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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A./20/88
O.A./21/88
O.A./264/88
O.A./266/88
O.A. No. 292/88 XXX
~~T.A. No.~~ ~~XXX~~

DATE OF DECISION 31-7-1991

Shri Harji Kanji & Ors. Petitioner

Mr. M.M. Xavier 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. [illegible].M. Singh : Administrative Member

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

CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH AHMEDABAD

(11)

O.A./20/88

Shri Harji Kanji
Substitute Safaiwala under
Health Inspector, Sanitary Deptt.,
Bhavnagar para. : Applicant

Versus

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

2. The Divisional Railway Manager,
Western Railway,
Bhavnagar division,
Bhavnagar para.

3. The Health Inspector,
SNI Department,
Bhavnagar para,
Bhavnagar division. : Respondents

O.A./21/88

Shri Lalji Bhana,
Substitute Safaiwala,
Health Inspector,
SNI Deptt., Bhavnagarpara, : Applicant

Versus

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

2. The Divisional Railway
Manager, Western Railway,
Bhavnagar Div.,.Bhavnagarpara

3. The Health Inspector,
SNI Deptt., Bhavnagar para
Bhavnagar division. : Respondents

O.A.264/88

Smt.Kashi Mera,
Substitute Safaiwala,
Health Inspector, SNI Deptt.,
Bhavnagar para. : Applicant

Versus

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

2. The Divisional Railway
Manager, Western Railway,
Bhavnagar division,
Bhavnagarpara.

3. The Health Inspector,
SNI Deptt.,
Bhavnagar para,
Bhavnagar division. : Respondents

O.A./266/88

Smt.Jaya Dhamji,
Substitute Safaiwala,
Health Inspector's Office,
SNI Deptt., Bhavnagarpara. : Applicant

Versus

1. Union of India
Through:
General Manager,
Western Railway,
Churchgate, Bombay.

2. The Divisional Railway
Manager, Western Railway,
Bhavnagar division,
Bhavnagar para.

3. The Health Inspector,
SNI Deptt., Bhavnagar para,
Bhavnagar division. : Respondents

O.A./292/88

Shri Savji Mulji,
Substitute Safaiwala,
Under Health Inspector,
SNI Deptt., Dhola Junction. : Applicant
(Advocate: Mr.M.M.Xavier)

Versus

1. Union of India
Through:
General Manager,
Western Railway,
Churchgate, Bombay.

2. The Health Inspector,
SNI Department,
Dhola Junction, Dhola. : Respondents
(Advocate: Mr.R.M.Vin)

JUDGMENT

Date: 31-7-1991

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

Applicants and learned advocate Mr.M.M.Xavier absent. Mr.R.M.Vin, learned advocate for the respondents present.

2. In these five applications made under Section 19 of the Administrative Tribunals Act, 1985, common questions arise and

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hence they are considerated and heard together and are being disposed of by common judgment.

3. All the applicants in these applicats are the 'substitutes safaiwala' who have worked with the respondents - railways. The case of all the applicants is that they have worked continuously for the period of more than 120 days with the respondent No.3, that they have acquired temporary status and therefore they should be considered as temporary employees of the railways and, therefore, they should have been absorbed on regular basis by the respondents. It is alleged by the applicants that all the applicants have been terminated/retrenched by the oral order of the respondent No.3 on 30.11.1987. According to the applicants, their juniors are working in the same division and they are continued, while the services of the applicants are terminated without following the provision of Rule 149 of the Indian Railway Establishment Code Volume I, Railway Board Circulars and the action of the respondents is also contrary to the provisions of the Industrial Disputes Act and Industrial Disputes (Central) Rules. Thus, according to the applicants, the action of the respondents is illegal and void. It is, further, alleged by the applicants that the respondent No.1 made an order dated 23.12.1987 directing the respondents No.2 to appoint one Smt. Manu Kala who is similarly situated to the applicants but the applicants are discriminated. The applicants approached the respondent No.2 and 3 through their union i.e. Western Railway Employees Union but it did not yield any results and hence they have filed these applications praying that the impugned oral order dated 30th November, 1987 retrenching/terminating the services of the applicants be declared as arbitrary, discriminatory and contrary to the provisions of Industrial Disputes Act and Industrial Disputes (Central) Rules and the rule of Indian Railway Establishment Code and it may be declared that the applicants continue in service in the scale Rs.196-232,

with all consequential benefits and it may be further declared that the applicants are eligible for being considered for regular absorption.

