

a Petition
(Jd)
19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 122 OF 1988
T.A. No.

DATE OF DECISION 19-7-1991.

Natwarlal L. Bariya & Ors. Petitioner

Mr. B.P. Tanna, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, 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. *Yes*

1. Natwarlal L. Bariya,
2. Tansukh Karamsibhai,
3. Bhagwan Laxman,
4. Dhanaji Nathubhai,
5. Shanker Khoda,
6. Ganesh Khimabhai,
7. Dhiraj Bhav,
8. Hasmukhbhai Velajibhai,
9. Kantilal Karsanbhai,
10. Prabhu Arjan,
11. Amarsi Limba,
12. Ashok Balashanker,
13. Dhiraj Magan,
14. Hajarilal Ramajilal,

All are casual labourers.
Nos. 1 to 10 under Permanent
Way Inspector, Bhimnath.

Nos. 11 to 14 under Chief
Permanent Way Inspector,
Bhavnagar Para.

..... Applicants.

(Advocate: Mr. B.P. Tanna)

Versus.

1. Union of India, through
The General Manager,
Western Railway,
Churchgate, Bombay.

2. Divisional Rly. Manager,
Western Railway,
Bhavnagar Para,
Bhavnagar.

3. Chief Permanent Way Inspector,
Bhavnagar Para.

4. Permanent Way Inspector,
Bhimnath,
Dist: Ahmedabad.

..... Respondents.

(Advocate: Mr. R.M. Vin.)

J U D G M E N T

O.A.No. 122/1988

Date: 19-7-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

Applicants from Serial No. 1 to 11 who were
working as casual labourers under Permanent Way
Inspector (PWI for short) Bhimnath and applicants from
Serial number 12 to 14 who were similarly working under
PWI Bhavnagar Para filed this joint application

under section 19 of the Administrative Tribunals Act, 1985 to challenge oral termination of their services by PWI Bhimnath on 20.3.1985 and by PWI Bhavnagar Para on 10.1.1985. The application received on 2.2.1988 attracted the bar of limitation. Also, as the applicants were serving under different PWIs and orders of termination issued by each on different dates, one application from them suffered from the vice of wrong joinder of applicants whose causes of action were separate, both in time and place. However, by its order dated 27.7.88 in two miscellaneous applications, a Bench of this Tribunal permitted joint application by first eleven applicants only and also condoned the delay in filing the application. Thus the application is restricted to the cause of action for the first eleven applicants which arose from the oral termination of their service on 20.3.85 by PWI Bhimnath.

2. In the service details and duration of engagement of the applicants furnished by both parties, the central point of dispute is that while the applicants allege that their services were terminated by oral order, the respondents assert that the applicants had left their job and question of termination of their services therefore did not arise. The applicants, alleging oral termination of their services, have described the same as violative of Sections 25-F, 25-G, 25-H and 25-M of the Industrial Disputes Act, 1947 and Rules 76-A and 77 of the Industrial Disputes (Central) Rules 1957 and therefore liable to be quashed and set aside with consequences of reinstatement in service with consequential benefits. It is to be noticed that this reinstatement is sought either in Bhavnagar Railway Division or in Chittorgarh-Kota

Project.

3. We have perused the record, including the written arguments submitted by the two sides.

4. The details of engagement of each applicant furnished by the respondents contains mention that each left service on 21.3.1985. While it appears unusual on the part of all the applicants to have left service on 21.3.85 and therefore the stand of the respondents that all the applicants left service on 21.3.1985 has to be viewed with reasonable doubt, we should also look at this crucial issue from the applicants' end to see what the applicants did when they heard the order of termination. The applicants have averred that their cases were presented before the General Manager vide PNM item No. 114/84 and the General Manager had advised that sanction for the regularisation of 300 fresh casual labourers on Bhavnagar Division has been communicated to DRM Bhavnagar vide reference of 19.7.74. The minutes of the PNM meeting produced at Annexure A-1 however are to the effect that WREU had represented against irregular engagement of new faces after 14.7.81. As the applicants were, on their own showing, engaged between 21.12.1982 and 27.7.1984, in fact the Union's objection would cover their engagement also as new faces. Thus the minutes give no indication that the Union had pleaded for the applicants' cases. The minutes appear to be for an opposite purpose. Apart from utilising the PNM minutes for the purpose though contents are not germane for such utilisation, the applicants have not shown that they protested at their alleged illegal termination in any proper forum for about three years though shown to be aware that their juniors are retained in service and even work on which

they should have been engaged given away to contractors. It was only in the miscellaneous application for condonation of delay in filing the application that the applicants averred that they "approached everyday to the authority for getting job and authority was giving usual reply that they will see in the matter". **Which** authority was approached "every day" is not disclosed. It is also averred in the delay condonation application that the applicants were under fear that if they approached the court of law "they will lose the employment for ever". We notice that in this condonation application is cited case law of times before the Administrative Tribunals Act, 1985, which will obviously refer to the general law of limitation and not the particular provision on limitation in section 21 of the Administrative Tribunals Act. Only one case of Principal Bench giving the names of the parties but without mentioning the citation is relied upon. Such general pleas taken to somehow tide over the problem of limitation fall much short of convincing with their genuiness so far as the particular law on limitation contained in the Administrative Tribunals Act is concerned and the posit that this Tribunal is not to exercise concurrent jurisdiction with industrial/ labour courts so far as disputes under the Industrial Disputes Act are concerned and in such cases this Tribunal will exercise jurisdiction only in cases where grounds for exercising writ jurisdiction under Article 226 are seen to exist. This is the substance of the law laid down by a larger bench of this Tribunal in **A. Padmavally and another Vs. C.P.W.D.**, III (1990) **SSJ (CAT) 384 (FB)**. But in the case before us, while the respondents' stand leaves unexplained and therefore raises reasonable doubts - as to why all the applicants should have left the service together, equally the

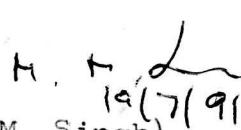
applicants' reaction falls short of convincing that they had not so left service. When such is found to be the state of the rival pleadings on the pivotal question, we are not in a position to see our way through for the exercise of writ jurisdiction above referred. The applicants may have to take greater pains to lead evidence in a forum more conducive and especially created for such purposes, namely, industrial/labour court constituted under the Industrial Disputes Act which Act, to quote from the views of the Supreme Court expressed in the judgment in *The Workmen & Ors. Vs. M/s. Hindustan Lever Ltd.*, 1984 SCC (L&S) 183, para 23 is

"..... designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relation norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice."

5. In view of our above analysis, the application is ~~not~~ maintainable in this Tribunal. The applicants are free to seek redress of their grievances before the industrial/labour court, as the case may be, if found ~~advisable~~ ^{admissible}.

6. The application is dismissed with no orders as to costs.


(S. Santhana Krishnan)
Judicial Member


M. M. Singh
19/7/91
Admn. Member