IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 274 OF 1987.
~~T.A. No.~~

DATE OF DECISION 22-11-1988

SHRI MULJIBHAI K. MARAIYA, Petitioner

MR. Y.V. SHAH 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 ? 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 Muljibhai Keshavbhai Maraiya,
C/o. C. Permanent Way Inspector,
Western Railway,
Dholka, Dist: Ahmedabad. .... Petitioner.

(Advocate: Mr. Y.V.Shah)

Versus.

1. Union of India,
through the General Manager,
Western Railway,
Churchgate, Bombay-20.

2. Divisional Engineer,
Western Railway,
Bhavnagar.

3. C. Permanent Way Inspector,
Western Railway,
Dholka. ..... Respondents.

(Advocate: Mr. R.M. Vin)

J U D G M E N T

O.A. NO. 274 OF 1987.

Date: 22.11.88

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

The petitioner, Shri Muljibhai Keshavbhai Maraiya, of Dholka (Dist.Ahmedabad) has filed this application on 5.6.1987, under section 19 of the Administrative Tribunals Act, 1985, (hereinafter referred to as "the Act"). He has challenged the validity of the action of the respondents, whereby his services are terminated. According to the case set up by the petitioner, he was initially engaged in the year 1980-81, as casual labourer under P.W.I.(C), respondent No.3, at Dholka. It is alleged that he has been retrenched from service by oral order passed on 23.12.1986 by Mr.Bukhari, the then P.W.I. Dholka on the ground that there was no work. It is therefore,

prayed by the petitioner that the impugned action of retrenchment be quashed and set aside as it is violative of Article 14 & 16 of the Constitution of India and also offending the provisions contained under section 25F, 25G, 25H and 25N of the Industrial Disputes Act, 1947 and Rules 76A and C & 77 of the Industrial Disputes (Central) Rules,1957. He has further prayed that the respondents-railway administration be directed to absorb him in service with all consequential benefits including backwages and seniority above his juniors in pursuant to the Railway Board's Scheme.

2. The respondents-railway administration have resisted the petitioner's application on the grounds inter-alia that the petitioner was engaged by the Chief Permanent Way Inspector of Dholka on 19.8.1981 as casual labourer, but, he left the job of his own accord since 20.4.1982 and during this period he worked only for 180 days in broken spells. It was further contended that the petitioner's application was barred by limitation as per the provisions contained under section 21 of the Administrative Tribunals Act. The respondents have denied the petitioner's assertions and allegations made against them and submitted that the petitioner's applications is liable to be dismissed.

3. When the matter came up for hearing, we have heard Mr. Y.V.Shah and Mr. R.M.Vin, the learned counsel for the petitioner and the respondents respectively, along with other cases of casual labourers wherein common questions of law were raised. But, we have not preferred to render a common judgment as each case represented different

set of facts and circumstances. Both the sides were called upon to supply the information and materials in terms of our directions issued on 16.6.1988 and in terms thereof the Respondents have placed the relevant documents on record.

4. At the very outset, it may be stated here that the petitioner while filing the application and during the pendency of the proceedings has not produced the service card. It is the plea of the petitioner that he was initially engaged in the year 1980-81 and retrenched with effect from 23.12.1986. It is his version that he had acquired temporary status and that he has been retrenched by verbal orders. These materials averments could have been easily proved by producing the service card. A service card on prescribed form is given to each casual labourer as a documentary proof of his service in terms of instructions contained in para 2513 of Establishment Manual. Mr. B.S.Mainee, in his book on Railway Establishment Rules and Labour Laws (17th Edition, 1988), while quoting Railway Board's letter dated 30.11.1971 at page 423 has explained the utility and the importance of the service card and the entries of service made therein as each sub-ordinate officers are required to make them without fail before discharging a casual labourer. When a casual labourer is on authorised absence that does not constitute a break for counting towards the four month's period for conferring temporary status. It is undisputed that such "authorised absence" has to be shown as service. No seperate entry for such break is necessary. In the case of loss of card, it should be reported to the nearest police station and

a copy of F.I.R. lodged with the police should be furnished to the railway authorities.

5. The stand of the respondents-railway administration is that the petitioner has materially suppressed his service particulars and has come out with a false plea that he has been retrenched verbally on 23.12.1986, especially when as a matter of fact he has never reported for work since 1982. Relying on the case of Buckingham & Carnatic Co. V/s. Venkatiah & Anrs. (A.I.R. 1964 S.C. 1272) it was contended by Mr. R.M.Vin, the learned counsel for the respondents that the petitioner having abandoned or relinquished the service as back as in year 1982, he is not entitled to any relief and his cause is also otherwise barred by limitation. Mr. Y.V.Shah, the learned counsel for the petitioner, during the course of his submissions had preferred to refer to several cases reported in A.I.R. 1986 S.C. 132, A.I.R. 1978 S.C. 8, A.I.R. 1982 S.C. 854, A.I.R. 1979 S.C. 582 & A.I.R. 1988 S.C. 390. Suffice it to say, that the broad principles laid down therein are not disputed. Having regard to the facts of the present case, they are all distinguishable and not applicable in the present case.

6. Now, in light of the materials and the records produced before us, it is clearly borne out that the petitioner worked as casual labourer during the following periods only.

..... 6/-

Wage period		Present absent	
		From	To
21.8.81	20.9.81	10.9.81	-
21.9.81	20.10.81	8.10.81	-
21.10.81	20.11.81	8.11.81	
		10.11.81	12.11.81
		19.11.81	
21.11.81	20.12.81	12.12.81	
		14.12.81	
21.1.82	20.1.82	14.1.82	
21.1.82	20.2.82	8.2.82	
		18.2.82	
		20.2.82	
21.2.82 (see R35 p.2,S.No.15)	20.3.82	10.3.82	
21.3.82 (see R21 p.2, S.No.14)	20.11.82	10.4.82	

7. It is thus quite evident that the petitioner last worked as casual labourer upto year '82. It is pertinent to note that it is not the case of the petitioner that his services are terminated by any order of retrenchment in writing. He has come out with a plea that he has been orally retrenched from service on 23.12.86. Presumably, he has come out with such a version in order to conceal his long absence since year '82, indicating his voluntarily abandoning the employment. A person like the petitioner can hardly afford to remain absent without being gainfully engaged elsewhere. Ordinarily, in case of difficulty or inability to attend, a casual labourer would either inform the higher officer or make any representation himself or through recognised Trade Union or approach competent Court or Tribunal for redressal of his grievance. Nothing of the sort seems to have been done by the petitioner in this case. For the first

time, in the application filed by him on 5.6.87, he has come out with a version that he has been orally retrenched from service on 23.12.1986.

8. Shri Vin's contention that retrenchment has not taken place in the case of the petitioners appears to be correct. The word "Retrenchment" has been defined under section 2(OO) of I.D. Act, 1947, as under :

> "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
>
> (a) voluntary retirement of the workman; or
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
> (c) termination of the service of a workman on the ground of continued ill-health;

The retrenchment is mode of termination of service. It can be brought about by dismissal, discharge, removal from service. As per the present definition, it means termination by the employer of service of the workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. "For any reason whatsoever" are now key words. There is divergence of the judicial opinion on the question. Whether the expression, "any reason whatsoever" is susceptible to any limitations or admits no exception. The correct law in view of ratio decidendi derived from various decision including, (1) State Bank of India V/s. N.Sundramoney (1976(1) I.L.J.P. 478 S.C.) (2) Hindustan Steel's case, 1977(1) L.I.J. p.1(S.C.), (3) Delhi Cloth Mills Case, 1977 Lab.I.C. 1695(S.C.)

(4) Santosh Gupte V/s. State Bank of Patiale, C.A. No. 3563/79 decided by S.C. on 29.4.1980, (5) Barsi Light Co.,case 1957(1) L.I.J. p.243(S.C.) and (6) Union of India V/s. S.B.Chatterjee case 1980 R.L.W. p.188, where the Court on construction of "retrenchment" as defined in Section 2(OO) has unequivocally stated "retrenchment" means discharge of surplus labour or staff by the employer for any reason whatsoever. In the instant cases, the petitioner's services have neither been terminated nor he has been removed from service. It is not reasonable that he should get compensation under I.D.Act on the basis that he has been retrenched.

9. It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Bearing in mind all the facts and circumstances of this case we have no hesitation in holding that the petitioner intended to abandon service since year '82. Thus, as petitioner has relinquished the service since the said date, he is not entitled to the relief as prayed for. Moreover it is not established that the petitioner had worked as casual labourer on project. It is therefore, difficult to hold that the petitioner can claim any benefit of the scheme prepared by the Railway Board in terms of the directions issued in the case of Indrapal Yadav(supra).

..... 9/-

10. In the facts and circumstances of the case, it is clear that the petitioner has failed to establish his claim. Accordingly, the application has no merit and fails. The application therefore stands dismissed, with no order as to costs.

(P.M. JOSHI)
JUDICIAL MEMBER

(P.H.TRIVEDI)
VICE CHAIRMAN