4. The respondents have filed reply in all these applications contending that the applicants are substitute workers, that they are not regular railway servants or regular workers but they are engaged on a day to day vacancy basis as and when required which is really the nature of "substitute" work. The respondents have denied that they have orally retrenched the services of the applicants as alleged. It is contended that if there is no need of additional hands, the railway is not obliged to engage any substitute and as there was no need to employ the applicants under the Health Inspector - Bhavnagar since 30.11.1987, the applicants have not been reengaged. According to the respondents, this is not a case of oral termination as alleged because by the very nature of things, it does not require to be terminated and there is no cause of action for the applicants for filing these applications.

5. The respondents have contended that the applicants have worked in broken spells and have denied that the applicants have acquired temporary status and it is denied that if once temporary status is acquired, it remains for ever. It is contended that if the temporary railway servant absents from work for 90 days he is deemed to have given up and foresaken railway service, and some of the applicants were not in job for more than 90 days and therefore, even if they have earned temporary status, they ceased to be a temporary railway servant due to long deliberate absence. and their working thereafter, do not entitle them for temporary status. The respondents have contended that these are not the cases of retrenchment but they are of non-engagement. They have denied that any junior is

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offered the job. It is contended that so far Smt.Manu Kala is concerned, her case was about relaxation of upper age limit and for calling in service and denied that her case was any way, similarly to that of the applicants. They have contended that the applicants are not entitled to benefits of provisions of Industrial Disputes Act because they have not complied with those essential conditions of the I.D.Act and prayed that the applications be dismissed.

6. The applicants of O.A./20/80, OA/264/88, OA/266/88 and OA/292/88 has not filed rejoinder. The applicant of O.A.21/88 has filed rejoinder controverting the contentions taken by the respondents in their reply.

7. In the instant cases, neither the applicants nor their learned advocate were present at the time of hearing. The learned advocate Mr.R.M.Vin for the respondents took us through various pleadings and documents on record. We have also perused the pleadings and the documentary evidence on record. The applicant Shri Harji Kanji of OA/20/88 has produced at Annexure A/1 his service card which shows that his initial appointment was as a part time Safaiwala on 21.6.1979. It is alleged in the application that he worked continuously for a period of 180 days from 15.7.1979 to 10.1.1980. The service card shows, thereafter, also he had worked in broken spells upto April, 1981. However, thereafter, the applicant has worked from 28th August, 1987 to 30th November, 1987 according to the particulars mentioned in his service card. The respondents have also produced the particulars of the service card of this applicant at Annexure R/I. Therefore, from this service card it is found that he had worked for more than 180 days in 1979-80. He has also worked thereafter in broken spell in April, 1981 and then he was reengaged from 28th August, 1987 upto 30th November, 1987 in broken spells, the total of which comes

to 79 days.

8. The applicant Shri Lalji Bhana of O.A./21/88 worked continuously for 127 days in 1986-1987 as per his service card produced at Annexure A/1 and before that period he was engaged for few days in May, 1974. He was engaged also for few days in May and June, 1987 and then he has worked for some days in October, 1987 and November, 1987. The respondents have also produced the particulars of the engagement of this applicant at Annexure R/1. The respondents have not disputed the fact that the applicant had worked continuously for 127 days from 15th October, 1986 to 19th February, 1987 but then his engagement was in broken spell and from July, 1987 to November, 1987 the applicant has worked for 90 days.

9. The applicant Smt. Kashi Mera of OA/264/88 has produced her service card at Annexure A/1. She had worked for 23 days in 1983 and thereafter she worked for 127 days continously from 16th October, 1986 to 19th February, 1987 but thereafter from 1st September, 1987 upto 30th November, 1987, she has worked for 80 days in broken spell. The respondents have also produced the particulars of the working of this applicant at Annexure R/II. It is clear from the service particulars of this applicant, after working for few days in 1973, she was reengaged after about 13 years, where she worked for 127 days continously and then she has worked in broken spell in 80 days as per the service card.

10. The applicant Smt. Jaya Damji of OA/266/88 has produced her service at Annexure A/1. She was initially appointed on 10th April, 1972. She has worked for some few days in 1972 and 1973 and thereafter about 14 years, she was again reengaged where she has worked continuously 123 days from 28th October, 1986 to 27th February, 1987. Thereafter, she has worked for about 77 days in broken spell

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from 1st September, 1987 to 30th November, 1987. The respondents have also produced the particulars of her service at Annexure R/II in which it is mentioned that the applicant worked for about 66 days in broken spell from 10th April, 1972 to 16th September, 1973 and, therefore, she was reengaged on 28th October, 1986 where she worked for 123 days.

