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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 590 OF 1987
~~W.A. No.~~

DATE OF DECISION 22-11-1988

Shri Kuber Shama & Ors. Petitioner

Mr. Y.V. Shah Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondent

Mr. R.M. Vin 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 ? *Y*
2. To be referred to the Reporter or not ? *Y*
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*

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1. Kuber Shama
2. Baldev Vashram Kadia
3. Lalji Bhagwan Luhar
4. V.J.Solanki
5. Narshi Mula Solanki
6. Udesing Bhavsing
7. Ramsing Kachra
8. Daya Kalu
9. Amarshi Ganda
10. Soma Rama
11. Bhoora Chatur
12. Manga Shakra
13. Kanti Bavdas

C/o. C.P.W.I.,
Western Railway,
Dholka.

14. Vithal Dhiraj Tankolia
15. Dhiraj Gordhan Tankolia
16. Naresagar Dhangar Gosai
17. Manji Bhikha Lavji
18. Naku Ravji
19. Odha Popat
20. Natvar Ramsing
21. Vinu Dayalbhai
22. Mansukh Vaja
23. Prabhu Kanji Makwana
24. Bhimji Jivraj
25. Chhana Narsang
26. Manu Vikram
27. Manji Bhikha Magan
28. Devji Tapu
29. Kanji Khema
30. Radheshyam Avsan
31. Jasa Kana
32. Dhiru Dhanji
33. Balwant Kalu

C/o. P.W.I.,
Western Railway,
Bhimnath.

.....petitioners

Versus

1. Union of India,
through the General Manager,
Western Railway,
Churchgate,
Bombay - 20.
2. Divisional Railway,
Manager (E),
Western Railway,
Bhavnagar.
3. Mr. Bukhari or his
successor in the office,
C.P.W.I.,
Western Railway,
Dholka.

4. Permanent Way Inspector,
Western Railway,
Bhimnath,
Ta. Dhandhuka.

....Respondents.

J U D G M E N T

O.A. No. 590 OF 87

Date: 22-11-88

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

The petitioners (33 in all) have filed this application under section 19 of the Administrative Tribunals Act 1985, (hereinafter referred to as "The Act"), on 20-11-1987. It is averred that the petitioners No. 1 to 13 and petitioners no. 14 to 33 were initially engaged as casual labourers at Dholka and Bhimnath respectively, during the period between 21-8-1981 to 20-3-1985 and they had acquired 'temporary status'. According to them they have been retrenched from service by oral orders passed on 20-3-1985 by the respondents no. 3 and 4 on the grounds of surplus. The petitioners have therefore, prayed that the impugned action of retrenchment be quashed and set aside as it is violative of articles 14 and 16 of the Constitution of India and also offending the provisions of section 25 F, 25 G, 25 H, & 25 N, of the Industrial Disputes Act 1947 and Rules 76 A and C and 77 of the Industrial Disputes (Central) Rules 1957. They have further prayed that the respondents railway administration be directed to reinstate them in service with all consequential benefits.

2. The respondents railway-administration in their counter denied the averments and the allegations made against them. According to them S/Shri V.J. Solanki

(no.4) and Daya Kalu (no.8), were not engaged at the respective station and accordingly, their employment with them is denied. It is contended inter-alia by the respondents that the rest of the petitioners who were engaged as casual labourers did not work continuously as required of them and that they have not reported for work, having left the employment as casual labourer on their own accord from the respective dates as shown in Annexure R-I appended to their counter. It was further submitted that their application is false and malafide as they have come out with an imaginary story, pleading a case of "retrenchment by verbal orders". It was further submitted that the petitioners are not entitled to any reliefs including the benefits of the scheme framed by the railway board as they were not 'Project Casual Labourers'.

3. When the matter came up for hearing we have heard Mr. Y.V. Shah and Mr. R.M. Vin the learned counsel for the petitioners and the respondents respectively, alongwith other cases of casual labourers, wherein common questions of law were raised. But, we have not preferred to render a common judgment as each case represented different set of facts and circumstances. Both the sides were called upon to supply the information and materials in terms of our directions issued on 16.6.1988, and in terms thereof the respondents railway administration have produced relevant documents in support of their version, which are taken on record.

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4. At the very outset it may be stated here that the petitioners except no. 1, 6, 10, 14, 15, 16, 20, 23, and 33, while filing the application and during the pendency of the proceedings, they have not produced their Service Cards. It is significant to note that the petitioners have not thought it proper to state the specific dates, month or year, on which they were engaged. It is vaguely stated that they were engaged in the year 1972 to 1979. It is their version that they have acquired 'temporary status'. Now, these material averments could have been easily proved by producing their service card. A service card on prescribed form is given to each casual labourer as a documentary proof of his service in terms of instructions contained in para 2513 in Establishment Manual. Mr. B.S. Mainee, in his book on, "Railway Establishment Rules and Labour Laws" (17th Edition 1988) while quoting Railway Board's letter dated 30-11-1971 at page 423, has explained the utility and the importance of the service card and the entries of service made therein as each sub-ordinate officers are required to make them without fail before discharging a casual labourer. When a casual labourer is on authorised absence that does not constitute a break for counting towards the four month's period for conferring temporary status.. It is undisputed that such "authorised absence" has to be shown as service. No separate entry for such break is necessary. In the case of loss of card, it should be reported to the nearest police station and a copy of F.I.R. lodged with the police should be furnished to the railway authorities. The following notes are printed on the service card itself.

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NOTES

1. The person to whom card is issued is responsible for its safe custody.
2. No duplicate card be issued under any circumstances.
3. In case of loss, the fact should be immediatly reported.
4. This card should invariably be produced at the time of every fresh appointment.
5. No claim for permanent absorption will be entertained without this card.
6. Another form of evidence in support of his employment will not be taken cognisince of.
7. Any misuse of this card shall render its owner liable for being disqualified from railway service of all kinds.

5. The petitioners' plea that they were engaged during 1981 to 1985 is not only incorrect, but it is quite misleading. On the basis of the service cards produced by the concerned petitioners and the materials and the records produced by the respondents before us it is duly established that the petitioners worked as casual labourer during the following periods only : -

Sr. No.	Name	From	To
1.	2.	3.	
1.	Kuber Shama (see R.68 P.2 Sr.No.7)	9.8.81 9.8.82	8.8.82 8.8.83
		(Left on 20.3.1985 as per the copy of the Service Card with discrepancy noticed in the name)	
2.	Baldev Vashram (see R.37 P.5 Sr.No.41)	2.5.74 2.5.74 2.5.76 2.5.77 2.5.78 2.5.79	1.5.75 1.5.76 1.5.77 1.5.78 1.5.79 1.5.80 (Left)

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|-----|-------------------|--|-----------------|
| 3. | Lalhi Bhavan | 9.12.77 | 8.12.79 (Left) |
| 4. | V.J.Solanki | His name is not appearing in specimen Thumb register/Time Books or ELA pay bills. | |
| 5. | Narshi Mula | 7.11.73 | 6.11.74 (Left) |
| 6. | Udesing Bhavsing | 7.8.81 | 6.8.82 |
| | (see R.38 P.1 | 7.8.82 | 6.8.83 |
| | Sr.No.5) | 7.8.83 | 6.8.84 |
| | | Left as per certificate produced worked upto 20.8.84. | |
| 7. | Ramesing Kachra | 17.12.81 | 16.12.82 (Left) |
| 8. | Daya Kalu | His name is not appearing in specimen Thumb impression register/nor in any Time Books or pay bills. | |
| 9. | Amarshi Ganda | 7.5.74 | 6.5.75 |
| | (see R.69 P.3 | 7.5.75 | 6.5.76 |
| | Sr.No.600, | 7.5.76 | 6.5.77 (Left) |
| | see R.26, P.6 | | |
| | Sr.No.25) | | |
| 10. | Soma Rama | 4.12.79 | 3.12.80 |
| | (see R.40 P.1 | 4.12.80 | 3.12.81 |
| | Sr.No.2) | 4.12.81 | 3.12.82 (Left) |
| | | A copy of the Service Card attempted to be produce does not seem to be of the same person (Original not produced). | |
| 11. | Bhura Chatur | 4.9.81 | 8.9.82 |
| | (see R.45 P.1 | 4.9.82 | 8.9.83 |
| | Sr.No.6) | 4.9.83 | 8.9.84 (Left) |
| 12. | Manga Sakra | 31.5.83 | 30.5.84 |
| | (see R.28,P.2 | 31.5.84 | 30.5.85 (Left) |
| | Sr.No.11) | | |
| 13. | Kanti Bhavadas | 2.10.73 | 1.10.74 (Left) |
| 14. | Vithal Dhiraj | 24.6.83 | 23.6.84 |
| | (see R.53 P.2 | 24.6.84 | 23.6.85 (Left) |
| | Sr.No.16) | | |
| 15. | Dhiraj Gordhan | 24.6.83 | 23.6.84 |
| | (see R.53 P.6 | 24.6.84 | 23.6.85 (Left) |
| | Sr.No.51) | | |
| 16. | Naresh Dhangar | 24.6.83 | 23.6.84 |
| | (see R.53 P.2 | 24.6.84 | 23.6.85 (Left) |
| | Sr.No.17) | | |
| 17. | Manji Bhikhalavji | 6.7.84 | 6.7.85 (Left) |
| | (see R.53 P.8 | | |
| | Sr.No.64) | | |
| 18. | Naku Ravji | 5.7.84 | 4.7.85 (Left) |
| | (see R.53 P.8 | | |
| | Sr.No.67) | | |

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19. Odha Popat 5.7.84 4.7.85 (Left)
(see R.53 P.3
Sr.No.20)
20. Natwar Ramsing 6.7.84 5.7.85 (Left)
(see R.53 P.6 Sr.No.
47)
21. Vinu Dayal 5.7.84 4.7.85 (Left)
(see R.53 P.5
Sr.No.39)
22. Mansukah Vaja 6.7.84 5.7.85 (Left)
23. Prabhu Kana 6.7.84 5.7.85 (Left)
(see R.53 P.7
Sr.No.56)
24. Bhimji Jivraj 5.7.84 4.7.85 (Left)
(see R.53 P.7
Sr.No.59)
25. Chhana Narising 7.7.84 6.7.85 (Left)
(see R.53 P.6
Sr.No.48)
26. Manji Bhikha 28.7.84 27.7.85 (Left)
Magan
(see R.53 P.9
Sr.No.73)
27. Manu Vikram 6.7.84 5.7.85 (Left)
(see R.53 P.7
Sr.No.55)
28. Devji Tapu 6.7.84 5.7.85 (Left)
(see R.53 P.3
Sr.No.26)
29. Kanji Khima 14.7.84 13.7.85 (Left)
(see R.53 P.2
Sr.No.14)
30. Radeshyam Ausan 6.7.84 5.7.85 (Left)
(see R.53 P.6
Sr.No.46)
31. Jasa Kama 6.7.84 5.7.85 (Left)
(see R.53 P.7
Sr.No. 63)
32. Dhiru Dhanji 28.7.84 27.6.85 (Left)
(see R.53 P.6
Sr.No.54)
33. Balvant Kalu 5.7.84 4.7.85 (Left)
(see R.53 P.4
Sr.No.35)

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6. It is thus quite evident that the petitioners last worked as casual labourer as shown in the Table referred to above. It is pertinent to note that it is not the case of the petitioners that their services are terminated by any order of retrenchment in writing. They have come out with a plea that they have been orally retrenched from service on 20-3-1985. Presumably, they have come out with such a version in order to conceal their long absence ^{since} the date shown in the said ^{which is} of ^{of} Table, ^{indicative} their act of voluntarily abandoning the employment. A person like the petitioner can hardly afford to remain absent without being gainfully engaged elsewhere. Ordinarily, in case of difficulty or inability to attend, a casual labourer would either inform the higher officer or make any representation himself or through recognised trade union or approach competent Court or Tribunal for redressal of his grievance. Nothing of the sort seems to have been done by the petitioners in their case. For the first time, in the application filed by him on 20/11/1987, they have come out with aversion that they have been orally retrenched from service on 20/3/1985.

7. Shri Vin's contention that retrenchment has not taken place in the case of the petitioners appears to be correct. The word "Retrenchment" has been defined under section 2 (00) of Industrial Disputes Act, 1947 as under :-

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise, than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) Voluntary retirement of the workman ; or

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- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
- (c) termination of the service of a workman on the ground of continued ill-health ;

The retrenchment is a mode of termination of service. It can be brought about by dismissal, discharge, removal from service. As per the present definition, it means termination by the employer of service of the workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. "For any reason whatsoever" are now key words. There is divergence of the judicial opinion on the question, whether the expression, "any reason whatsoever" is susceptible to any limitations or admits no exception. The correct law in view of ratio decidendi derived from various decision including, (1) State Bank of India V/s. N.Sundramoney (1976 (2) I.L.J.P. 478 S.C.) (2) Hindustan Steel's case 1977 (1) L.I.J.P. 1 (S.C.) (3) Delhi Cloth Mills Case, 1977 Lab. I.C. 1695 (SC.S).., (4) Santosh Gupte V/s. State Bank of Patiale C.A. No. 3563/1979 decided by S.C. on 29.4.1980, (5) Barsi Light Co., Case 1957 (1) L.I.J.P. 243 (S.C) and (6) Union of India V/s. S.B. Chatterjee Case 1980 R.L.W. P.188, where the Court on construction of "retrenchment" as defined in Section 2 (00) has unequivocally stated "retrenchment" means discharge of surplus labour or staff by the employer for any reason whatsoever. In the instant case, the petitioners' services have neither been terminated nor they have been removed from service. It is not reasonable


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that they should get compensation, under Industrial Disputes Act, on the basis that they have been retrenched, when they abandoned their employment.

8. It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Bearing in mind all the facts and circumstances of this case we have no hesitation in holding that the petitioners intended to abandon service since the date shown in the said Table. Thus, as petitioners have relinquished their service they are not entitled to the relief as prayed for. Moreover in the case of the petitioners viz. No. 2, 3, 5, 9, & 13 there are grounds to believe that the grievance if any had arisen much earlier to 1-11-1982, that is, three years prior to 1-11-1985. A perusal of section 21 (2) clearly shows that if the grievance had arisen by reason of action or order made beyond three years from the date, the Tribunal exercised its jurisdiction in respect of the matter to which such action or order relates, then the application can not be admitted (see Shri A.C. Bose V/s. Union of India & Ors. A.T.R. 1986 (2) C.A.T. 642). It is not established that petitioners had worked as casual labourer on project. It is therefore, difficult to hold that the petitioner can claim any benefit of the scheme prepared by the Railway Board in terms of the directions issued in the case of Indrapal Yadav (Supra).

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9. In the facts and circumstances of the case, it is clear that the petitioner has failed to establish his claim. Accordingly, the application has no merit and fails. The application therefore, stands dismissed, with no order as to costs.


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(P.M. JOSHI)
JUDICIAL MEMBER



(P.H. TRIVEDI)
VICE CHAIRMAN