

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
No. 528 of 1987

Terminated (MS)
O.A. No. 528 OF 1987 ~~xxx~~
~~xxx~~

DATE OF DECISION 13-6-1991.

Pratap Hira & Anrs.

Petitioner s

Mrs. K.V. Sampat.

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? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

1. Pratap Hira,
2. Vajesing Sanabhai,
Khalasi,
C/o. Jitendra K. Ved.,
Rly Colony, G.L. Yard
Q, 376/B. Nr. Raly. School,
GODHRA.

.... Applicants.

(Advocate: Mrs. K.V. Sampat)

Versus.

1. Union of India,
Represented by the
Addl. General Manager,
Re. Allahabad (UP).

2. The Project Manager,
Rly. Electrification,
Pratapnagar,
Baroda - 390 004.

3. Divisional Signal and (Telecom)
Engineer, Rly. Electrification,
Rly. Yard, Pratapnagar,
Vadodara - 390 004.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A. NO. 528 OF 1987

Date: 13-6-1991.

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

This application under section 19 of the Administrative Tribunals Act, 1985, is filed by the two applicants describing themselves as temporary railway employees with the respondents railways challenging the order dated 5th August, 1986 purporting to termination of the services of the applicants and further order dated 3rd October, 1986 passed by the respondents for reemployment. The main challenge of the applicants in this application is non-compliance by the respondents of Rule 77 of the Industrial Disputes (Central) Rules, 1957.

2. It is the case of the applicants that they had acquired the legal status of a temporary railway employee from 1st January, 1984 as per Railway Board's circular dated 11th September 1986 and therefore their services were not liable to be terminated without complying with provisions of the Railway Establishment Code and yet their services were terminated by order dated 5th August, 1986 produced at Annexure A-1 & A-2. It is alleged by the applicants that their termination of services was made on the ground that they were junior most in service, but according to the applicants that ground was unlawful, as there was no seniority list compiled as per directions of the Hon'ble Supreme Court in the case of Indrapal Yadav. It is further alleged by the applicants that they were reemployed by order dated 3rd October, 1986 issued by respondent No.3 in the vacancies of Khalasi in the Railway Electrification Project of Nagpur, that they reported to the Chief Project Manager, R.E. Nagpur, on receiving this order produced at Annexure A-3, ^{but} the said officer gave no response to the order. The said officer issued telegram dated 13th October, 1986 to Respondent No.3 stating that he did not want hands like the applicants who were not acquainted with bridge working. The applicants ^{have} produced xerox copy of the said telegram at Annexure A-4. It is further alleged by the applicants that inspite of the telegram Annexure A-4,

the junior hands who were junior to the applicants were continued. It is also alleged by the applicants that the Divisional Railway Manager, Western Railway, Baroda resorted to recruitment from open labour market of class IV employees (unskilled personnel) in 1985 and appointed some 400 persons in the vacancies caused by new assets ignoring at the same time, the present applicants and some others. According to the applicants new recruitment was done in gross violation of Railway Board's circular dated 8.6.1981 and 15-2-1972 of respondent No.2 the General Manager, Western Railway, Bombay. It is alleged by the applicants that the respondents were bound to prepare a combined seniority list at divisional level by including all casual labourers departmentwise working in the R.E. Project, Construction work, and open line, for the purpose of firstly absorption and lastly for retrenchment. The applicants have prayed that the respondents be directed to reinstate the applicants in service treating them as being continuous in employment from their date of discharge from 5.8.1986 and further directe the respondents to pay the applicants all the backwages and allowances and also directing the respondents to prepare a divisionwise combined seniority list.

3. The respondents have filed written statement contending that the application is not maintainable at law, that the application is barred by limitation, that

the applicants were not entitled to raise any question regarding preparation of seniority list of project casual labourers and consequential relief when the directives contained in Railway Board's letter No. E(NG) II-84/CL/41 dated 11th September, 1986 giving guidelines for implementation of Hon'ble Supreme Courts judgment dated 18th April, 1985 modified by them on 11th August, 1986 in their directions to Railways in the matter of preparation of seniority list of project casual labourer for each department of a division on each railway and subsidiary instructions contained in General Manager(E) Churchgate's letter No. E(R&T) 615/0(L) dated 26th February, 1987 cited by the applicants have come in force after the termination of their employment. It is contended that the employment of the applicants came to be terminated on 5th August 1986 due to completion of works of Signal & Telecom department which action was prior to the implementation of the Railway Board's directives contained in their letter dated 11th September, 1986 and therefore the termination of the applicants' employment was governed by the set of rules in force prior to issue of Railway Board's letter dated 11th September, 1986. It is contended that the applicants were juniormost persons amongst the 18 project casual labour retrenched on 5th August 1986 after following proper procedure under the Industrial Disputes Act, 1947. The respondents have produced with the written statement the annexure

showing the list of project casual labour with their date of engagement in employment ^{which} in the names of the applicants are last. It is also contended by the respondents that the seniority list of project casual labour working in Signal & Telecom department of Railway Electrification Project was prepared and placed on the notice board by District Signal & Telecom Engineer, Railway Electrification, Vadodara in compliance to Rule 77 of the Industrial Disputes (Central Rules, 1957. It is contended that the seniority was in accordance with the rules in force prior to Railway Board's instructions contained in their letter dated 11th September, 1986 and that was binding to the applicants. It is contended that the instructions contained in the letter dated 11th September, 1986 be can not/considered in the matter of preparation of seniority for termination of their employment which took place earlier to the instructions dated 11th September, 1986.

