

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 257 OF 1987
~~XXXAxxNo.~~

DATE OF DECISION 16.12.1988

SHRI JIVAN GOVIND

Petitioner

MR. P.H. PATHAK

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondents

MR. R.M. VIN

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*

Shri Jivan Govind
Jundala Plot,
Street No.1, Road No.12,
Sukhabhai Mather's House,
Porbandar.

.... Petitioner.

(Advocate: Mr.P.H. Pathak)

Versus.

1. Union of India

Notice to be served through
the Executive Engineer(Constrn.)
Bhavnagar Para, Bhavnagar.

2. Permanent Way Inspector (Constrn.)
At & Post Bhimnath,
Dist. Bhavnagar.

..... Respondents.

(Advocate: Mr. R.M. Vin)

JUDGMENT

O.A.NO. 257 OF 1987

Date: 16.12.88.

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

The petitioner, Shri Jivan Govind of Porbandar, in this application, filed under section 19 of the Administrative Tribunals Act, 1985, on 20.5.1987, has challenged the validity of the action of the respondents, whereby his services were terminated on 26.5.1985 by verbal orders. According to the petitioner, he was engaged in the year 1983 as casual labourer and the persons who were employed thereafter as casual labourer are continued in service. It is alleged that the impugned action of termination is violative of Section 25F r.w. Sec. 25G, H & N of the Industrial Disputes Act, and also Rule 77 of the Industrial Disputes (Central) Rules, as no seniority list as required, has been prepared or published before his services are

terminated. The petitioner has therefore prayed that the impugned action in terminating his services be quashed and set aside and the respondents-railway administration be directed to reinstate him on his original post with continuity of service and full backwages.

2. The respondents have resisted the petitioner's application and denied the averments and the allegations made against them. According to them, the petitioner was initially engaged on "Viramgam-Okha-Porbandar" (guage Conversion) Project on 22.7.83 under PWI Lalpur and on completion thereof, he alongwith other casual labourers, was shifted to Bhimnath under Bhavnagar Division on work of "complete track renewal" (CTR-work) of Sabarmati-Botad Section and on completion thereof, he alongwith other casual labourers, was retrenched with effect from 25.5.1985, after payment/retrenchment compensation, in addition to one months' notice pay in lieu of one months' notice as per the provisions of the Industrial Disputes Act, 1947. It was further submitted that the seniority list (Annexure 'A' appended to the respondents reply) of casual labourers working under PWI Botad was prepared and published before the said retrenchment and no junior persons have been continued and hence the petitioner is not entitled to the reliefs as prayed for.

3. When the matter came up for hearing Mr. P.H. Pathak and Mr. R.M. Vin, the learned counsel appearing for the petitioner and the respondents respectively, waived oral hearing and

they were permitted to file their written submissions as prayed for. Accordingly, they have filed their written submissions which have been taken on record. We have perused the materials placed on record and also considered the written submissions filed by them.

4. The particulars of the service of the petitioner including the date of employment and the length of service rendered by him are stated in the application and they are supported by the entries shown in the service card produced by him.

5. The main grievance of the petitioner is that the provisions laid down under section 25F are not complied with and the respondents have failed to prepare and publish the Division-wise seniority list as required under the rules. It is further contended that the respondents have not obtained the requisite sanction before resorting to the retrenchment of the casual labourers including the petitioner.

6. It is true, that the notice of retrenchment is not necessary where the employer pays salary for notice period. However, the payment of notice pay must precede actual termination of service and not follow it. The provisions contained under section 25F lay down the conditions which have to be fulfilled before a valid order of retrenchment is made and non-compliance renders the retrenchment invalid. In this regard, it is stated by the petitioner that he was paid Rs. 1657/- as the salary of 35 days and the so called notice pay and no other amounts have been paid to him. The respondents however have produced the relevant extracts of the

register showing that a sum of Rs. 111.35 being the wages for 5 days (i.e. 21.5.85 to 25.5.85) and a sum of Rs. 302-75 being 15 days wages on account of retrenchment compensation and a sum of Rs. 671 being one months' pay in lieu of one months' notice have been paid under the voucher duly signed by the petitioner in the presence of PWI(R) Dholka. Accordingly, it can not be said that the respondents have not paid the petitioner, his admissible dues on the count of retrenchment.

