(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 391 OF 1987.
~~T.A. No.~~

DATE OF DECISION 22-11-1988

SHRI NATHURAM BHAGWANDAS Petitioner

MR. Y.V. SHAH Advocate for the Petitioner(s)

Versus

THE 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

(8)

Shri Nathuram Bhagwandas,
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. Mr. Bukhari or his
successor in the office,
C.Permanent Way Inspector,
Western Railway,
Dholka, Dist.Ahmedabad. ..... Respondents.

(Advocate: Mr. R.M. Vin.)

J U D G M E N T

O.A.No. 391 OF 1987

Date: 22.11.88

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

The petitioner, Shri Nathuram Bhagwandas, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, (hereinafter referred to as "the Act"), on 7.8.1987. It is averred by the petitioner that he was initially engaged as a casual labourer on 16.8.1981 and he had acquired 'temporary status'. According to him, he has been retrenched from service by verbal order passed by respondent No.2 on 20.3.1986, on the ground of surplus. It is therefore prayed that the impugned action of retrenching the petitioner from service 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 & 25N of the Industrial Disputes Act 1947 and Rules 76A & C and 77 of the Industrial Disputes (Central) Rules 1957. The petitioner has further prayed that the respondents be directed to reinstate and absorb him in service with all consequential benefits.

2. The respondents-railway administration have contested the petitioners' application and in their counter they have denied the allegations made by the petitioners. According to them, the petitioner has left the job of casual labourer of his own accord since 25.2.1985, they have further submitted that the petitioners are not orally retrenched on 20.3.1986 as alleged. But as a matter of fact he left the job of his own accord w.e.f. 25.2.1985 and thereafter never reported for duty as per the details supplied in Annexure R-I.

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, at a considerable length, 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 informations 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 1981 and retrenched on 20.3.1986. It is his version that he has acquired temporary status and that he has been retrenched by verbal orders. These material 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 the 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 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 20.3.86, especially, when as a matter of fact he has never reported for work since 20.3.1985. Relying on the

abandoning the employment. A person like 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 February 1985, 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 submission 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. On the basis of the materials and the records produced before us it is duly established that the petitioner worked as casual labourer during the following periods only.

Wage period	Date of absence
16.8.81 to 20.8.81	-
21.8.81 to 20.9.81	-
21.9.81 to 20.10.81	-
21.10.81 to 20.11.81	-
21.11.81 to 20.12.81	-
21.12.81 to 20.1.82	-
21.1.82 to 20.2.82	9/2 & 13/2
21.2.82 to 20.3.82 (see R35,p.10,S.No.4)	10.3.82
21.3.82 to 20.4.82 (see R21, p.10, S.No.84)	-
21.4.82 to 20.5.82	Not worked

(12)

21.5.82 to 20.6.82	Not worked
21.6.82 to 20.7.82	"
21.7.82 to 20.8.82	7.8.82 9.8.82 to 12.8.82
21.8.82 to 20.9.82	1.9 & 6.9.82
21.9.82 to 20.6.83	Not worked
21.6.83 to 20.7.83 (see R46,p.4,Sr.No.8)	10.6., 17.6, 19.6, & 1.7.1983
21.7.83 to 20.8.83 (see R48A,p.1,S.No.9)	26.7, 27.7 & 30.7.83
21.8.83 to 20.9.83	-
21.9.83 to 20.12.83	Not on work
21.12.83 to 20.1.84	8.1.84
21.1.84 to 20.2.84	7.2 & 11.2
21.2.84 to 20.3.84	-
21.3.84 to 20.7.84	Not on work
21.7.84 to 20.8.84 (see R38,p.1,S.No.6)	-
21.8.84 to 20.9.84	11.9, & 15.9
21.9.84 to 20.10.84 (see R28,p.6,S.No.23)	4.10, 8.10 to 12.10 & 14.10, 18.10 & 20.10
21.10.84 to 20.12.84	Not on work
21.12.84 to 20.1.85	19.1.85
21.1.85 to 20.2.85	Not on work
21.2.85 to 20.3.85 (see page 7,S.No.11)	-

7. It is thus quite evident that the petitioner last worked as casual labourer upto March 1985. 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 20.3.86. Presumably, he has come out with such a version in order to conceal his long absence since 25.2.85, indicating his voluntarily abandoning the employment. A person like the

(13)

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 7.8.87, he has come out with the version that he has been orally retrenched from service on 20.3.86.

8. Shri Vin's contention that retrenchment has not taken place in the case of the petitioner appears to be correct. The word "Retrenchment" has been defined under section 2(OO) of Industrial Disputes 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(00) 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

(15)

service since March 1985. 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 has worked as a 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).

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