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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~XXXXXXXXXXXXXXXX~~

O.A. No. 409 OF 1987 ~~XXX~~

~~XXXXXX~~.

DATE OF DECISION 27-2-1991

Shri Veersingh Harsingh Petitioner

Mr. P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & anr. Respondents.

Mr. R.M. Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi, Vice Chairman.

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? 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

MGIPRRND—12 CAT/86—3-12-86—15,000

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Shri Veersingh Harsingh
Gangadhar Railway Station,
P.O. Gangadhar,
District Surat. : Applicant
(Adv.Mr.P.H.Pathak)

Versus

1. Shri R.B.Verma,
   Inspector of Works,
   Surat.

2. Union of India,
   Through:
   General Manager
   Head Quarter Office,
   Churchgate, Station Building,
   Bombay. : Respondents
   (Adv.Mr.R.M.Vin)

O.A.409/87

JUDGMENT

Date: 27-2-1991

Per: Hon'ble Mr. R.C.Bhatt : Judicial Member

The applicant in this application under Section 19 of the Administrative Tribunals Act 1985 has challenged the validity and legality of the oral termination dated 20th April, 1987 by the Respondent No.1. According to the applicant, he was working as a casual labour doing the work of loading, unloading, growing plants and other miscellaneous jobs. It is alleged that the oral termination order has been passed in contravention of the provisions of the Industrial Disputes Act and rules made thereunder. and that the said termination is void ab initio. It is further alleged that there has been no compliance with Section 25F (a) (b) and Section 25 N of the Industrial Disputes Act and there was no reason or justification for passing the impugned oral termination order. It is alleged that the said termination order is colourable exercise of power and the same is passed arbitrarily in violation of principles of natural justice. The applicant has, therefore, prayed that the Tribunal may be pleased to quash the impugned order and grant all consequential reliefs which the Tribunal thinks fit in the

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interest of justice.

2. The respondents have filed reply at the stage of interim relief in which it is contended that there was no oral order passed as alleged in the application. It is contended, inter alia, that the applicant has himself absconded without permission or authority and as he was merely a casual labourer, his employment has automatically come to an end. It is contended that the applicant was initially employed as a Khalasi on 23.9.1986 and was continued upto 20th October, 1986 and then gave up attending the work any further. Again he reported for duty on 24th November, 1986 and he was engaged to work from that date till 4th May, 1987. It is contended that since 5th May, 1987 the applicant remained absent unauthorisedly without informing anyone and as the said unauthorised absence constituted more than three days his engagement stood terminated in terms of Board's Circular No.E(NG) II/80/CL/25 dated 25th October, 1980 issued on this subject. According to the respondents, as per this circular, if the casual labourer remains absent for morethan 20 days then it automatically amounts to break in service and the employment automatically stands terminated. It is contended that as the applicant's employment has come to an end automatically by his own action, the question of affording the benefit of the provisions of the Industrial Disputes Act does not arise.

3. The applicant has filed rejoinder controverting the averments made by the respondents in the reply and has denied that there is no order of termination of services of the applicant and denied that the applicant had absconded from duty. It is denied by the applicant that he gave up duty after 20th October, 1986. He contended that he was terminated first time with effect from 21st October, 1986 and then after repeated request, he was reinstated with effect from 24th November 1986

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and was continued upto 4th May, 1987. He has in unequivocal terms denied that he remained absent, from 5th May, 1987. He contended that there is no question of unauthorised absence without informing anyone or taking leave because the Respondent No.1 verbally terminated his services. He contended that no letter of the Railway Board referred to in the reply of the respondent was given to him and further contended that the said circular is not applicable to him and the same is also violative of Article 14 of the Constitution of India. He denied that he has not worked continuously and has denied that he has not completed more than 240 days ofcontinuous service also. It is contended that there cannot be automatic termination and ~~termination~~ of service of an employee on the ground of absence without following the departmental proceeding and the same is void-ab-initio.

4. The point which is germane to the inquiry of this case is whether the Respondents were in law entitled to terminate the employment of the applicant verbally as alleged by the applicant or were entitled to treat automatic termination of applicant on the ground of his alleged absence as contended in reply. The applicant has produced the record of service as casual labour at page 9 and 10. He was on employment at intervals from 1978 onwards and the last entry at page 10 of the record of service shows that he was in continuous service from 24th November, 1986 to 4th May, 1987 meaning thereby that he was in continuous service for more than 120 days before his oral termination.

5. It is submitted on behalf of the respondents that there was no oral termination as alleged by the applicant but as the applicant absconded without permission or authority, his employment automatically came to an end. The bone of contention of the respondents is that since 5th May, 1987, the applicant remained absent unauthorisedly without informing anyone or taking any leave. The service cards shows the presence of the applicant in service upto 4th May, 1987, therefore the date of oral termination mentioned in the application is not correct date. The applicant in rejoinder has specifically denied that he remained absent from 5th May, 1987. The learned advocate for the respondents has relied on the copy of the Railway Board's letter dated 21st October, 1980 No.E(NG) II-80/ CL/25 circulated to the General Managers, All India Railways & Others in which Clause (ii) says that unauthorised absence of three days and authorised absence upto 20 days will not constitute a break in the employment to casual labour.