7. With regard to the petitioners' allegation about the failure on the part of the respondents-railway administration to obtain permission of the appropriate Government for retrenchment of the employees as required under section 25N of the Industrial Disputes Act, 1947, the petitioner sought orders directing the Respondents to produce such document vide his M.A.No. 380/87. The respondents, however, in reply thereto dated 6.4.88 have stated that the original section's file of Divisional Office, Bhavnagar Para, pertaining to this case is not tracable and as such, it is not possible to produce the express permission of appropriate Government. Thus, in absence of such an express permission of appropriate Government, the action of the retrenchment can not be regarded as legal and valid.

8. Now turning to the question of preparation of the Division-wise seniority list and its publication the stand of the respondents, is that the final order of the Hon'ble Supreme Court for preparation of Division-wise seniority list of project casual

labourers were issued on 11.8.86 and since the retrenchment in question was effected on 25.5.1985, the retrenchment was effected as per the unit-wise seniority of PWI Dholka. In this regard, Mr. Vin, the learned counsel for the respondents has pressed in service, the order dated 11.8.88 passed by the Supreme Court, which reads as under :-

"We are of the view that the scheme prepared by the Railways setting out the list of project casual labour with reference to each department in each Division and also in regard to each category, namely skilled semi-skilled and unskilled is in compliance with the judgment and order dated 18.4.85 given by this Court and that absorption of these with the longest service be made in accordance with such list. Mr. Krishnamurti Iyer states that this process will be completed within two months from today. The matter is disposed of in these terms. "

9. It is pertinent to note that the case of Indrapal Yadav & Ors. V/s. Union of India & Ors. (1985(2), All India Services Law Journal, p.58) was decided by the Supreme Court on 18th April, 1985 and in terms thereof the respondents-railway administration were required to prepare the Division-wise seniority list and operate the same on the basis of "last come, first go" as enunciated in Section 25G of the Industrial Disputes Act, 1947. The order relied upon by Mr. Vin, is irrelevant for our consideration and has very little significance. Admittedly, the seniority list relied upon by the respondents is not a Division-wise seniority list as envisaged. More over, even the so called seniority list does not seem to have been duly published as required under the relevant rule. It transpires from the letter dated 4.5.85 addressed to Assistant Engineer, Botad and subsequent letter dated 6.5.85 addressed by him to CPWI, Dholka that

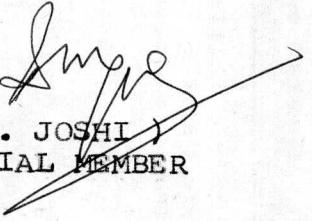
the seniority list was sent for verification and for inviting objections, if any. It is in this context, it was contended that the seniority list relied upon by the respondents was merely a provisional one. Thus it is difficult to conclude that the seniority list referred to was a final one. More over in absence of any material or documents to show that it was duly posted and published as required under the rule, it can not be said that the respondents authority had duly complied with the requirement. Since, the Division-wise seniority list was not duly prepared and published in strict compliance with the rules, it can not be said that the respondents have followed the principle of "last come, first go". The impugned notice terminating the service of the petitioner therefore can not be sustained.

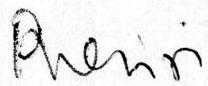
10. It was next contended that the petitioners' application was time barred and thus it is liable to be dismissed. It is true, in respect of a cause of action which took place three years prior to the constitution of the Tribunal, we can neither entertain an application, nor can we exercise the discretionary power to condone the delay in such cases. According to the respondents the Tribunal was constituted on 1.11.1985 and six months period ended on 30.4.86 and thus there is a delay of more than one year in filing the application. Now as per the provision contained under section 21 of the Act, we can exercise the discretionary power of condonation of delay, if the cause of action arose within three years before the constitution of the Tribunal. In the

instant case we condone the delay, if any, in filing the application. However, we take into consideration the factor of delay, in refusing backwages, when we are directing the reinstatement of the petitioner.

11. For the reasons stated above, we allow the application and quash the impugned action terminating the services of the petitioner and set aside the same. We hereby direct the respondents-railway administration to reinstate the petitioner in service within one month from the date of this order, but there will be no backwages. We however direct that the respondents shall not regard any break in service and continuity and seniority will be retained in his case.

With the aforesaid directions the application stands disposed of. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN