

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 412 OF 1986.

~~SECRET~~

DATE OF DECISION 17-7-1989

MALABHAI RAMUBHAI THAKORE & ORS Petitioner s.

MR. AKHIL KURESHI

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS.

Respondent s.

MR. 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 ? *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*

1. Malabhai Ramubhai Thakore
2. Mohanbhai Dahyabhai
3. Somabhai Ramubhai
4. Ganeshbhai Juthabhai
5. Kanjibhai Gandabhai
6. Bhimabhai Tribhovanbhai
7. Fulabhai Chudabhai
8. Bachubhai Somabhai

..... Petitioners.

(Advocate: Mr. Akil Kureshi)

Versus.

1. The Union of India
(Through the General Manager,
Western Railway, Churchgate,
Bombay).
2. The Chief Engineer (Construction)
Western Railway, Station Building,
2nd floor, Ahmedabad - 2.
3. The Executive Engineer (C)-I
Western Railway,
Ahmedabad - 2.
4. The Divisional Railway Manager,
Western Railway, Baroda.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

O R A L O R D E R.

Date: 17-7-1989.

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

The petitioners (8 in all) including Malabhai Ramubhai Thakore & Ors. have filed this application under section 19 of the Administrative Tribunals Act, 1985. According to them, they were working in the Baroda Division on "Viramgam-Shahibag Doubling Project" since ~~Services~~ the year 1979 and they were terminated in 1982 as the said project was to be closed down. It was further averred that the notices of termination were given to petitioners No.1 to 4 & 8; whereas no notices of retrenchment were given to petitioners No. 5,6 & 7. It is alleged that they were offered alternative employment under letter dated 25th September, 1982 in Jamnagar Division (Annexure 'A') but as they were loosing seniority they expressed their unwillingness to

accept alternative employment. The petitioners have therefore alleged that the Respondents-Railway Administration has not offered employment in Baroda Division as required under section 25 (H) of the Industrial Disputes Act, 1947. They have therefore prayed that the respondents be directed to reinstate the petitioners in service with full backwages.

2. When the matter came up for hearing we have heard Mr. Akhil Kureshi and Mr. N.S. Shevde, the learned counsel for the petitioner and the respondents respectively. We have also noted that the respondents have not filed any reply. However it was contended by Mr. Shevde that the case of the petitioner is not in compliance with the Rules and procedure and the claim of the petitioner is barred by limitation and the principles of "res-judicata". According to him, no orders of termination have been brought on record.

3. During the course of his argument Mr. Kureshi pressed in service, the relevant provisions of Section 25(H) and Rule 78 of the Industrial Disputes (Central) Rule, 1957, which are reproduced as under :-

Section 25-H. Re-employment of retrenched workmen. - Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity "to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen" (a) who offer themselves for re-employment shall have preference over other persons.

Rule 78. Re-employment of retrenched workmen. - (1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter: "

4. It was vehemently contended by Mr. Kureshi that the provisions contained under section 25(H) and Rule 78 are mandatory and they are required to be complied with by issuing an intimation under a registered post to the employee concerned, who has been earlier retrenched, in addition to the publication of notice in the premises of the industrial establishment. In support of his submission -

he has relied on the case of Gujarat Machine Tools Corporation Limited, Bhavnagar v/s. Deepakbhai J. Desai (1987 G.L.H.p.192).

5. At the very outset it must be made amply clear that the petitioner No.1, Malabhai Ramubhai Thakore only has verified the petition even though there are more than one petitioner. There are thumb-marks of other petitioners in the Vakalatnama. But they have admittedly not signed in the application and no permission has been sought to allow them to file a joint application for the redressal of their grievance. It is not clear as to how they have a common or identical questions of facts and law in terms of their engagement and the orders of termination, if any, for seeking the reliefs as prayed for.

6. Mr. Kureshi, referred to the prayer made in the application and conceded that he does not challenge the orders of termination which might have been passed in the year 1982. However, he stated that his claim for re-engagement only arises in the matter only when the respondents had engaged other employees without offering the petitioners an employment.

7. In order to claim a relief under section 25(H) of the Industrial Disputes Act, a worker or the petitioner has to establish: firstly, that his services were terminated by the employer and he is a retrenched employee, secondly, he has to prove that the project or the establishment which was closed has re-opened and he being a retrenched employee was not offered re-employment. Admittedly no orders of termination have been produced on record. In absence of such orders of termination it is extremely difficult to hold that the present petitioners are retrenched employees.

A reference was made to the letter dated 25-9-82 addressed to one Shri Soma Ramu (Petitioner No.3). It is only gathered from the said letter that an action of termination of his services was under contemplation. But in absence of any order of termination, it is difficult to reach to the conclusion that any such order of termination was passed in his case. It is rather astounding that even though it is stated in the petition that the petitioners No. 1 to 4 & 8 had challenged the action of termination and it was rejected, ~~However, but~~ there is no clear statement as to when such proceedings were initiated and in which Court and what was the final decision and the order passed by the concerned Court. It is not understood, how the said petitioners can be allowed to reagitate the same issues. Admittedly, no orders of termination is alleged to have been passed in the case of the rest of the petitioners. Thus, the first condition has not been duly established in the present case. With regard to the second requirement, except the bald statement that "Viramgam-Shahibag Doubling Project" was re-started, it should be noted that there is hardly any material on record to show that any such project had infact re-started. Both the requirement are not duly established in the present case, to enable the petitioners to claim the relief as prayed for.

8. For the aforesaid reasons, the application fails and the same is accordingly dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN