

413 (3)

Shri Laxman Gordhan Koli,
Near Railway Station,
Bhatia

: Applicant

Versus

1. The Union of India
Through:
The General Manager,
Western Railway,
Churchgate, Bombay-20.

2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

: Respondents

Coram : Hon'ble Mr. P.H.Trivedi

: Vice Chairman

Hon'ble Mr. N.Dharmadan

: Judicial Member

O R A L O R D E R

Date: 17/4/1990

Per: Hon'ble Mr. P.H.Trivedi

: Vice Chairman

Heard Mr.M.K.Paul and Mr.B.R.Kyada, learned advocates
for the applicant and the respondents respectively.

The petitioner was engaged as Hot Whether Water Man at
Railway Station Bhopalka from 25.4.1982 to 30.4.1982 and
was engaged as substitute Pointsman at Railway Station Bhatia
from 2.9.1982 to 8.4.1985. On 9.4.1984 his services were
terminated without following the mandatory provisions of
the Industrial Disputes Act and of last come first go,

According to the petitioner, nor any notice has been served upon
him. The petitioner has claimed that he was continuously
worked ^{for} 342 days in 1984. The respondents in their reply
while denying the contentions of the petitioner have merely
taken the stand that whenever vacancies occurred persons are
engaged and whenever the vacancies are not available they
are discontinued and substitutes ^{are} not having ^{any} claim
for regular appointment. The respondents have stated that
the petitioner was originally engaged on 25.4.1982 and
therefore ^{many} seniors are ⁱⁿ queue for the service and the

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applicant cannot claim to be engaged before them.

The railway has issued orders banning ~~was~~ engagement of casual labourers/substitutes with effect from 14.4.1981 and therefore supervisory staff was not empowered to engage such substitutes. It is not necessary to go into the ^{de} contentions of the respondents. In so far as the rights of substitutes are averred therein the short point for the decision is that if a substitute is engaged ^{whether} rightly or wrongly, whether his service can be terminated without following the procedure under Industrial Disputes Act. There is no challenge about the applicability of the Industrial Disputes Act in the reply against the plea to that effect taken in the petition. The mere fact that there are certain provisions in the Indian Railway Establishment Manual regarding the right of the respondents to terminate the service of the substitutes and the right of the substitutes to be reengaged in a certain order does not take away the protection of the Industrial Disputes Act the procedure ^{for} which has to be scrupulously observed by the respondents in effecting the retrenchment. This admittedly has not been done and therefore the petition succeeds. The impugned orders dated 9.4.1985 are quashed and set aside. The respondents are at liberty to proceed against the petitioner by passing valid orders on observance of the safeguards provided under the Industrial Disputes Act and ^{as} governed by the Indian Railway Establishment Manual according to the instructions prescribed. No order as to costs.



(N. Dharmadan)
Judicial Member



(P. H. Trivedi)
Vice Chairman

(MA 396/90)

R.A. 21/90 in O.A. 349/87R. A. 420/90 in O. A. 349/87

The applicant as well as the respondents have filed Review Application in this case. They can be disposed of by circulation under Rule 17 (iii) of the Administrative Tribunal(Procedure)Rules, 1987.

R.A. 21/90 has been filed by the applicant within time claiming full back wages from 9.4.1985 taking into consideration the observations of the Tribunal in the judgment in T.A. No. 1363/86 and other group of cases disposed on 24.1.90.

R.A. 420/90 was filed by the Respondents Railways with MA.396/90 for condoning the delay in filing the R.A. The main reason stated for the review is that the Tribunal erred in holding that provisions of Industrial Disputes Act, 1947 is applicable to the applicant and that her termination is bad for the Railways failed to issue to the applicant and applied the principle of last come first go. It is further stated that the Tribunal " has not considered or stated the provisions in the Indian Railway Establishment Manual which states of the right of the employee and termination of their services. They have not quoted this provision but stated that this has not been followed. They have haphazardly stated this which cannot take place of the established rules."

RA 21/90 can straight away be disposed of for the applicant has not made out any ground for review. His grievance in the original application was only against the termination order dated 9.4.1985. He did not claim any consequential benefits. It is only a fresh claim raised for the first time in this R.A. So there is no error apparent

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on the face of the records or other mistake or ground warranting interference in review. R.A. 21/90 is only to be rejected. Accordingly it is rejected; but it is made clear that the observations in the judgment would not stand in the way of the applicant from approaching the respondents for getting the benefit of backwages in accordance with law.

R. A. 420/90 has been filed out of time. Hence, M.A. 396/90 was filed on 22.10.90. There is about six months' delay. The reasons for the delay stated in the M.A. are not sufficient for condoning the same. It would be advantageous to read the reasons stated in the M.A.:-

"The Petitioners could not file the present application in time because after getting the certified copy of the judgment from the court, the same was sent to the department and after their careful study of the judgment, it was revealed that the observations of the Hon'ble Tribunal is not applicable in the present case."

X

X

X

"The petitioner has after getting the sanction and opinion from the Legal Adviser decided to file Review Application against the judgment. The same could not be done in time as the department has to act in accordance with the settled principles and procedures and therefore there is some delay in filling this present Review Application which may be condoned for the ends of justice."

The judgment was pronounced in the open court on 17.4.90. The Review applicant did not say when he received the copy of the judgment, when it was forwarded to and what happened thereafter. The dates are very relevant for assessing whether there was a wilful delay or laches on the part of the review applicant. He is obliged to give satisfactory and cogent reasons and explanation for each days' delay particularly when Rule 17(1) very stringent regarding the entertainment of an application for review. It says 'no petition for review shall be entertained unless it is filed within thirty days from the date of the order. It is only in extreme exceptional

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case that the Tribunal entertains a petition for review after the period mentioned in the Rules when it is fully satisfied that there is absolutely no delay on the part of the review applicant. There is no satisfactory materials to ^{arrive at} ~~come~~ such a conclusion on the facts and circumstances of this case. Hence this M.A. is only to be rejected without issuing any notice to the respondents, the original applicant. Accordingly, it is rejected. Consequently, the RA is also rejected.

Before ~~leaving~~ the matter I cannot help making some observations about the language used in this review petition by the review applicant. Litigants when approach the Court or Tribunal are expected to use chaste language and expressions which can be used by gentlemen in judicial forum. He has stated that we have not ^{quoted} ~~granted~~ the provisions and disposed of the matter in a haphazard manner. This is unwarranted. While disposing of the matter we have considered the contentions of the parties ^{carefully} and allowed the application solely on the question of violation of principles of natural justice and the application of the procedural formalities under the I.D. Act because admittedly no notice was issued to the applicant and no ^{acceptable} ~~reason~~ was shown to him before terminating his service particularly when he was continuing in the services of the respondents from 25.4.82. There was also no contest about the applicability of I.D. Act by the respondents. Under these circumstances, he it is unnecessary to quote any provisions and the review applicant would not have used the expression 'they have haphazardly stated this....' in the application for review.

Both the M.A. as well as the R.A. are dismissed.

N. Dharmadan
(N. DHARMADAN)
JUDICIAL MEMBER

I concur

P. H. Trivedi
18/4/91
(P.H. TRIVEDI)
Vice Chairman