

C.V
Petition filed
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(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 386 OF 1987.
Tax No.

DATE OF DECISION 7-4-1992.

Gopi Birdha, Petitioner

Mr. Y.G. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. R.Venkatesan, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Gopi Birdha,
C/o. I.O.W.(C),
Western Railway,
Gandhidham.

..... Applicant.

(Advocate: Mr.Y.V. Shah)

Versus.

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

2. Chief Engineer (C)
Western Railway,
2nd Floor, Station building,
Ahmedabad - 2.

3. Executive Engineer(C) I,
Western Railway,
Railwaypura,
Ahmedabad - 2.

Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 386 OF 1987

Date: 7-4-1992.

Per: Hon'ble Mr. R.Venkatesan, Admn. Member.

The prayer in the present application is
applicant
for quashing order retrenching the/from service.
the

The facts of/case are that the applicant claims

that he was initially recruited as casual labour
from 7-9-50 to 7-3-51 in the Railways. Thereafter
claims that he
he/had worked as Railway Mistry and Works Mistry
from 14.1.62 to 31.12.66 under P.W.I.(C) Dungarpur.

Thereafter he states that he was recruited as
Gangman on JK project from 1967 under PWI(C)

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Gandhidham. In the year 1975 he was medically found unfit and was engaged as Watchman in which post he was continued. He states that he again sent for medical examination for C-2 category on 19.1.86 but failed in the vision test, and thereafter a retrenchment order effective from 31.3.1986 was issued. According to the Railways, however, the applicant has been engaged only from 30.11.68 and there are no records available of his employment during earlier periods from 1962 to 1966 or 1950 to 1951 as claimed; the certain respondents rely in this connection on proceedings before the Conciliation officer, Assistant Labour Commissioner (Central) Ahmedabad, which are reproduced at Annexure 'B' of the application in which it has / been recorded by the ALC, "The dispute according to the Western Railway Mazdoor Sangh, is that Shri Gopi Birdha, at present working as Watchman under PWI(C) Gandhidham was recruited on 30.11.68". The respondents contended that it had ^{been thus} been admitted on behalf of the applicant by the Union that he was recruited on 30.11.68. The learned counsel on the other hand for the applicant emphatically contended that the applicant had worked between 14.1.1962 to 31.12.66. His main ground in the prayer is that the retrenchment was illegal inasmuch as the full compensation had not been paid under section 25F of the Industrial Disputes Act by taking this period into account. In support of his contention that the

applicant actually worked in the above period, he relies upon a certificate in the possession of the applicant and a copy of which has been filed with the application which reads as follows :

CERTIFICATE

Certified that Shri Gopi Ram S/o Birdha worked under me as Railwaymistry and works-mistry from 14.1.62 to 31.12.66. He was found sincere to his duties and obedient to officers. I wish him every success in his career as a railwayman.

Sd/- (illegible)
Permanent Way Inspector
(Construction)

Dungarpur.

He contended that on the strength of the certificate the applicant's service during this period was entitled to be counted. He further produced another certificate in original (a copy of which has also been filed with the application) reads as follows :

CERTIFICATE

This is to certify that Shri Gopiram Birdha has worked as a Mate on J.K.Project from 1967 to 1971 on various jobs including launching of 60' span Girders and making Temp. Rail duster & cribes etc. on DHG-GIM Dist.

He is also very perfect in Alignning the track Linking Points and crossing and other works connected to Permanent Way. He has got a good capacity to control Labour also.

I wish him every success in his life.

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Sd/-

18.9.71

Ex. P.W.I./C/Gim
P.W.I.(C)

The counsel for the applicant relied upon the above certificate in support of his contention that the applicant was further engaged during 1967 without break. The learned counsel for the applicant also contended that non-availability of records or destruction of records was not a legal defence for not complying with the requirement of the rule and relied on judgement of this Tribunal in (1991) 16 A.T.C. 180.

2. The learned counsel for the respondents submitted that there was difficulty in accepting the above certificate as proof of continuous service for purposes of Industrial Disputes Act. He submitted that the certificate for the period from 14.1.1962 to 31.12.1968 did not state for what reason the service of the applicant came to an end on 31.12.1986. It had not been stated that the applicant had been retrenched. The applicant might have left service of his own accord or he might have resigned. In case he had been retrenched he would have been paid compensation as on the date of retrenchment as per Industrial Disputes Act and it was for the applicant to prove that he had not been so paid despite being retrenched. If on the other hand he had resigned or left the service of his own accord, such service could not be counted. He further pointed out that the certificate for the period from 1967 did not mention the date from which the employment was commenced, and was there-

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fore vague. It was moreover issued by someone who claimed to be an Ex.PWI and the certificate was issued only on 18.1.1971. It could not be concluded from the certificate that the person who was in charge of the project where the applicant was employed during the period was the person who issued the certificate. Moreover in the ~~case~~ ^{face} of the statement before the Conciliation Officer ~~and~~ that the applicant had been employed from (Anupra), 30.11.1968, no inference could be drawn from the documents produced by the applicant of his having been employed prior to this date.

3. From the facts of the case and perusal of the documents in original produced by the learned counsel for the applicant, it is clear that the evidence provided by the applicant in regard to the period of employment from 1962 to 1966 and during 1967 is not sufficient to establish that he had been employed continuously during the said periods and that such period would be counted for the purpose of retrenchment compensation when he was finally retrenched on 31.3.1986. This is on account of the fact that the circumstances in which the applicant's service was ^{came} put to an end on 31.12.1968 have not been clearly stated in the certificate and the applicant has not been able to establish from what date he was reengaged in 1967 to show that there was continuity of service until 30.11.1968. Moreover the record of proceedings

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dated 16.4.1986 (No.ALC/45(14)/86) before the Assistant Labour Commissioner acting as Conciliation Officer in a dispute regarding his retrenchment on 31.3.1986 clearly states, " The dispute according to the Western Railway Mazdoor Sangh, Gandhidham (hereinafter referred as Union) is that Shri Gopi Berdha, presently working as Watchman under PWI (C) Gandhidham, was recruited on 30.11.1968. This clearly shows that the applicant through his Union had stated that he was recruited on 30.11.1968. It was not a ground in the conciliation proceedings that the retrenchment was illegal, as now contended in this application, ^{because} ~~on the spot~~ that earlier periods of employment were omitted for the purpose of computation of retrenchment compensation under the Industrial Disputes Act.

for

4. The applicant cannot ask for the production of records pertaining to periods 1962 to 1966 or 1967 more than 20 years later, to establish his claim that he had been employed during the said period. The judgement referred to by the learned counsel for the applicant will not apply in the facts of this case.

5. In the result we hold that the applicant has not ~~been~~ established his case that the respondents had not ^{fully} paid him retrenchment compensation and thereby violated the provision of Industrial Disputes Act. The application accordingly dismissed. There will be no order as to costs.

R. Venkatesan
(R. Venkatesan)
Member (A)

Rene
(R.C.Bhatt)
Member (J)