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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 104 OF 1986
~~TA No.~~

DATE OF DECISION 26-11-1986

NARSINGH KADWA Petitioner

(PARTY IN PERSON)

T.N. SHAH

Representative of

~~Advocate for~~ the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

R.P. BHATT

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 ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

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J U D G M E N T

O.A.No. 104 OF 1986.

Date: 26-11-1986

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

The petitioner, Narsingh Kadwa, who served as 'casual khalasi' under the Bridge Inspector No.2, Western Railway, Ahmedabad, claims reinstatement, back wages and other monetary benefits in this application under section 19 of the Administrative Tribunals Act, 1985. According to him, he worked from 21.6.1976 to 25.12.1981 under Bridge Inspector No.1, Western Railway, Ahmedabad and later on, worked under Bridge Inspector No.2, on transfer, from 26.12.81 to 31.3.84. It is alleged that even though he has been conferred with a temporary status in the scale of Rs.195-232(R) as per the Railway Rules contained in Chapter No.23 & 25 of the Indian Railways Establishment Manual, his services are discontinued from 1.4.1984 by the Bridge Inspector No.2 without any notice or charge-sheet.

2. While opposing the application, it is contended by the respondents that the petitioner worked in Broken Spells from 21.6.76 to 27.7.80 and from 3.4.82 to 17.7.82 under Bridge Inspector(I) Ahmedabad and from 26.12.81 to 31.3.84 under Bridge Inspector No.2, Ahmedabad. In the meantime, he was granted a 'temporary status' from 25.3.78 to 20.8.80 vide letter dated 24.5.85. According to them, when a casual labour, who acquires a temporary status, remains absent for more than 20 days, he automatically loses the temporary status as per the instructions contained in the circular dated 29.10.77 (Annexure 'B'). With regard to the petitioner's allegation that his services are discontinued, the stand taken by the respondents, is

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that the petitioner himself left the work of his own accord and was not discharged by the Railway Administration. It is further submitted that the petitioner will be considered for screening whenever his turn comes provided he fulfils the other eligibility conditions.

3. The short question, therefore, to be determined is whether the petitioner is entitled to reinstatement? Our answer is in the affirmative.

4. Mr. T.N. Shah, representative of the petitioner, submits that the Circular (Annexure 'B') relied upon by the respondents do not apply to the persons employed on Open Line. It is further contended by him that when the petitioner is working continuously since the year 1976 and granted a temporary status, the respondents' action, in discontinuing his service from 1.4.1984 amounts to termination of service and that too without retrenchment compensation or notice in contravention of the provisions of section 25(F) of the Industrial Disputes Act, would be illegal and bad in law. In support of his submission he has relied on the following cases :

- (1) Randhir Singh Vs. Union of India,
(1982 LAB.I.C. P. 806)
- (2) M/s. Hindustan Tin Works Pvt.Ltd., Vs. The
Employees of M/s. Hindustan Tin Works Pvt.Ltd.
(1978 LAB.I.C. p. 1667)
- (3) Hindustan Aluminium Corpn. Vs. Murari Singh,
(1979 LAB.I.C. p. 477)
- (4) Ramani Mohan Indus. Pvt.Ltd., Vs. IInd Industrial
Tribunal, (1981 LAB.I.C. p. 59)
- (5) Subhash Purohit Vs. State of Rajasthan,
(1981 LAB.I.C. p. 720)
- (6) Mohan Lal Vs. Management, Bharat Electronics Ltd
(1981 LAB.I.C. p. 806)

5. With regard to the assertions made by the respondents that the petitioner worked in broken spell

and that he left the work on his own accord and was not discharged by the Railway Administration sole reliance is placed on the statement Annexure 'A' showing the service particulars and the grant of temporary status in the case of the petitioner. While referring the said statement it is contended by Mr. R.P. Bhatt, the learned counsel for the respondents that when the petitioner was engaged as casual labourer from 26.12.81 under Bridge Inspector (II) he was utilised for non project work but after he was granted a temporary status from 10.3.1983 to 20.3.1983 as per letter dated 17.6.1985 he remained absent from 21.3.83 to 29.6.83 i.e., for 121 days and hence he automatically lost his temporary status. According to him, even thereafter when he was engaged as a casual labourer he could not complete 120 days.

