# IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 650 OF 1987
~~T.A.No.~~ with
M.A.No. 22 OF 1990

DATE OF DECISION 28-4-1992.

Shri Veera Ramchandran & Anr. Petitioners

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

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. R.Venkatesan, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

1. Shri Veera Ramchandran,
2. Smt. Panchalammal Kevasran
C/o. Association of Railway &
Post employees, 37, Pankaj
Society, Paldi,
Ahmedabad. ..... Applicants.

(Advocate: Mr.P.H. Pathak)

Versus.

1) Union of India, notice to be
served through
The Chief Engineers(C)
Kalupur Railway Station,
Ahmedabad.

2) Executive Engineer (C)
Near Ervine Hospital,
Jamnagar. ..... Respondents.

(Advocate: Mr.B.R. Kyada)

J U D G M E N T

O.A.No. 650 OF 1987
with
M.A.No. 22 OF 1990

Date:28-4-1992.

Per: Hon'ble Mr. R.Venkatesan, Admn. Member.

The prayer in this application is for declaring the action of the respondents terminating the two applicants Veera Ramchandran and his wife Panchalammal Kevasran from 30.4.1984 as illegal, invalid and inoperative and to quash it and to direct the respondents to reinstate them in their original post with full backwages and continuity of service.

2. According to the applicants, whose case was argued ably by Shri P.H. Pathak, Advocate, applicant no.1 had completed more than eight years of service and applicant no.2 had completed more than three years of service as casual labourers when they were arbitrarily terminated from their service from 30.4.84. The applicants have annexed copies of service card to the application. According to the card of applicant No.1, he was employed initially as khalasi from 7.11.1977 as indicated on the card at page 7 dated 7.11.1977, though in the application it is stated that he was employed in the year 1975. The applicant no.2, according to the service card, was employed from 7.11.80 which tallies with the statement of the applicant in the application. According to the learned counsel for the applicants, the applicants were retrenched from service from 30.4.1984 without following the procedure prescribed under section 25F r.w.Section 25B, 25G, 25H and 25N of the Industrial Disputes Act and Rule 77 of the Act. The learned counsel elaborated these provisions in support of his contention.

3. According to Section 25 G of the Industrial Disputes Act, when a workman is to be retrenched, the employer shall ordinarily retrench the workman who was the last person to be employed. According to the counsel this principle of "last come first go" had not been followed and there were juniors to the applicants who were continued in service. No details, however, have been given in the application or made available during the hearing.

4. The applicants' counsel contended that Section 25 F of the Act, which requires one month's notice indicating reason for retrenchment in the case of a workman who had been in continuous service for not less than one year, had been violated as no notice was given and no reasons indicated. In fact no written order was served on the applicants and they were only orally informed that they were terminated.

5. Section 25 H of the I.D. Act requires that if any workmen are retrenched, and the employer propose to take into his employ any persons, he shall give an opportunity to the retrenched workmen to offer themselves for the employment and such persons shall have preference over other persons. According to the applicant this requirement had not been complied

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with and the respondents had reported to fresh recruitment in various projects. The applicant also contended that Section 25 N of the I.D. Act requires that before terminating the service of an employee, prior permission of the appropriate Government must be sought. This provisions had also been violated.

6. The learned counsel contended that according to Rule 77 of the Industrial Dispute(Central) Rules, the employer has to maintain a seniority list of all workmen in each particular category in which retrenchment is contemplated, arranged according to the seniority and the seniority list had to be declared before seven days of actual retrenchment. He contended that it has not been complied with and therefore, the termination was void ab initio and deserved to be quashed.

7. Learned counsel for the applicant also contended that the action of the respondents was illegal in terms of the judgment of the Supreme Court in Indrapal Yadav V/s. Union of India & Ors., which had directed the railway authorities to absorb all casual labourers who had completed 360 days of service and to follow the principle of "last-come first go".

8. The applicant has also filed an M.A.No.22/90 asking for a direction to the respondents to produce before the Tribunal the seniority list of casual labourers showing the place of the applicants therein and other documents. This Tribunal had considered this M.A. earlier and directed the respondents to produce the seniority list referred to in the M.A.

9. The respondents have filed a reply to the main O.A. in which the contents of the applicant No.1 that he had been working continuously from 1975 has been refuted. In this connection learned counsel for the respondents, Mr.B.R.Kyada, drew our attention to the service card of the applicant in which the following entry has been made by the Inspector of Works, Western Railway, Jamnagar: "From 7.4.1977 to 20.8.79 he has worked under IOW(C) I Jamnagar and from 21.8.79 to 29.4.81 he has worked under this office. From 30.4.81 he has left the job." Thereafter he drew our attention to the next entry on page 8 of the service card which reads as follows:- "From 31.3.1984 to 30.4.1984 the applicant has worked as a Welder and retrenched on 30.4.1988". The learned counsel, next drew our attention to the service card of the second applicant on page 7 of which there is an entry which reads as follows: "From 3.11.80 to 20.3.81 she had worked as Female Belder and from 9.4.84 to 30.4.84 again she had worked as Casual F.B.