6. The learned advocate for the applicant has relied on the decision in Jarnail Singh and Others vs. State of Punjab and Others 1986 SCS 524 in support of his submission that the respondents' verbal order was punitive and in violation of aricle 311 (2) of the Constitution of India. It is held in this decision that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an adhoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order that the attending circumstances that as well as the basis of the order that have to be taken into consideration. It is submitted that it was the duty of the respondents to issue show cause

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notice to the applicant if the applicant was absconding or there was unauthorised absence as contended by the respondents and the applicant ought to have been given an opportunity of being heard. He submitted that a verbal order of termination in the instant case was nothing but a punishment which was made without giving any opportunity to the applicant of being heard and the action of the respondents is in violation ofprinciples of natural justice and therefore the order is also bad in law.

7. The learned advovate for the applicant submitted that the applicant had attained temporary status by virtue of having worked for 120 days and therefore, his services cannot be terminated without notice of termination of service. He, submitted, that the respondents cannot take a stand that the services of the applicant has automatically came to an end on the alleged ground that the applicant had absconded without permission or authority of the respondents.

8. The question whether the services of casual labourers who have attained temporary status by virtue of having worked continuously for 120 days can be terminated without notice of termination of service came for consideration before the Bench of this Tribunal in OA No.204 of 1987 (Shri Madhu Dhola and Others vs. Union of India and Others) decided on 11.8.1988. It was observed in para 7 of this decision. "Now it is well settled that the casual labourer engaged by the Railway Administratiion and who has attained temporary status possesses a right of getting a notice for discharge". In the same decision, the Tribunal considered Rule 2505 in Chapter XXV and Rule 2301 and 2302 in Chapter XXIII of Railway Establishment Manual. Having considered the said rules, the Tribunal came to the conclusion that even though the petitioners in that case were not

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regular temporary employees but who had attained temporary status had to be given a notice before discharge, and in absence of such notice or in absence of pay for the period of notice by Railway Administration to the concerned labourer, the verbal order or simple discharge would be illegal. The Tribunal in that case quashed the impugned order and directed Railway Administration to reinstate petitioners with backwages.

9. In the instance case also the record of service produced by the applicant shows that he had continuously worked for 120 days upto 4th May, 1987. Therefore, in the instant case applying ratio of decision in OA.204/87 the applicant having acquired temporary status was entitled to a notice before his service was terminated which admittedly is not given by respondents. A verbal order of termination was therefore illegal.

10. Next, it was urged on behalf of the applicant that the contention of the respondent that since 5.5.87 the applicant remained absent unauthorisedly for more than 3 days his engagement stood terminated in terms of Railway Board's Circular No.E(NG)11/80/CL/25 dated 21.10.80 has no substance. He submitted that applicant has controverted this contention of respondents in his rejoinder. He submitted that the respondents could not have treated the employment of the applicant having automatically come to an end on the said alleged ground. There is no reliable evidence to show that there was any unauthorised absence of the applicant as contended by the respondents. Moreover no opportunity was given to the applicant of being heard before his services were treated as automatically terminated and there was a clear violation of principles of natural justice. There is much force in this submission

we rely on the rejoinder filed by the applicant and do not accept the contention of the respondents that the services of the applicant has automatically come to an end on the ground of his alleged unauthorised absence. The contentions taken in the reply by respondents have no substance and the action of the respondents is held illegal and bad in law. We hold that this is a fit case for reinstating the applicant to his original position.

11. This takes us to the question as to whether the full backwages should be paid to the applicant. In this connection, the learned advocate for the applicant has put reliance on the decision in Gammon India Ltd. vs. Niranjan Dass (1984 SCC p.144) in which it was held that as the respondents in that case had been kept out of service, therefore, it was but justthat the appellant-company should pay all the arrears as calculated according to the directions given with 12 per cent interest from the date the amount became due and payable till realisation. He also put reliance on the decision in S.G.Chemicals and Dyes Trading Employees Union vs. S.G.Chemicals and Dyes Trading Limited and Another (1986 I.L.L.J p.490). It was held in this decision that the amounts received by the employee by alternative employment for a short period need not be set off and workmen can retain such amounts by way of solatium. In the case of reinstatement, the other decision is Mohanlal vs. Management of M/s. Bharat Electronics Ltd. (1981) 3 SCC 225 in which the Hon'ble Supreme Court held that where the termination is illegal especially where there is an ineffective order of retrenchment there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. In this case, also the applicant therefore would be entitled to full backwages.

12. In the aforesaid circumstances and the view which we have taken, we hold that the action of the respondents in terminating the service or treating the service of applicant as automatically terminated is void and illegal and the same is quashed and the applicant would be entitled to reinstatement with full backwages.

13. The result is that the application is allowed and the respondents are directed to reinstate the applicant with full backwages. We pass no order as to costs.

(R.C. Bhatt)
Judicial Member

(P.H.Trivedi)
Vice Chairman