6. The sole controversy is with regard to the plea of the petitioner that he was discontinued from his service from 1.4.84 by Bridge Inspector No.2. He has made this plea known to the authorities by making several representations as found at Annexures 'E', 'F', 'G', 'H', 'I' & 'J'. It is rather astounding to note that the respondents have not paid any heed to the said representations. The respondents seem to have come out with the defence for the first time that the petitioner had left his work on his own accord, this defence of the respondents runs entirely counter to the fact stated categorically in the statement (Annexure 'A') produced by them. The statement reads as under :-

"Last he was discontinued from 31.3.84 due to non-availability of work and E.L.A. (Emergency Labour Appliance)".

7. It is alleged against the petitioner that he was the habit of leaving the work from one Bridge Inspect

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and joining at the other on his own accord and sweet will. However, it is the case of the petitioner that he had joined as casual khalasi on 21.6.76 under Bridge Inspector No.1 and thereafter in the year 1981 he was transferred to Bridge Inspector No.2. Apart from the counter allegations, the fact remains that the petitioner continued to work under Bridge Inspector since the year 1976 and onwards. It is borne out from Annexure 'A' that on several occasions the service of the petitioner was discontinued either for the reasons of non-availability of work or E.L.A. If there is any break in service on such grounds, it can not visit with any disqualification in respect of his temporary status. Moreover there is substantial inconsistency and infirmity in the statement recorded in Annexure 'A'. As for example, it is stated that the petitioner remained absent for 121 days during the period 21.3.1983 to 29.6.1983. Now, the period, if counted properly it would be about 99 days. Similarly it is stated that after 29.6.83 when he was engaged and till the period 31.3.84 he was discontinued, he could not complete 120 days. Now taking into account, the total days on which the petitioner worked during the said period, comes to 277 days. The nature of the inconsistency and infirmity need proper scrutiny on the basis of the original record duly maintained by the authority. But before such an exercise is taken, the petitioner has been successful in establishing that he has been discontinued from service from 1.4.84 without following the procedure required in this regard and the principles laid down in the aforesaid cases cited on behalf of the petitioner. The defence of the respondents that he had left the work on his own accord is not borne out by any evidence whatsoever. As a matter of fact, the statement Annexure 'A' reads that he was

discontinued due to non-availability of work and E.L.A. In para-10 of the petitioner's application he has given the names of 8 employees who are junior to him and they are still employed by the respondents. It is not the case of the respondents that they had informed the petitioner by serving him with a notice about the resumption of work ~~by~~ calling upon him to resume his duty. On the contrary the petitioner had made several representation requesting them to reinstate him. This nature of inaction on the part of the respondents has resulted in termination of the service and it is vitiated by not following the required procedure, thus the same can not be sustained.

8. In this view of the matter, the petitioner is entitled to reinstatement. Accordingly, the respondents are directed to reinstate the petitioner to the post or the job he was doing prior to 31.3.84. The respondents are directed to work out the back wages due to the petitioner after 1.4.84 till the date on which he is reinstated on the basis of the date on which persons junior to the petitioner were re-employed after 31.3.84 and pay such wages to the petitioner within three months from the date of this order.

9. Before parting with it may be stated that the respondents will be considerate to the petitioner's claim for absorption in accordance with Rules. With these observations, the application is allowed. The respondents are directed to pay to the petitioner a sum of Rs.250/- being the cost of this application.

P.H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN

P.M. Joshi
(P.M. JOSHI)
JUDICIAL MEMBER.