

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 508 OF 1987.
~~3000 No.~~

DATE OF DECISION 19.7.1988

SHRI J.P. VAGHELA

Petitioner

MR. B.B. GOGIA

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS.

Respondents

MR. B.R. KYADA

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 ? *Ye*
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*

Shri J.P. Vaghela,
Rly.Qr.No. 88/D,
Kothi Compound,
Rajkot.

..... Petitioner

(Advocate: Mr. B.B.Gogia)

Versus.

1. Union of India,
Owning & Representing
Western Railway
Through: General Manager,
Western Railway,
Churchgate,
Bombay.

2. Chief Engineer(Construction),
Western Railway,
Ahmedabad.

..... Respondents.

(Advocate: Mr. B.R.Kyada)

JUDGMENT

O.A.No. 508 OF 1987.

Date: 19.7.1988.

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

In this application, filed under section 19 of the Administrative Tribunals Act, 1985 on 13.10.1987, the petitioner Shri J.P.Vaghela of Rajkot claimed that he was re-engaged as casual labourer on 22.6.1987 on the basis of the fact that he had served as casual labourer under Permanent Way Inspector (Construction) Rajkot from 22.6.1979 to 10.4.1981. It is alleged that his services are again terminated by verbal order given on 19.7.1987 by the Chief Permanent Way Inspector, Rajkot which is quite illegal and bad in law. He has prayed for the relief in the following terms :-

Relief(s) sought.

The oral termination order dated 19.7.1987 of the Chief Permanent Way Inspector, Western Rly.Rajkot may kindly be declared as illegal, in-effective and null and void and the application may kindly be declared to be in continuous service with all consequential benefits of pay, seniority etc. etc. The Respondents may please be further directed to

regularise the services of the applicant with all consequential benefits on the basis of Indrepal Yadav's case as referred to above with any other further or better relief(s) as the honourable Tribunal finds just and proper in the circumstances of the case.

2. Pending admission, notices were issued to the Respondents-Railway Administration. Mr. B.R. Kyada, the learned counsel appeared for the Respondents-railway administration in response to the notices served upon them. After hearing the learned counsel for the petitioner and the respondents the application was admitted on 8.2.1987 and the respondents were required to file the reply within 3 weeks. However the respondents have not filed any reply. But when the application came up for hearing on 10.5.1988 Mr. B.B. Gogia for the petitioner was present, however Mr. B.R. Kyada for the respondents was not present. Mr. B.B. Gogia waived oral hearing and preferred to file written submissions for which he was granted time. Mr. B.R. Kyada also was informed to file written submissions. In pursuance of the said directions, Mr. B.B. Gogia and Mr. B.R. Kyada have filed their written arguments which has been taken on record. We have also perused and considered the materials placed on record.

3. It is contended inter-alia on behalf of the petitioner that after he was engaged as casual labourer on 22.6.79, his services were terminated on 10.4.1981. According to him, he continued making representation to the railway authorities and in response thereof, he was re-engaged on 22nd June, 1987, but his services are again terminated on 19.7.1987. In his written submission, he has sought the relief for his regularisation in service on the basis of the scheme framed by the railway administration. Mr. B.R. Kyada, the learned counsel for the respondents in his written arguments however denied

the fact that the services of the petitioner was terminated. According to him, he had left the job on 10.4.1981 and hence as the question of following the procedure under section 25-F of the I.D. Act did not arise and hence he is not entitled to any reliefs as prayed for.

4. At the outset it may be stated here that the main grievance of the petitioner was that his termination dated 18.7.1987 should be quashed and declared as illegal. The fact that the applicant was re-engaged on 22.6.1987 and worked till 18.7.1987 is not supported by any documentary evidence including service card. The Service card Annexure A-5 relied upon by the petitioner indicates that he had worked as casual labourer for the period 22.6.79 to 10.4.1981. However while referring Annexure 'A-2' and Annexure 'A-4' it permits us to infer that he might have been engaged as casual labourer from 22.6.87 to 18.7.1987. Admittedly, he has not worked even for a month during the said period. No notice is required for termination of service of casual labourer, except where notice is necessary under any statutory obligation. Their services will be deemed to have been terminated when they absent themselves or on the close of the day (see para 2505 of I.R.E.M.) During the year 1987, the petitioner had not even worked for 30 days and therefore provisions of Section 25-F of the I.D. Act are not attracted and hence he can not claim any reinstatement on the ground that his services were terminated by verbal order.

5. Perhaps, having realised this position that he can not claim any reinstatement, the petitioner in his written submission seems to have pressed relief of absorption on the basis of the scheme framed by the railway administration as approved by the Supreme Court

of India in case of Indrapal Yadav V/s. Union of India, reported in 1985(2) S.L.R. p.58. It is true, Division Bench of the Supreme Court consisting of Desai & Rangnath Misra, JJ. gave certain directions in Indrapal Yadav(supra) modifying a scheme prepared by the railway administration for the purpose of absorbing "retrenched railway casual labour" (emphasis supplied). Incorporating directions of the Court, the railway board issued a circular to the General Manager's of All India Railways, Paragraph 5.1 of which is as follows :-

5.1. As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as "Project casual labour") may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

(a) These orders will cover:

- (i) Casual labour on projects who were in service as on January 1, 1981 ; and
- (ii) Casual labour on projects, who, though not in service on January 1, 1981, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after January 1, 1981.

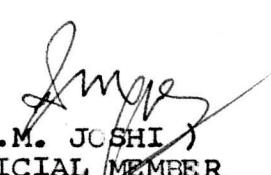
(b) The decision should be implemented in a phased manner according to the schedule given below:

Length of service(i.e. continuous employment)	Date from which may be treated as temporary.
(i) Those who have completed five years of service as on 1.1.1981;	1.1.1981
(ii) Those who have completed three years but less than five years of service as on 1.1.1981;	1.1.1982
(iii) Those who have completed 360 days but less than three years of service as on 1.1.1981;	1.1.1983
(iv) Those who complete 360 days 1.1.1981.	1.1.1984 or the date on which 360 days are completed whichever is late.

6. The study of the scheme and the aforesaid provision reveals that the benefits of the scheme are extended to the "project casual labour" who were earlier

retrenched by the railway administration and who had completed 360 days of continuous employment. It is stated by Mr. B.B.Gogia, the learned counsel for the petitioner in his written submission that the services of the petitioner were terminated on 10.4.1981 but due to his poverty he could not approach the Court to challenge the same and therefore he could not get any stay orders. However on going through the service card Annexure A-5 produced and relied upon by the petitioner, this version does not seem to be well-founded. It is clearly indicated in the service card that the petitioner had left the service on 10.4.1981 and it is in this context rightly contended by Mr. B.R.Kyada that the petitioner had no cause of action as he had willingly left the service of the respondents-railway administration. It is true, the petitioner was a casual labourer on project as on January 1, 1981 but in view of the fact he had left the service, on his own, he can not be considered to be a retrenched casual labourer covered under the scheme. Even after his so called termination when he made representation vide his letter dated 3.8.87 Annexure A-4 addressed to the D.R.M. Rajkot he has not registered his claim for getting the benefit under the scheme meant for absorption of the retrenched railway casual labourer. The petitioner is therefore not entitled to the reliefs as prayed for.

7. In the result, we see not merit in this application which is accordingly dismissed. But in the circumstances there would be no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN