(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 541 OF 1987
~~R.A. No.~~

DATE OF DECISION 11.8.1988

SHRI VALJIBHAI K. PARMAR — Petitioner

MR.K.K.SHAH FOR MR.B.B.OZA. — 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. 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 ? 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

Shri Valjibhai Karsanbhai Parmar,
working under Baroda Division,
residing at :
AT.PO Karjan, Ramdev Pir Mandir,
Vankarvas,
District : Baroda. .... Petitioner.

(Advocate: Mr.K.K.Shah for
Mr. B.B. Oza.)

Versus.

1. Union of India,
notice to be served through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda.

3. Divisional Mechanical Engineer(E)
Western Railway,
Pratapnagar,
Baroda. ..... Respondents.

(Advocate: Mr.N.S.Shevde)

J U D G M E N T

O.A.NO. 541 OF 1987

Date: 11.8.1988.

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

In this application, filed on 9.11.87, under section 19 of the Administrative Tribunals Act, 1985, the petitioner Shri Valjibhai K. Parmar, has challenged the validity of the action of the respondents-railway administration; whereby his services are terminated with effect from 20.6.1987 by verbal orders. According to him, he was working as Casual Labourer with the respondents from the year 1980 and after working about 80 days he was removed from service without any reasons. According to him, again after re-employment, his services are terminated without following the rules. The petitioner therefore prayed that the respondents-railway administration be directed to allow the

petitioner on duty by treating him as continuing in service and as regular employee since there is no valid order of termination and award all the benefits admissible to him.

2. The respondents-railway administration have contested the petitioner's application on the grounds inter-alia that they are entitled to discontinue/ terminate the services of casual labourers and the petitioner is not entitled to any compensation as he has not worked for more than a year. According to him, no casual labourer is to be engaged even out of casual labourer holding cards without prior approval from the General Manager as per the letter No.E(R&T)/ 615/0, dated 13.7.87. But no such letter is produced on record.

3. When the matter came up for hearing we have heard Mr. K.K.Shah for Mr. B.B.Oza and Mr.N.S.Shevde, the learned counsel for the petitioner and the respondents respectively. We have also perused and considered the materials placed on record. Mr.K.K.Shah while taking us through the service card Annexure'A', contended that the petitioner was governed by the provisions of the Industrial Disputes Act and he having worked for more than 120 days he had attained temporary status and this the respondents' action in terminating the services by verbal order is illegal and void and deserves to be quashed and set aside. Mr. N.S.Shevde however strenuously urged that the petitioner was only a casual labourer who had not completed one year continuous service and hence he was not entitled to any notice or compensation payable under the I.D. Act.

4. At the outset, it may be stated that the petitioner's assertions that he was working continuously for 7 years as Casual Labourer is not borne out from the service card relied upon by him. Even in the representation made by the petitioner's father under his letter dated 25.6.1987, he has stated that his son had worked as Casual Labourer at Loco Shed BH from 1.9.80 to 18.11.80 i.e., 79 days only. However it is borne out from the service card that the petitioner was re-employed from 30.7.86 and before his services were terminated he had worked for nearly 207 days. The respondents in para 2 of their reply have categorically admitted that the petitioner was engaged in open line and he, having worked for more than 4 months during the period from 14.10.86 to 15.5.87 his case for granting temporary status is under consideration. It is rather astounding that even before the conclusion of the proceedings of this application, it is not made known as to whether any such decision is taken by the respondents-railway administration. Even otherwise, a casual labourer other than that employed on project, is considered to have acquired temporary status on completion of four month's continuous service either in the same work or any other work of the same type.(see RB's No.PC-72/RLT-69/3(i) of 12.7.73).

5. As far as the application of the Industrial Disputes Act is concerned, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched unless certain conditions are followed. Period of one year is deemed to have been completed if a workman during the period of 12 calander months preceeding the date with reference to which the

calculation is made has actually worked under the employer for not less than 240 days in the case of those who are not employed below ground in a mine. In this case, the petitioner have worked for 207 days after they were re-engaged under Respondent No. 3 and therefore, the provisions of the Industrial Disputes Act 1947 are not attracted.

6. What is therefore important for our decision is the question whether the petitioner who has attained temporary status by virtue of having worked for 120 days, his service can be terminated without notice of termination of service. Admittedly, the petitioner is asked to sit at home for want of work. Now, it is well settled that the casual labourer engaged by the railway administration and who has attained temporary status possesses a right of getting a notice for discharge. Rule 2505 in Chapter XXV of the Indian Railway Establishment Manual and Rule 2301 in Chapter XXIII deal with this matter.

Rule 2505 reads as under :-
"2505. Notice of termination of service- Except where notice is necessary under any statutory obligation no notice is required for termination of service of the casual labour. Their services will be deemed to have terminated when they absent themselves or on the close of the day.

Note:- In the case of casual labour who is to be treated as temporary after completion of 6 months continuous service, the period of notice will be determined by rules applicable to temporary Railway servants."

Rule 2301 in Chapter XXIII defines a temporary railway servant as :-

"2301. Definition. A 'temporary railway servant' means a railway servant without a lien on permanent post on a Railway .. .. The term does not include 'casual labour'..... The services of a temporary servant may be terminated as provided in Rule 2302.

Rule 2302. Termination of service and periods of notice Service of a temporary railway servant shall be liable to termination on 14 day's notice on either side provided that such a railway servant shall not be entitled to any notice of termination of his service-

7. Evidently, a casual labour who has attained a temporary status can thus be terminated as provided in Rule 2301. In Union of India & Ors. V/s. Ramkumar, 1986(3) C.A.T. 459, Allahabad Bench, it was held that this rule (2302) lays down the mode, manner and methodology of terminating service of a temporary railway employee. This would mean that the discharge of the petitioner on 20.6.1987 should be given by the above principles even though the petitioner was not a regular temporary employee. A person who had attained a temporary status has to be given a notice before discharge. In the instant case, the petitioner therefore having acquired a temporary status, he was entitled to a notice before his services were terminated from 20.6.1987. A verbal order or a simple discharge will be illegal. The impugned action i.e. termination of services by giving verbal intimation can not be sustained.

8. Rule 2302 no doubt includes the provisions under sub-para 2 thereof for it being permissible on the part of the Railway Administration to terminate the services of a temporary Railway servant by paying him the pay for the period of notice. In case of Government servants having temporary service the question was of notice of termination, without offering one month's pay in lieu thereof, it was decided that if such payment is made, termination can be allowed. (see Rajkumar V/s. Union of India, A.I.R. 1975 S.C. 1116). In this case, however, there has been no notice whatever and, therefore, the alternative for offer of pay in lieu of the notice without any notice served is not open to the Railway-respondents. We, therefore, see no reason not to quash and setting aside the impugned order.

9. In this view of the matter, we have no hesitation in holding that the action of the respondents-railway administration in terminating the services of the petitioner is bad in law and the same is hereby quashed and set aside. The respondents-railway administration are hereby, directed to reinstate the petitioner with backwages within three months from the date of this judgment.

10. The petitioner have prayed that the respondents be directed to regularise his service in view of his having worked during the year 1980. In this regard, it may be stated that the petitioner is required to register his claim by making representation to the respondents-railway administration. Having not done it so far, he would be free to register his claim for the benefits of absorption etc. under the scheme framed by the railway administration and it is for the competent authority to take the decision in the matter.

In the result this application stands allowed, leaving the parties to bear their own costs.

(P.M. JOSHI)
JUDICIAL MEMBER

(P.H.TRIVEDI)
VICE CHAIRMAN

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