11. The applicant Shri Savji Mulji of OA/292/88 has produced his service card at Annexure A/1. He was initially appointed on 5.12.1978. The respondents have also produced the particulars of the service of this applicant at Annexure R/II. This applicant has worked for 12 days in 1978, 115 days from 25.3.83 to 25.9.83 and then after 20 days he worked from 26.9.83 to 20.10.1983 for 60 days and then after the break of one year five months, he worked for 65 days in broken spells in 1985. He has also worked for some days in broken spell from 16.5.1986 to 25.10.1986 and he worked for 125 days from 20th October, 1986 to 28th February, 1987 and for 138 days from 1st March, 1987 to 16th July, 1987 and then some days from 21st July, 1987 to 25th November, 1987 in broken spell.

12. It is the case of the applicants that all of them had at some point of time worked for 120 days and therefore, they have acquired temporary status and the respondents could not have orally terminated their services without following the rule 149 of the Indian Railway Establishment Code Volume I and without following the provisions of the I.D.Act. In order to appreciate this contention of the applicant, it is necessary to examine the definition (substitute) given in para 2315 in Chapter 23 of the Indian Railway Establishment Manual which reads as under:

"Substitutes are persons engaged in regular scales of pay and allowance applicable to posts against which they are employed. These posts may fall vacant due to Railway servants being on leave, due to non-availability of permanent or temporary railway servants and which cannot be kept vacant".

Para 2318 deals with rights and privilages admissible to the substitute, para 2318 reads as under:

> "Substitute should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of six months continuous service. Substitute school childrens may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection .
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> Note:
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> The conferment of temporary status on the substitutes on completion of six months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts".

13. Now after modification, the substitutes who put in four months continuous service are also entitled to all the rights and privileges admissible to temporary railway servants. This modification was made as per R.B.'s No. E(NG) II/77/SB 37 of 24th October, 1976. Thus the period of six months was reduced to four months. The case of all the applicants as pleaded in the application is that all of them have continuously worked without break for more than four months at some point of time as per their service card and they are entitled for all the rights and privileges admissible to temporary railway servants. It is also their case that as the applicants have acquired temporary status, their services could not be terminated without notice and the reference is made to Rule 149 of the Indian Railway Establishment Code Volume I. This old Rule 149 is not found in new edition of Indian Railway Establishment Code Volume Fifth Edition 1985. Therefore, it need not be considered. In the Fifth Edition 1985 in Chapter III "Termination of Service" there is Rule 301 which reads as under:

> "301. TERMINATION OF SERVICE AND PERIOD OF NOTICE -
>
> (I) TEMPORARY RAILWAY SERVANTS -
>
> When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is

"entitled to no notice of the termination of his service if such termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy, or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contact for a definite period and the contact does not provide for any other period of notice; and to a notice of 14 days if he was not engaged on a contact. Temporary railway servants with over three years continuous service, shall, however, be entitled to a month's notice. The periods of notice specified above shall apply on either side, and steps should be taken to bring this condition to the notice of the railway servants concerned."

14. Learned advocate for therespondents submitted that the applicants have not acquired temporary status and even if at some point of time, the applicants have acquired temporary status, they have lost their status because some of them remained absent for more than 90 days without obtaining sanction as per the rules and therefore they after reengagement cannot claim that their status is continued and the reliance was placed on para 732 of the Indian Railway Establishment Code, Part II, the copy of which is produced in all the applications. It is submitted by learned advocate for the respondents that after a temporary railway servant's absence from work for 90 days he is deemed to have given up and foresaken railway service. He submitted that in the instant case, the applicant of OA/20/88 was initially appointed on 21.6.1979 he did not turn up after 6th April, 1981 till 20th August, 1987 and therefore, this temporary status if at all acquired previously cannot continue. It also appears that he was initially engaged as a part time Safaiwala. Therefore, such a person cannot be considered even as a regular substitute acquiring status of a temporary railway servant if he has worked continuously for 120 days. He submitted that so far applicant of OA/21/88 is concerned, he was initially appointed on 16th May, 1974. He worked for 8 days

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in 1974 and then turned up for employment after 12 years and 5 months and worked continuously for 127 days but then again there was a gap of 2 months and 22 days. So far applicant of OA/264/88 is concerned, the learned advocate for the respondents submitted that after having worked for 127 days continuously from 16th October, 1986 to 19th February, 1987 the applicant did not turn up for more than 6 ½ months. He, therefore, submitted that applicants who have a long break due to their fault cannot claim that the temporary service acquired, once should continue for ever.

15. The main submission of the learned advocate for the respondents was that the service particulars of these applicants show that they have been reengaged from time to time as and when respondents required their service and when these applicants were willing to work. He submitted that the definition of the words 'substitute' given in para 2315 of the Indian Railway Establishment Manual shows that these substitutes are engaged when the regular railway servants are on leave or when there is non-availability of permanent or temporary railway servants and when such post cannot be kept vacant. He, therefore, submitted that when the permanent or temporary railway servants report after their leave, or no more work, the substitutes cannot claim their right to continue. He, submitted, that the service particulars submitted by the respondents also make it very clear that these substitutes are appointed to manage the work in deficiency of staff as and when required, and if there is no shortage or if the work can be managed with the existing regular staff or when the staff on leave, reported back the railway administration is not under any obligation to continue the substitutes. He submitted that the respondents have neither retrenched the applicants nor terminated their services on 30th November, 1987 but as it was not in necessary to engage them or as the respondents were not their need, their engagement come to an end. He submitted that

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that even if the applicants have acquired temporary status, because of their previous spell of working, they cannot claim continuity of service when there was no work for them. He submitted that when the railway administration can manage its work by existing regular staff, it was not necessary to continue the engagement of these substitutes. He submitted that, therefore, this is not a case of termination as alleged but it is not a case of non-engagement and when the contingency exists, they will be reengaged. This submission of the learned advocate for the respondents has much substance. Even reading Rule 301 of Indian Railway Establishment Code Volume I Fifth Edition also when a person (Temporary Govt. Servant) without a lien on a permanent post, under Govt. is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service if such termination is due to the expiry of the sanction to the post which he holds or the expiry of the offciating vacancy. Therefore, even temporary railway servants are not entitled to any notice in the above circumstances. In the instant cases, the applicants are more substitutes and as observed above on 30.11.1987, it was not at all necessary for the respondents to continue the engagement of the applicants and therefore they are not continued, but it is not a case of termination or retrenchment and they will be reengaged by the respondents whenever they are needed. Therefore, we find no substance in the case of the applicants that they were retrenched or terminated on 30th November, 1987. Thus, even if the applicants have acquired temporary status, they are not entitled to any notice because they are substitutes and their services are not terminated or retrenched, but they are not engaged after 30th November, 1987, as they were not needed and these are the cases of non- engagement for want of work.

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16. It is also alleged by the applicants that the respondents have retrenched them in violation of the provisions of Industrial Disputes Act and Industrial Disputes (Central) Rules, 1957. None of the applicants has completed continuous service for 240 days in one year or 120 days in a period of six months before 30th November, 1987. We have examined the particulars of the servicecard and as none of the applicants has completed the said period as mentioned above, their cases do not fall under 25 B of the Industrial Disputes Act and hence there is not of retrenchment by respondents and no infringement Section 25 F of I.D. Act.

17. It is also the case of the applicants that one Smt. Manu Kala was called for screening and for giving her a regular appointment in Class IV as per the order of the respondents dated 23.12.1987. It is the case of the applicants that if this substitute can be screened and given a regular appointment and the applicant should not be given such appointment and why similar treatment should not be given to the applicants. The respondents have denied that Smt. Manu Kala is similarly situated. The learned advocate for the respondents submitted that the case of Smt. Manu Kala was about the relaxation of upper age limit, and their case cannot be compared with the applicants. We agree with his submission on that point that the applicants' case is not at par with that of Smt. Manu Kala.

18. The applicants have also not established that the juniors of the applicants are continued except their bare allegation in the applications, and therefore, there is no discrimination or arbitrary action on the part of the respondents.

19. We have considered all the points involved in these case, and we find that the applicants have failed to establish that the respondents have retrenched or terminated their services on 30th November, 1987, as alleged by them or that the respondents'

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action was either arbitrary or discriminatory or that it was against the provisions of the Industrial Disputes Act. We also hold that the applicants have not proved that they are entitled to absorption in the service. The result is that the applications fail. The applications are dismissed with no orders as to costs. The applications are disposed of.

Sd/-
(R.C.Bhatt)
Judicial Member

Sd/-
(M.M.Singh)
Administrative Member

Prepared by : BJSolk 02/08/91
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Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench.