

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 148 OF 1987.
~~P.A. No.~~

DATE OF DECISION 27.4.1988

SHRI KAMA PACHA Petitioner

K K SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

B.R. KYADA 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*

Shri Kama Pacha,
Male Beldars,
C/o. The Permanent Way Inspector(C)
Western Railway,
Surendranagar.

..... Petitioner.

(Advocate : K.K. Shah)

Versus.

1. The Union of India,
notice to be served through
The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Chief Engineer(Survey & Constn.)
Western Railway,
Ahmedabad.
3. The Executive Engineer(Const.)
Western Railway,
Rajkot.

..... Respondents.

(Advocate : B.R. Kyada)

J U D G M E N T

O.A.NO. 148 OF 1987

Date: 27.4.1988.

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

In this application, under section 19 of the Administrative Tribunals Act, 1985, filed on 30.3.1987, filed by the petitioners viz; (i) Kama Pacha, (ii) Vajesingh Khumansingh, for redressal of their grievance, Mr.K.K.Shah, the learned counsel for the petitioners, by amending the petition, separated the case of petitioner No.2, Vajesingh Khumansingh and now the claim of petitioner No.1 only is pursued. The petitioner Kama Pacha working as 'Male Beldar' under the Permanent Way Inspector (C), Surendranagar (Rajkot Division), has challenged the validity of the notice dated 4.7.1986 issued by the Executive Engineer(C), Western Railway, Rajkot whereby his services were sought to be terminated with effect from 5.7.1986. The said impugned notice of retrenchment

Annexure 'B' dated 4.7.1986 reads as under :-

Sub : Retrenchment of Service.

Consequent upon the reduction in work, your service is no longer required, as such your service will stand terminated with effect from 5.8.86 A.N. in terms of para 25/F(a) of Industrial Disputes Act. Your retrenchment benefits as due will be paid to you on or before 5.8.86 at RJT by cashier(C) Rajkot and you should receive the same through your subordinate.

This may be treated as one month's notice.

Please acknowledge receipt.

2. It is the plea of the petitioner that even though he has been engaged as 'Male Beldar' since January 1973, his services are sought to be terminated in violation of the rules and the provisions of the Industrial Disputes Act. It is alleged that no seniority list as envisaged under the rules have been prepared or published and consequently, the action of the respondents on terminating the services of the petitioner by way of retrenchment, is vitiated. He has therefore prayed that the respondents be directed to absorb the petitioner in service as 'Male Beldars' in Rajkot as regular employee and treat him as in continuous service without any break and grant backwages.

3. The respondents-railway administration in their counter have denied the assertions and the allegations made by the petitioner. According to them, since the petitioner has accepted the notice and also retrenchment compensation, his application is not entertainable. It is further submitted that the casual labourers worked on VOP(BG) Project which has been completed and all the surplus labourers who were working in the Executive Engineer(C) Rajkot were to be retrenched by following Section 25F of the Industrial Disputes Act and they have not committed any breach as alleged by the applicant. It is therefore prayed that the petitioner is not entitled to the relief as prayed for.

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4. When the matter came up for hearing, we have heard Mr. K.K.Shah and Mr. B.R. Kyada, the learned counsel for the petitioner and the respondents respectively. We have also perused and considered the materials placed on record.

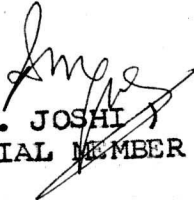
5. As averred by the petitioner, he was engaged as Male Beldars in January 1973 and continued to discharge his service till his service were terminated by the impugned notice. The fact that the services of the petitioner are terminated by the respondents-railway administration is not in dispute. The only contention of the respondents-railway administration is that the petitioner has accepted the notice and the retrenchment compensation and consequently the petitioner is not entitled to reinstatement. Apart from this bald statement of the respondents in their counter, no supporting evidence has been produced. Even otherwise, in the matter of retrenchment of a casual labourer, it is the duty of the respondents to show that the requirement of the rules and the provisions contained under Section 25(F) of the Industrial Disputes Act are duly complied with. It is strenuously urged by Mr. Shah, the learned counsel for the petitioner that the case of the petitioner is squarely covered by common judgment dated 16.2.1987 rendered by this Bench in O.A.No. 331/86 & Ors. (Sukumar Gopalan & Ors. V/s. Union of India & Ors.).


6. Now, in view of the particulars regarding the service of the petitioner, discussed above, it is clearly established that he is in the employment of the Railway Administration for more than 240/120 days as casual labourer which entitle him to acquire temporary status in the employment of the railway administration. Admittedly, no division-wise seniority list as envisaged in the case of Indrapal Yadav (1985 S.C.C. (L&S) 526) has been produced or shown to have been published as required

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under Rule 77 of the Industrial Disputes (Central) Rules, 1957. In the instant case, the respondents have failed to establish that the principle of "last come first go" has been complied with. The action of the respondents-railway administration in terminating the service of the petitioner is therefore vitiated. As pre-conditions for valid retrenchment has not been satisfied, the termination of service is illegal, invalid and inoperative. Where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continuous to be in service with all back wages and consequential benefits (see Mohan Lal V/s. Management of M/s. Bharat Electronics Ltd., 1981 S.C.C.(L&S) 478). The impugned notice therefore can not be sustained.

7. In view of the aforesaid discussion and for the reasons stated in our common judgment we allow the application and quash the impugned notice. Consequently the petitioner is declared to be in continuous service of the respondents-railway administration and they are directed to reinstate him with backwages within three months from the date of this order. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN.

ttc.