4. It is contended by the respondents that the applicants have no right to file this application before this Tribunal without exhausting the remedies available to them, that the applicants had made appeal dated 5th October, 1987 to the Chief Project Manager, the copy of which produced by the applicants at Annexure A-5. It is contended that the respondents have followed the proper procedure under the provisions of I.D. Act, 1947. It is further contended that

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a seniority list of project casual labour was placed on the notice board on 21st July, 1986 to retrench 18 project casual labourer including the applicants in compliance of Rule 77 and the wages in lieu of one month's notice as well as retrenchment compensation admissible to the applicants on the basis of their services was paid to them on the date of retrenchment. It is contended that the notice is prescribed form-P under Rule 76 of Industrial Disputes Rule, 1957 was served to the appropriate authority of the Central Government by the employer i.e., District Signal & Telecom Engineer, under his letter dated 6th August, 1986 and therefore the retrenchment of the applicants was in accordance with law. The respondents have denied that juniors to the applicants have been continued in employment. The details showing the date of the engagement vis-a-vis others is shown in the annexure produced with the written statement which shows that the applicants are junior to the other project casual labour. The respondents have also contended that though the applicants were retrenched prior to the issue of Railway Board's instructions contained in their letter dated 11th September, 1986 the names of the applicants have been interpolated in the seniority list for S&T department of Baroda Division for the purpose of their screening and absorption against regular posts on Baroda

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division as and when their turn for such absorption comes according to service rendered by them and their right for re-employment as project casual labour remain intact as per provision in the I.D. Act. It is also contended that the contention of the applicants for combining the seniority of all casual labour namely project and non-project, however, can not be entertained as Hon'ble Supreme Court's judgment cited deals by the applicants with project casual labour only. It is contended that the applicants can not have grievance because they were retrenched after following proper procedure under I.D. Act, 1947 for good and sufficient reasons and when their right of screening and absorption as per their turn in seniority remains intact.

5. The applicants have filed rejoinder controverting the averments made by the respondents in the written statement. The applicants have denied that the respondents ever published a seniority list as required by Rule 77 of the I.D. Rules. It is contended by the applicants that the delay of two months and 22 days in filing the application be condoned. The applicants further contended in their rejoinder that they had never claimed appointment under the Chief Project Manager, R.E.Nagpur. The applicants in the present application claimed their absorption in Baroda division in terms of their seniority. The applicants have produced the Railway circulars with the rejoinder

and also xerox copy of the judgment in Raj Singh V/s. Union of India & Ors., (1987) 4 A.T.C. 718 and xerox copy of their service card.

6. In the instant case both the learned advocate have waived the oral arguments and they have submitted written arguments. It is mentioned in the written arguments by the applicants that as the applicants have acquired temporary railway employees' status, the provisions of I.D. Act and also Rule 77 under the Industrial Disputes (Central) Rules, 1957 are applicable to both the applicants and the services of the applicants were not liable to be terminated without complying with those provisions. The applicants have relied on the decision of this Tribunal in T.A.No. 847/86 & T.A.No. 767/88 decided on 21st May, 1987 in which the Tribunal followed the earlier decision of Sukumar Gopalan V/s. Union of India & Ors. in O.A.No. 331/86 & Ors. Now the decisions which have been referred to and relied by the applicants were the decisions prior to the decision given by five member bench of the Central Administrative Tribunal in the case of A. Padmavally V/s. C.P.W.D. & Ors. reported in III (1990) CSJ(CAT) 384 (F.B) in which the larger bench has taken the view contrary to the previous decision which have been relied on by the applicants. ~~The larger bench has~~

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The questions of the jurisdiction of the Administrative Tribunal with respect to the case coverd under the Industrial Disputes Act has been pronounced by the Central Administrative Tribunal consisting of five members in A. Padmavally & Anrs. v/s. C.P.W.D. & Ors. reported in III (1990) CSJ (CAT) 384 (FB). The law is laid down in paras 38 and 39 of this judgement. They read as under:

"38 In the Rohtas Industries case the decision in Premier Automobiles case was cited with approval and it was held that if the I.D. Act creates rights and remedies it has to be considered as one homogenous whole and it has to be regarded as unoflato. But it was made clear that the High Court could interfere in a case where the cirdumstances require interference. This is clear from the following observation in regard to exercise of jurisdictions under Article 226:

"This Court has spelt out wise and clear restraint on the use of this extraordinary remedy and the High Court will not go beyond those wholesome inhibitions excepts where the monstro- sity of the sitnation or exceptional circumstan- ces cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered."

