IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 485 OF 1988.
~~T.A.No.~~

DATE OF DECISION 16th Sept. 1992.

Umesh Ranchodbhai & Ors. Petitioners

Mrs. K.V. Sampat, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. N.S.Shevde, Advocate for the Respondent(s)

Mr. Y. V. Shah Advocate/ Intervener

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? No
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. Umesh Ranchodbhai,
2. Suresh Bipinbhai,
3. Natwarbhai Jethabhai,
4. Shankar Virsing,

C/o. Jitendra K. Ved,
Railway Colony G.L. Yard,
Q. 376-B, Godhra,
Panchmahals. .... Applicants.

(Advocate:Mrs. K.V. Sampat)

Versus.

1. Union of India,
   Represented by the
   Addl. General Manager,
   Rly. Electrification,
   Nr. Old Loco Shed,
   Western Railway,
   Re. Allahabad (U.P)

2. The Divisional Railway Manager,
   Western Railway,
   Baroda Division,
   Pratapnagar,
   Baroda.

3. The Chief Project Manager,
   Railway Electrification,
   Pratapnagar,
   Baroda.

4. District Electrical Engineer,
   Western Railway,
   (Over head Equipment)
   Railway Electrification,
   Railway Yard,
   Pratapnagar,
   Vadodara. .... Respondents.

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ORDER

O.A. 485/88

Date: 16-9-1992.

Per: Hon'ble Mr. N.V.Krishnan, Vice Chairman.

The applicants are casual labourers under the fourth respondent viz., the District Electrical Engineer, Western Railway (Overhead Equipment) Railway Electrification, Railway Yard, Pratapnagar, Baroda. The fourth respondent has issued on 23.6.87 a combined seniority list (Annexure A-3) of project casual labourers of the Baroda Division, pertaining to the Electrical Department, which includes the names of the applicants. This was a prelude to their retrenchment. For, on 20.7.87, the fourth respondent issued a notice to the first and third applicants informing them that, after complying with the provisions regarding retrenchment under the Industrial Disputes Act, 1947 (Act, for short) viz. Sections 25F & 25G and Rule 77 of the Industrial Disputes (Central Rules) 1957, their services stand terminated.

2. The applicants are aggrieved by the manner in which the Annexure 3 seniority list has been prepared as it is contended that this does not conform to the directions given by the Supreme

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Court in Inderpal Yadav's case (1985(2)SCC 648) and the guidelines issued by the Railway Board and by the General Manager, Western Railway (Ann. 1 and Ann.2). As will be shown presently, we are not concerned with this grievance for the present. They are aggrieved by the retrenchment notices (Ann.A-4) on many grounds, one of which, mentioned in para 6.6 is as follows:

> "6) The respondents ought to obtain prior permission of competent authority Viz. The Regional commissioner of Labour (Central) Ahmedabad for effecting retrenchment under Section 25 N of the Industrial Disputes Act, 1947, but this is not done as the applicants are also entitled to hearing by a notice from that officer."

It is this ground that is being considered here. The applicants have, among other things, prayed for quashing the Ann. A-4 retrenchment orders dated 20.7.1987, on this among other grounds.

3. The respondents have filed a reply opposing the application. In regard to para 6.6 of the application they have contended as follows in para 10 of their reply.

> "Regarding para 6(6) of the application, it is submitted that prior permission of Regiona Labour Commissioner (Central) Ahmedabad was not necessary for effecting the retrenchment of the applicants. Section 25 N of I.D. Act 1947 of Chapter V-B applies only to the Industrial Establishments viz. factories, mines and plantations as clearly defined in

section 25 L of the same Act. The relevant section applicable for retrenchment in the Industrial establishment of Railways is 25 F of Chapter V-A of I.D. Act, 1947. The allegations made by the applicants in this para, are not correct."

4. In a rejoinder to this reply, the applicants have repudiated the construction placed upon section 25 N of the Act by the respondents and have relied on a judgment of the Madras Bench of the Tribunal in Stephen Arokiaraj & Others V/s. Union of India & Others (1988) 6 ATC 215, a copy of which has been exhibited at Ann. A-7. The applicants have filed written arguments on 17.2.92 and have reiterated their contention based on violation of provisions of Section 25 N of the Act. It is submitted that a Full Bench of this Tribunal has delivered a judgment in O.A. 727/88 and 728/88, holding that the provisions of section 25 N are applicable to the Railway Establishment. Hence, it is prayed that the impugned Ann. A-4 order be quashed as being in violation of Section 25N of the Act.

