can be very well said that there is hardly any merits in this plea. The fact that the petitioner continued for more than 3 months on the post in question does not create any right in favour of the petitioner to continue in a post to which he was appointed on adhoc basis. It is clearly stipulated in the order of the appointment that his engagement is made purely on adhoc basis and does not confer upon

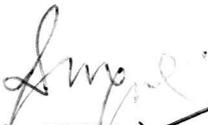
him any claim for absorption against the regular post unless he gets himself selected through RSC-CCG.

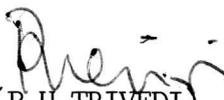
7. Relying on a case of Yogender Singh Vs. State of Punjab & Ors. (1981(2) S.L.R. p. 792), it was straneously urged by Mr. Shah for the petitioner that the petitioner deserves to be regularised as he fulfils the requisite qualification for the post in question. In the said case the petitioner had relied on the executive instructions for regularisation of service and the department had recommended for the same, but the Government declined the regularisation on the ground of delay. We have carefully gone through the said case and others cited by Mr. Shah in support of his arguments and find that none of them is applicable in the instant case as they are clearly distinguishable from the facts and circumstances obtained in the instant case.

8. It was next contended by Mr. Shah that the Respondents have not actually paid the petitioner's dues including retrenchment compensation under the impugned notice of termination, the action of the Respondents-Railway Administration can not be upheld. In this regard, it is submitted by Mr. Shevde for the Respondents-Railway Administration that the petitioner has not turned up after the notice has been communicated to him through official channel. The Respondents have elaborately indicated the efforts made by them in tendering the dues including retrenchment compensation admissible to the petitioner in M.A.No. 189/87 filed by them on 14.5.1987. We have recorded the same and treated as disposed of by observing that it is not necessary to make the Tribunal agency for whatever purposes the Respondents may have in this regard. This being the position, when the legal and valid orders as envisaged under section 25-F of the Act, 1947, are issued, it can not be said that the action of Railway Administration in terminating his services, suffers from any procedural infirmity or illegality.

9. It has been clearly stated in the impugned notice dated 10.11.1986 that <sup>on</sup> availability of RRB candidate for the post in question, the petitioner Shri Nathaniel has become surplus. Now in view of the stipulation contained in the order of appointment dated 17.2.1984 (Annexure 'A') made it obligatory for the appointing authority to terminate the appointment of adhoc employee when RAC candidate is available. When persons qualified to be appointed to a post in accordance with rules are available, it is neither just nor proper to continue adhoc appointees who are not qualified to hold the post. This is a simple case of discharge simpliciter on the basis of an agreement which specifies a date of termination of service. No case of any discrimination has been made out or shown by the petitioner in this application which may attract the applicability of Article 16 of the Constitution.

10. For all these reasons, we find no merits in this application. The impugned action, that is, the termination of the service of the petitioner is held quite valid. The petition is accordingly dismissed with no order as to costs.

  
( P.M. JOSHI )  
JUDICIAL MEMBER.

  
(P.H. TRIVEDI)  
VICE CHAIRMAN.