In our view, one such situation would be where the competent authority ignore statutory provisions or acts in violations of Article 14 of the Constitution. Further, where either due to admissions made or from facts apparent on the face of the record, it is clear that there is staturoty violation, we are of the opinion, . . . that it is open to the Tribunal exercising power under Article 226 to set aside the illegal order of termination and to direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. To this extent we are of the view that alternate remedy cannot be pleaded as a bar to the exercise of jurisdiction under ARTiclr 226."

"39. However, the exercise of the power is discretionary and would depend on the facts and circumstances of each case. The power is there but the High Court/ Tribunal may not exercise the power in every case. The principles of exercise of power under Article 226 have been clearly laid in the case of Rohtas Industries by Krishna Iyer, J. cited above. Issues No. 2 and 3 are answered accordingly."

Then follows the conclusions of the Larger Bench in para 40 of the judgement as under:

"(1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not ~~not~~ substitutes from the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence all matters over which the labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the administrative Tribunal for adjudication. The decision in the case of Sisdia, which lays down a contrary interpretation is, in our opinion, not correct.

(2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(3) The power of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (Supra).

(4) The interpretation given to the term 'arrangements in force' by the Jabalpur Bench in Rammo's case is not correct."

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It is clear from the above that the jurisdiction of the Tribunal in challenged under I.D. Act, is by

direction to be conferred to such cases as may fall within the guide lines of para 38.

8. It is not in dispute that the applicants are seeking the relief under the provisions of I.D. Act and Rule made thereunder and it is also not in dispute that they have not exhausted the remedies available under the that Act before the appropriate forum namely the Labour Tribunal or Industrial Tribunal, therefore, this Central Administrative Tribunal has no concurrent jurisdiction in regard to these matters over which Industrial Tribunal has jurisdiction.

9. The next question is whether we should exercise our ~~discretion~~ direction in terms of the guidelines of para 38 of the Padmavally's judgement above. There are many disputed question of facts between the parties in this ~~same~~ ^{case which} require oral evidence of the parties and their witnesses on these points including documentary evidence. The first disputed question of fact is that according to the applicants, the respondents ought to have followed the directions contained in a letter dated 11th September, 1986, while according to the respondents the said letter of instruction would not apply in the case of these applicants whose services were terminated prior to that date i.e. on 5th August, 1986. It is not in dispute that the services of the applicants were terminated by the order dated 5th August, 1986 (Annexure A-1 & A-2) because of the completion of the

electrification work of Signal & Telecommunication department of Vadodara Ratlam section. The respondents have contended that the applicants were junior-most person amongst 18 project casual labour retrenched on 5th August, 1986 and that the respondents have followed the proper procedure under the Industrial Disputes Act. The applicants in rejoinder have disputed that fact. The other disputed fact is that according to the respondents, though the applicants were engaged as casual labourers on 30th December, 1982 and 29th March, 1982 respectively they had remained absent during their tenure of service which constituted a break in service and thereafter were taken back on duty from the date they joined subsequently with the result that they were treated as juniors to those persons ~~should~~ shown in the list produced by the respondents with the written statement and which fact according to the respondents is clear from the copies of service card produced by the applicants at Annexure A-4 & A-5. It is also contended by the respondents that there was no circular for grant of temporary status to project casual labourers and they have denied that the applicants had acquired temporary status from 1st January 1984. It is contended by the respondents that the applicants have been paid all the dues at the date of retrenchment. It is also contended by the respondents that the notice in the prescribed Form "P" under rule 77 of the Industrial Disputes (Central) Rules, 1957 was served on the appropriate authority

of the Central Government. It is also contended by the respondents that the applicants were offered re-employment but they did not possess the requisite experience of bridge working and the applicants were again offered re-employment vide letter dated 20th September, 1988 and have been taken back in employment vide letter No. NBRE/E/891/2/4 dated 20th September 1988 which is found at page '55 & 56 on the record. Thus all these facts require detailed evidence. If the applicants are re-employed as contended by respondents, then the question would be as to whether applicants would be entitled to the relief which they have prayed in this application. So these are the point which require the detailed evidence of the parties and witnesses if any. The applicants would have a better opportunity to adduce evidence on all these points before Labour Tribunal or Industrial Tribunal under the I.D. Act. Therefore, this is not a case where we should exercise our discretion in terms of the guidelines of para 38 of Padmavally's judgment (Supra). More over the exercise of the power under Article 226 of the Constitution is discretionary and having regard to the facts of this case, we do not find it a fit case to exercise the power under Article 226 of the Constitution of India.

10. The present application was admitted by the Tribunal subject to limitation and there is some delay in filing

this application. However, we will not go into merits on this point of limitation since we hold that the applicants should first exhaust the remedies available to them under the I.D. Act before the Labour Tribunal or Industrial Tribunal.

11. We hold that the application is not maintainable before this Tribunal having regard to the ratio laid down in the decision of Padmavally's case (supra) and the applicants should first exhaust the remedy before the proper ^{forum} under the provisions of I.D. Act. The result is that the application shall stand dismissed as not maintainable.

12. The application is dismissed as not maintainable with no orders as to costs.

Roshan
(R.C. Bhatt)
Judicial Member

M. M. Singh
(M. M. Singh)
Administrative Member