

(10)

CAT/8/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~XXXXXX~~

O.A. No. 402 OF 1987 ~~XXX~~
~~XXX~~

DATE OF DECISION 12-4-1991

Paschim Railway Karmachari Petitioner s.
Parishad & Anrs.

Party-in-person. 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. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, 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*

1) Paschim Railway Karmachari Parishad, A registered Trade Union affiliated with Bharatiya Mazdoor Sangh represents through its Office Secretary Shri Krishnakumar B. Pandey, residing at Wadi, Soni Pole No.4 Baroda - 390 017.

2) Shri Sarveshali Jahoorali S/o. Jahoorali Noorali residing at Railway colony Chd. No. 282, Nava Yard, Sardar Nagar, Baroda. Applicants.

(Party-in-person)

(None for Paschim Railway Karmachari Parishad)
Versus.

1. Union of India
Notice served through
The Chairman,
Railway Board
Ministry of Railway
Rail Mantralaya
Rail Bhavan
New Delhi - 110 001.
2. General Manager
Western Railway
Churchgate, Bombay.
3. Chief Engineer
Western Railway,
Churchgate, Bombay.
4. Divisional Rail Manager,
Western Railway,
Pratapnagar, Baroda.
5. Sr.Divisional Engineer
Western Railway
Pratapnagar, Baroda,
6. Inspector of Works, Baroda(P)
or his successor
Western Railway
Near Baroda Rly. Station
Baroda. Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 402 OF 1987

Date: 12-4-91.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The second applicant in this original application filed under section 19 of the Administrative

M. H. L.

Tribunals Act, 1985, had joined under PWI Baroda in Western Railway as casual labourer on 26.9.84. His allegation is that his service was terminated on 20.5.1987 by the oral order of Inspector of Works Baroda without payment to him of retrenchment compensation though he had completed 120/180 days in service as a casual labourer which made him eligible for temporary status in accordance with the provisions of para 2512 of Indian Railway Establishment Manual. It is alleged that his services were terminated though his juniors continued to be engaged and even fresh faces were also engaged without giving opportunity to the applicant to reengage. Thus violation by the respondents of provisions of Sections 25F, 25(G) and 25 H of the Industrial Disputes Act 1947 and of rule 77 of the Industrial Central Rules is alleged.

2. The reply of the respondents is to the effect that the applicant remained engaged from 26.9.84 to 30.9.84. The applicant did not come for work after the latter date. Thereafter the applicant came to be reengaged again from 25.6.86 for various broken spells upto 20.5.87 whereafter the applicant himself did not approach for work. The allegation of engagement of juniors and fresh fares is denied. That during the period 25.6.86 to 20.5.87 the applicant worked for 153 days in all is not disputed. But it is denied that the applicant had completed 120/180 days continuous service as a casual labourer. His qualifying for temporary status is denied and it is asserted that applicant not having completed 120 days continuous service under Inspector of Works, he is not entitled

M. R. J.

to temporary status or notice of retrenchment and compensation under the provisions of the Industrial Disputes Act. The seniority list of project casual labour for Baroda division has been published vide E/E/615/0 dated 12.3.87. Seniority of engineering department casual labour is maintained unitwise for PWI, IOW and BRI units.

3. No rejoinder has been filed.

4. We have heard applicant No.2. He appeared in person. Respondents' counsel also heard.

5. The evidence of engagement of the applicant consists of the xerox copies of his labour card. This evidence shows following durations of engagement.

<u>From</u>	<u>To</u>	<u>No. of days</u>
'26.9.84	30.9.84	4
26.11.85	20.12.85	Casual Khalasi
17.02.86	16.4.86	57
25.6.86	20.7.86	22
21.8.86	20.9.86	27
22.9.86	20.10.86	25
21.10.86	20.11.86	27
21.11.86	20.12.86	26
21.4.87	20.5.87	26

6. In a period of twelve months ending on 20.5.87, the applicant, though he was engaged for 155 days in all, was never engaged continuously for 120 days. The first spell from 25.6.86 to 20.7.86 was of 22 days and the second spell from 21.8.86 to 20.9.86 of 27 days. Between these is a gap of one month which on the face of it, has to be taken as real break. From 22.9.86 onwards, the date 'from' is a date next to the date in 'to' column upto 20.12.86. The breaks in this duration of engagement have to be taken as artificial. But, even by treating this duration

from 22.9.86 to 20.12.86 as continuous engagement, the period of continuous engagement comes to only 78 days which is much less than 120 days of continuous engagement which is a prerequisite for qualifying for protections under the Industrial Disputes Act, 1947 applied.

7. The applicant thus does not qualify for the protections and prayer he seeks. The application is therefore liable to be dismissed. We hereby do so without any order as to costs.

8. We, however, clarify that this order shall not come in the way of the applicant's any future rights of engagement which may arise on the basis of the above duration of engagement.

Raghul

(R.C.Bhatt)
Judicial Member

M. M. S.

(M.M. Singh)
Administrative Member.