and discontinued the service". Thus these entries clearly showed that the first applicant had left service of his own accord on 30.4.81 after working for about four years from 7.4.77. He had not been retrenched at that time. Thereafter, after a gap of about three years, he was again briefly employed for 30 days from 31.3.84 to 30.4.84 in another project namely, VOP project Phase II as a fresh entrant as a welder and had been retrenched after completion of the said work. Therefore there was no continuity of service as contended by the applicant. Having left service of his own accord in 1984, he could not claim the benefit of the past service on 30.4.84. He would be entitled only to whatever benefits were admissible under the I.D.Act for the period from 31.3.84 to 30.4.84. As this period was much less than the minimum period of service prescribed for being eligible for Section 25F r.w.Sec.25B namely, one year of continuous service or minimum 240 days of actual work during 12 calendar months, no notice or retrenchment compensation under section 25F was admissible.

10. He denied that the provision of Section 25G had been violated and that persons junior to the applicant with less than 30 days of service had been continued in employment thus violating Section 25G

of the I.D.Act. He contended that the applicant had not been able to show any such cases. As regards production of the seniority list/register under Rule 77 of the Act for the relevant period showing the names of the applicants, counsel said that no records of the said period during 1984 were available. He also strongly objected to the request of the applicant for production of the registers in every case and stated that it was the duty of the applicant to prove that the requirement of the Act or Rules had been violated and give specific reasons or instructions in support of his contention. He however, drew our attention to the reply affidavit filed in March 1988 in which it has been stated that the applicant had been retrenched after following the seniority list maintained at that time and the junior most persons in terms of their period of service had been asked to go, strictly following the provisions of Industrial Disputes Act.

11. As regards the second applicant, the learned counsel for the applicant drew our attention to the reply according to which she had worked 137 days between 3/11/80 and 20/3/81 and thereafter she was not on duty and had herself left the service. Thereafter she had been taken on fresh employment on 9.4.84 and had worked for only 21 days till 30.4.84.

Similar arguments to those in the case of the first applicant were put forth by the counsel who reiterated that the relevant authority had strictly followed 'last come first go' principle. The counsel for the respondents further denied that there was violation of either the I.D. Act or the decision of the Supreme Court in Inderpal Yadav's case.

12. We find that the applicants have themselves filed photo copies of their service cards in which entries have been very clearly made showing that the first applicant had left the service on 29.4.81 after about four years of service, and that thereafter he had only been briefly employed, after a gap of about 3 years, for 30 days from 31.3.1984 to 30.4.84. It is clear that this is not a case of continuous employment from 7.4.77 upto 30.4.84, as can be seen from the service card. The counsel for the applicant contended that the applicants had infact worked between 29.4.81 and 31.3.84 but their service had not been recorded in the service card. He contended that such cases were common and were resorted to in order to defeat the statutory provisions. However, he was not able to produce any evidence to support this particular contention. We also note that this contention has not been raised in the application. It is only in the rejoinder

affidavit that it is denied that the applicant had left the job, and it is claimed that the applicants were illiterate persons who did not know the endorsement made in the service card. We cannot accept the contention of the learned counsel for the applicant. The first applicant is not an illiterate as claimed. The service card shows his educational qualification as SSLC. He has signed his name in full in English as "P.Veera Ramachandran" on page 6 of the service card; the card has all long been in his possession and a photo-copy of it has been appended with the application. Therefore, the contention that he was ignorant of the entry recorded by the Inspector of Works, Jamnagar (which we have reproduced above) to the effect that he had left the job from 30.4.81, cannot be accepted. The applicant was in a position to read and understand the endorsement. If he had felt that the endorsement by the Inspector of Works was incorrect and that he had not in fact left the job, he should have represented to the respondents for rectification of the entry and taken further steps to secure his rights. There is no evidence let in to show that the applicant had ever done so, at that time, although the applicant has been quite diligently pressing for his rights after he was retrenched in 1984. Therefore, we hold that this contention of the applicant is not sustainable.

13. Going by the entry in the service card, the only period of service after which there was a retrenchment of the applicant was from on 31.3.1984 to 30.4.84. This period of 30 days is much less than the minimum of 240 days prescribed under section 25B as the minimum period for the purposes of reckoning continuous service of one year under Chapter 5A of the I.D. Act containing the provisions pertaining to the"law of retrenchment". Therefore the applicant cannot claim the rights under the sections of 25F, for the said retrenchment carried out on 30.4.1984. Section 25N would also not apply as the service rendered was less than the minimum of one year prescribed. The same remarks would apply to the case of the applicant's wife, the second applicant. Although the service card of the second applicant does not specifically contain an endorsement that she left of her own accord, such an averment is made by the respondents in their reply and it is a reasonable presumption that she being the wife of the first applicant, would have left service along with the applicant, when he left on 29.4.81. Her period of reemployment is also more or less same as that of the applicant, being 21 days from 9.4.84 to 30.4.84. In her service card it is mentioned "Discontinued with effect from 30.4.84 vide letter dated 26.4.84". The learned counsel for the applicants contended that the letter referred to

should be produced, but we do not consider it necessary as the entry in the service card is quite clear and requires no further elaboration.

14. In this case, the service cards are produced by this applicant to show the period for which they were employed, and there is no reason why entries in those cards should not be considered as part of their employment for the period mentioned therein. As each casual worker has been provided with a service card recording details of his employment, there is independent record available with the workers themselves as proof of employment. Vague and unsubstantiated allegations that the railway authorities do not always make entries in the service card, will not advance the case of the applicants. The onus is on the applicants to prove that if this was in fact the case, they had taken steps to secure their rights, either directly or through the recognised unions representing them, or through courts like this Tribunal. Learned advocate for the applicant submitted that respondent have not produced the seniority list which they referred in their reply though they were directed to produce by this Tribunal, and hence adverse inference should be drawn against them as per the decision in Gopal Krishnaji Kekkar vs. Mohammed Haji Latif and Ors.(AIR 1968 SC p.1413). He submitted that in this view of the matter it should be held that respondent have violated rule 77 of Industrial Disputes (Central) Rules, 1957 and it also should be held that the

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order of the respondent is violative of Article 14 of the Constitution of India. As observed earlier, the applicant has failed to establish his claim under Section 25-F and Section 25-N also would not apply looking to the facts of this case. In our opinion therefore, Rule 77 also would not apply and therefore it cannot be said that adverse inference should be drawn against respondents that they have violated Rule 77 because of non-production of the list. Therefore, the above decision of Hon'ble Supreme Court does not help the applicant. The facts involved in O.A. 330 of 1987 also were quite different from this case and the said decision and other decisions cited by the applicant do not apply to the facts of this case. So far as allegations about violation of Article 14 and 16 of the Constitution of India are concerned, very vague allegations in the application are made that many junior employees to applicants are working at Porbandar/Rajkot and at other various places. These allegations are not substantiated by the applicant and hence, we hold that the same are not established.

15. As regards the contention that the Supreme Court judgment in Inderpal Yadav vs. Union of India and others (1985 SCC (L&S) 526) has not been followed in the case of the applicants, we find that there is

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ground for the case of the first applicant being reexamined by the respondents.The second applicant as seen from the entries in the service card had not completed 360 days of continuous service at any time and was therefore not eligible under the scheme. According to the scheme for absorption of casual labourers drawn up by the Ministry of Railways and modified by the Supreme Court in the above judgment:

(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 prescribed period of 360 days of continuous employment on reengagement in future;

were to be treated as temporary and would be absorbed in a phased manner as prescribed in the schem for this purpose. Railways would prepare list of casual labourers with reference to each division of each zonal railway and then start absorbing the persons with the longest service. The first applicant in the present case, who as on January 1, 1981 as seen from the accepted facts in this case, had completed 360 days of continuous employment although he had left the service of his own accord, on 30.4.84. He had been reengaged as casual worker from 31.3.1984 to 30.4.1984. The entries in this regard had been made in the same service card which had been maintained for his earlier service from 1977 to

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1981. It is not clear whether the mere fact that he had left casual employment of his own accord on 30.4.81 and had further been reemployed after a break/retrenched from 30.4.84 would dis-entitle him to be considered for reengagement and conferment of temporary status an absorption/in a phased manner under the scheme in his due turn. The details of the scheme have not been made available to us either by the applicants or by the respondents. The respondents have merely stated in para 7 in their reply affidavit that the decision of the Supreme Court would not cover the case of the applicants, but no reasons for so holding have been explained in the reply or in the course of the hearing.

16. We however find from this application that the applicants through their advocate had made a representation in May 1987 to the Executive Engineer (C) Jamnagar that they had completed more than 360 days of service as stipulated in the judgment in Inderpal Yadav's case and have prayed for reinstatement. It is stated in the application that no reply to the said representation had been received till the date of filing of this application on 1.7.1987. No further response from the respondents was also shown to have been received till the time of

hearing. However, as full facts of the case including the copies of the service card had not been made available with the representation which is nearly five years old we consider it necessary for the first applicant to represent his case once again for being covered by the scheme of the Ministry of Railways referred to above.

17. We, therefore, dispose of this application with a direction to the first applicant to submit a fresh representation giving all the details of ~~their~~ his past employment together with copies of ~~their~~ his service card to the appropriate division of the Railways under which or in whose projects ~~they~~ he ~~were~~ was employed, for being included under the scheme of the Ministry of Railways as approved by the Supreme Court in Inderpal Yadav's case, within a period of two months from the date of the receipt of this order. The respondents shall then examine the representation strictly in accordance with the scheme and consider the eligibility of the applicants ~~of~~ for being included in the scheme, and if found so eligible he shall be included in the list of project casual labour for the division which is being maintained under the scheme for the purposes of absorption. The decision of the respondents in this regard shall

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be communicated to the first applicant within a period of three months from the date of receipt of the representation. Application disposed of as above. There will be no order as to costs.

(R. Venkatesan)
Member(A)

(R.C.Bhatt)
Member(J)