IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 204 OF 1987
~~T.A. No.~~

DATE OF DECISION 11.8.1988.

SHRI MADHU DHOLA & ORS. Petitioner s.

MR. P.H. PATHAK Advocate for the Petitioner(s)

Versus

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 ? No
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. Madhu Dhola,
2. Sartan Chutha,
3. Pratap Hemta,
4. Babu Ramji,
5. Murlidhar Thotaram,
All address to
Association of Railway & Post
Employees, 37 Pankaj Society,
Sarkhej Road, Ahmedabad. .... Petitioners.

(Advocate: Mr.P.H.Pathak)

Versus.

1. Union of India,
Notice to be served through:
The Chief Engineer(C),
Rly.Station, Ahmedabad.

2. Divnl. Railway Manager,
Western Railway,
Pratapnagar, Baroda.

3. Chief Telecom Inspectors,
Western Railway,
Ahmedabad. ..... Respondents.

(Advocate: Mr. N.S.Shevde)

J U D G M E N T

O.A.No. 204 OF 1987.

Date : 11.8.1988

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

The petitioners (5 in all), in this application (filed on 24.4.87) under section 19 of the Administrative Tribunals Act, 1985 have challenged the validity of the orders passed by the Respondents No.3; whereby their services are terminated with effect from 21.2.1987 by verbal orders. According to the petitioners, they were initially engaged as Casual Labourers during the year 1977 to 1983 and thereafter they were re-engaged and have worked for 129 days under the Respondents No.3. It is alleged that their services are terminated from 21st February, 1987 without following any procedure of law by the

respondents and the said action is illegal, invalid and inoperative. They have prayed that the impugned order be quashed and set aside and the Respondents-Railway Administration be directed to reinstate on their original post with continuity of their services and with all backwages.

2. The Respondents-Railway Administration have resisted the application and denied the assertions and the allegations made by the petitioners against them. According to them, as the petitioners had worked with railway in past, they were re-engaged by the Chief Communication Inspector (Signal) Ahmedabad on 15.10.86 with clear understanding that they (E.L.A. recruits) were engaged only for a period of 30 days and their services are likely to be terminated even before the said period and a copy of such notice was given to the petitioner No.5 & ors. It is further submitted that on completion of work on expiry of sanctioned E.L.A. on 20.2.1987, the services of the petitioners are terminated by giving verbal intimation and by placing their names on notice board and consequently, they are not entitled to the reliefs as prayed for.

3. When the matter came up for hearing we have heard Mr. P.H.Pathak and Mr. N.S.Shevde, the learned counsel for the petitioners and the respondents respectively. We have also perused the documents and the materials placed on the file. During the course of his arguments it was contended by Mr.Pathak that the establishment in which the petitioners were engaged is an industry under section 2(J) of the Industrial Disputes Act and hence the respondents are under statutory obligation to follow the provisions

of Section 25B(G) and (H) of the Industrial Disputes Act and when the action of the termination has been made without following the principle of "last come first go", it is void-ab-initio. It was however strenuously urged by Mr. N.S.Shevde, the learned counsel for the respondents that the provisions of the Industrial Disputes Act are not relevant for consideration as none of the petitioner had completed one year of service and worked for atleast 240 days, as required.

4. The main grievance of the petitioners is that their services are terminated without following the procedure as required, under the rules even though they had acquired temporary status. The petitioners in support of his version have relied on the service card. It is borne out from the said service cards that all the petitioners on their re-employment had worked for 129 days before their services were terminated (i.e. from 15.10.86 to 20.2.1987). The periods during which the petitioners were engaged in the service is shown in the following table:

Madhu Dhola	27-6-79 to 4.3.83 15-10-86 to 20-2-87	- 129 days.
Sartan Chutha	21-4-79 to 4-3-83 15-10-86 to 20.2.87	- 129 days.
Pratap Hemta	21.4.79 to 4.3.83 15-10-86 to 20-2-87	- 129 days.
Babu Ramji	21-4-79 to 4-3-83 15-10-86 to 20-2-87	- 129 days.
Murlidhar Thotaram.	21.4.82 to 20-7-82 1-11-84 to 20-1-84 5-4-85 to 20-4-85 29-4-85 to 20-5-85 15-10-86 to 20-2-87	- 129 days.

5. It is significant to note that even though it is specifically pleaded by the respondents that they were engaged only for a period of 30 days and such a notice was given to the petitioners No.5 & ors, a

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copy of such notice is not placed on record. Moreover, even though it is stated that on completion of work the termination of their services was notified by placing their names on the notice board, no such record is forthcoming in support of their version. In para 3 & 5 of the respondents' reply they have categorically admitted that the petitioners were re-engaged in open line and they are given temporary status vide SR.DSTE/E/BRC's No.E/SIG/6/15/7/3 SI(1)ADI dated 31.5.1987.

6. As far as the application of the Industrial Disputes Act, is concerned, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched unless certain conditions are followed. Period of one year is deemed to have been completed if a workman during the period of 12 calander months preceeding the date with reference to which the calculation is made, has actually worked under the employer for less than 240 days in the case of those who are not employed below ground in a mine. In this case, the petitioners have worked for 129 days after they were re-engaged under Respondent No.3 and therefore the provisions of the Industrial Disputes Act 1947 are not attracted.

7. What is therefore important for our decision is the question whether the petitioners who have attained temporary status by virtue of having worked for 120 days, their services can be terminated without notice of termination of service. Admittedly, the petitioners are asked to sit at home for want of work. Now it is well settled that the casual labourer engaged by the railway administration and who has attained temporary status possesses a right of

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getting a notice for discharge. Rule 2505 in Chapter XXV of the Indian Railway Establishment Manual and Rule 2301 in Chapter XXIII deal with this matter.

Rule 2505 reads as under :-
"2505. Notice of termination of service-Except where notice is necessary under any statutory obligation no notice is required for termination of service of the casual labour. Their services will be deemed to have terminated when they absent themselves or on the close of the day.

Note :- In the case of casual labour who is to be treated as temporary after completion of 6 months continuous service, the period of notice will be determined by rules applicable to temporary Railway servants."

Rule 2301 in Chapter XXIII defines a temporary railway servant as :-

"2301. Definition. A 'temporary railway servant' means a railway servant without a lien on permanent post on a Railway ..... The term does not include 'casual labour'..... The services of a temporary servant may be terminated as provided in Rule 2302.

Rule 2302. Termination of service and periods of notice

* Service of a temporary railway servant shall be liable to termination on 14 days' notice on either side provided that such a railway servant shall not be ebtitled to any notice of termination of his service.

8. Evidently, a casual labour who has attained temporary status can thus be terminated as provided in Rule 2302. In Union of India & Ors. V/s. Ramkumar, 1986(3) C.A.T. 459, Allahabad Bench, it was held that this rule (2302) lays down the mode, manner and methodology of terminating service of a temporary railway employee. This would mean that the discharge of the petitioners on 21.2.87 should be given by the above principles even though the petitioners were not a regular temporary employees. A person who had attained temporary status has to be given a notice before discharge. The respondents have not denied that they had attained such a status. In the instant case, the petitioners, therefore, having acquired temporary status, they were entitled to a notice before their service were terminated from 21.2.87. A verbal order or a simple discharge will be illegal. The impugned action i.e. termination by giving verbal intimation can not be sustained.

9. Rule 2302 no doubt includes the provisions under sub-para 2 thereof for it being permissible on the part of the Railway Administration to terminate the services of a temporary Railway servant by paying him the pay for the period of notice. In case of Government servants having temporary service the question was of notice of termination, without offering one month's pay in lieu thereof, it was decided that if such payment is made, termination can be allowed. (see Rajkumar V/s. Union of India, A.I.R. 1975 S.C. 1116). In this case, however, there has been no notice whatever and, therefore, the alternative for offer of pay in lieu of the notice without any notice served is not open to the Railway-Respondents. We, therefore, see no reason not to quash and setting aside the impugned order.

10. In this view of the matter, we have no hesitation in holding that the action of the respondents-railway administration in terminating the services of the petitioners is bad in law and the same is hereby quashed and set aside. The respondents-railway administration are hereby directed to reinstate the petitioners with backwages within three months from the date of this judgment.

11. The petitioners have prayed that the respondents be directed to regularise their services in view of their having worked during the year 1979 to 1983 (i.e. the past service). In this regard, it may be stated that the petitioners are required to register their claim by making representation to the respondents-railway administration. Having not done so far, they would be free to register their claim for the benefits of absorption etc. under the scheme framed by the

railway administration and it is for the competent authority to take the decision in the matter.

In the result, this application stands allowed, leaving the parties to bear their own costs.

(P.M. JOSHI)
JUDICIAL MEMBER

(P.H. TRIVEDI)
VICE CHAIRMAN

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