

(a) (b)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 270 OF 1988.

TAX No:

DATE OF DECISION 29.4.1993.

Suresh Rupal Bhimabhai & Ors. Petitioners

Mr. M.M. Xavier, Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondents

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

CORAM :

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

The Hon'ble Mr.M.R. Kolhatkar, 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. Suresh Rupal Bhimabhai
2. Ramesh Babulal Mavji
3. Amritlal Tulsi Bhagwan
All C/o. Babulal Mavji Yadav
Railway Qr.No. 142 B
Behind Loco Running Shed, Botad.

4. Bikubhai Benesingh
5. Bharat Mohan
6. Budha Laxman
All C/o. Bharat Mohan
Shram Niketan
Plot No. 6, Bheind St. Xavier
School, Bhavnagar.

..... Applicants:

(Advocate: Mr. M.M. Xavier)

Versus.

1. The Union of India
owning and representing
Western Railway through
its General Manager,
Western Railway, Bombay.

2. The Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL ORDER

O.A.No. 270/1988

Date: 29.4.1993.

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

Heard Mr. M.M. Xavier, learned advocate for
the applicants and Mr. R.M. Vin, learned advocate for
the respondents.

2. This application is filed under section 19
of the Administrative Tribunals Act, 1985, by six
casual labourers/substitute working under the Loco
Foreman, Bhavnagar Para unit, who were recruited
between 20th April, 1979 to 11th June, 1980. It is the
case of the applicants that they have been regularly,
daily and continuously attending offices of the

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Loco Foreman, Bhavnagar Para and the respondent No.2 i.e., Divisional Railway Manager, Western Railway, Bhavnagar Para for service. It is alleged by the applicants that they have been orally retrenched from service with effect from 20th May, 1987 by the respondent No.2 through his offices. It is alleged by the applicants that the impugned order of oral termination of the services of the applicants is in violation of mandatory provisions of Section 25F, 25G, 25H and 25N of I.B. Act, 1947 and Rules 77 of I.D(Central) Rules, 1957 and violative of Articles 14 & 16 of the Constitution of India also. It is alleged by the applicants that several juniors to the applicants have been retained and continued in service and fresh recruitment have been granted to 198 Casual Labourers after the oral retrenchment of applicants. The applicants have produced at Annexure A-7 the list of 198 fresh recruits made by respondents after the termination of the applicants from service. It is alleged that no division-wise nor any combined seniority list has been prepared and maintained nor notified by the respondents. It is alleged by the applicants that they have acquired temporary status. It is, ^{re} the case of the applicants that the oral termination of the applicants being illegal, the same should be quashed and set aside and the applicants should be reinstated in service with full backwages. The applicants 1, 2 & 3 even submitted representation

on 25th August, 1987 and the applicants 4, 5 & 6 sent representation on 27th August, 1987. Alternatively it is alleged by the applicants that in response to the notification No. EP 615/2 dated 23rd April, 1985 they are entitled to be reengaged or absorbed as in the case of others who are similarly situated.

3. The respondents have filed reply contending that the application is barred by limitation. It is contended that the applicants were engaged as casual labourers only for a specific period during the season and that there is no violation of provisions of I.D. Act nor any violation of the provisions of Articles 14 & 16 of the Constitution of India. They have contended that they had placed a notice on the notice board of Loco Foreman Bhavnagar Para, giving the notice of 15 days to report such substitutes casual to report labourers, who had worked previously/which included the name of applicants but they did not report for engagement. It is contended that vide letter dated 25th September, 1989 the substitutes who had worked for 120 days or more on or before 14th July, 1981 were called for to maintain live register and the interview was fixed on 25th October, 1989 but the applicants have not attended this interview. It is contended that only two applicants have obtained temporary status. It is denied that the junior persons to the applicants were engaged. It is contended that the applicants were not casual labourers of VOP project and on completion

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of the specific work for specific period, their services were not required, and therefore, the allegation of oral retrenchment is also baseless.

4. The applicants have filed rejoinder controverting the averments made by the respondents in the reply.

5. We have heard the learned advocates for the parties. So far the question of limitation is concerned, it is important to note that this matter is of 1988 and it was admitted long back and therefore, we do not propose to dismiss the application on the ground of limitation now.

6. So far the merits of the case are concerned, the learned advocate for the applicant rightly submitted that apart from the fact that no notice on 17th November, 1982 was fixed on notice board as contended by respondents, there was no question of applicants joining the duty due to that notice because the applicants were already on work during that period and they were orally terminated in 1987. He also submitted that so far the letter dated 25th September 1989 referred to by the respondents in their reply for interview is concerned, it was much subsequent to the filing of this application on 22nd April, 1988 and therefore, that letter has no relevance.

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7. The case of the applicants is that the applicants have been working with the respondents since

number of years right from the year 1978 to 1987 though intermittently upto the date of termination by the respondents on 20th May, 1987 orally and it can not be said that the applicants are not casual workers nor could it be said that they are not entitled to be continued in service as contended by the respondents. The learned advocate for the applicant, at the time of arguments has not pressed Section 25N of I.D. Act, 1947, but he submitted that when the junior persons as many as 198 were engaged after the oral termination of the applicants, it amounted to discrimination so far applicants were concerned and therefore, the applicants must be reinstated in service. The respondents in their reply have denied that any junior persons to the applicants were engaged. The applicants have produced the list of 198 persons having been engaged by the respondents after the oral termination of the applicants vide Annexure A-7. The respondents ought to have produced the seniority list to show that no junior shown in the list Annexure A-7 had been engaged by the respondents, but they have failed to produce any such seniority list and there is no reason not to rely on the averments made by the applicant in the application coupled with the list Annexure A-7 that the respondents have engaged persons junior to the applicants after their oral termination by the respondents.

8. The applicants have produced their service sheets but such service sheets do not show that they have worked for 240 days in a year previous to their oral termination; therefore, though their case succeeds on the ground of discrimination made by the respondents as they have engaged junior persons in the service after the termination of the applicants, the applicants would not be entitled to the backwages. There is violation of Articles 14 & 16 of the Constitution of India as the respondents have engaged juniors after termination of the applicants which act was illegal and the applicants ought to have been re-engaged prior to engaging fresh juniors. Having heard the learned advocate for the parties and having gone through the record, we hold that the engagement of juniors ignoring applicants was bad in law and therefore the respondents shall have to re-engage the applicants within one months from the receipt of the order of the Tribunal, but the applicants would not be entitled to any backwages. Hence we pass the following order.

OR D E R

8. Application is partly allowed. The oral termination of the applicants dated 20th May, 1987 is held illegal and the same is quashed. The respondent are directed to re-engage the applicants within one month from the receipt of the order of this Tribunal without any backwages. The respondents are directed

to give the seniority to the applicants prior to the date of the engagement of the juniors to the applicants and their names may be accordingly shown in the seniority list. Application is disposed of with no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.C. Bhatt

(R.C. Bhatt)
Member (J)

vtc.