5. When the case came up for final hearing, the learned counsel for the respondents submitted that they have already preferred a review of the Full Bench judgment in O.A. 727/88 and O.A.728/88 and hence, he requested that effect be not given

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to that judgment until the R.A is disposed of.

6. Normally, it should not have been difficult for us to have disposed of the issue relating to the application of Section 25N of the Act on the basis of the Full Bench judgment. However, on a perusal of that judgment (since reported in 1992 (1) A.T.J.-1) we found it difficult to interpret it properly. Therefore, we decided to hear the parties as also intervenors, if any, who had made similar claims in regard to Section 25N of the Act, about our proposal to refer the matter to the Hon'ble Chairman of the Central Administrative Tribunal. Accordingly, the case was finally heard on 17.8.92. None appeared for the applicants despite notice. Mr.Y.V.Shah, Advocate, appeared as an intervenor and he appreciated our dilemma. Mr.N.S.Shevde, learned counsel for the respondents did not object to the reference being made as the respondents had already sought for a review. It is in these circumstances that this reference is being made to the Hon'ble Chairman of the Central Administrative Tribunal.

7. The Division Bench which heard O.A. 727/88 and O.A. 728/88 came to the conclusion that the applicants therein cannot claim the benefit of Section 25N of the Act, because the Railways do

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not fall within the purview of the definition of the expression "industrial establishment", given in clause (a) of Section 25L of the Act. In this regard, this Bench could not agree with the views earlier expressed by another Division Bench, since reported as Manharlal Ramchandra and Others V/s. Union of India & Ors. (1989)11 ATC 553. That was a case where all the applicants were casual labourers whose services were terminated by the Railways. In that judgment, the question whether or not the provisions of Section 25N of the Act was attracted in the batch of cases under consideration, was answered in the affirmative by the Bench. In view of this difference of opinion, O.A. 727/88 and O.A.728/88 were referred to the Hon'ble Chairman for constituting a larger Bench to consider this issue, without posing the exact question which was to be considered. It is on this reference that the Full Bench has rendered its judgment, now relied upon by the applicants.

8. It is necessary to observe at this stage that this question was not at all considered in detail by the two Division Benches. In Manharlal Ramchandra's case, this issue has been considered in para 7 of the judgment and a conclusion reached as follows:

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> "It is pertinent to note that the impugned notice terminating the services of the concerned petitioners clearly makes a reference of Section 25-F of the I.D.Act. Now the said provisions are applicable in the case of an establishment engaged in "industry" as defined under the I.D.Act. It is not understood how the provisions contained under section 25-L exclude the industrial establishment of the railway, either expressely or by any implication."

With great respect, we find that the Division Bench has only begged the question and not arrived at a conclusion after a proper discussion. In O.A. 727/88 and O.A. 728/88, from which the reference to the Full Bench arose, the provisions of section 25N and the definition of 'industrial establishment' in clause (a) of Section 25L were reproduced and, without any further discussion, it was held that the Railways do not fall within the purview of that definition. It was, therefore, concluded that the applicants could not claim the benefit of Section 25N of the Act. Probably, the Division Bench felt that the matter was too obvious to need any further discussion at all. In these circumstances, before any finding is given, it is necessary to consider the issue in detail.

9. In our view, the Full Bench did not, unfortunately, pose for its consideration the proper question arising out of the difference of

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opinion between the two Division Benches. The question to have been considered was something on the following lines viz. "Whether the Railways is an 'industrial establishment' as defined in clause(a) of Section 25L of the Act, so as to make section 25N of the Act applicable to retrenchment of workers from such establishment." Instead, the Full Bench posed for its consideration the following question.

> "The question to be determined before the Full Bench is : Whether Railway Department is an 'Industry' as defined under Clause(a) of Section 25-L and can employees of the Railway Department claim benefits of retrenchment as enshrined under Section 25-N of the Industrial Disputes Act ?"

10. It is our respectful submission that this question is misdirected for two reasons.

(i) Clause (a) of Section 25L of the Act defines the expression 'industrial establishment' for the purpose of Chapter V-B and not the expression 'industry', which is defined in Section 2(j) of the Act.

(ii) There was no difference of opinion between the two Benches that the Railways, is an industry. The Railways also did not put up such a case, because, as can be seen from the extract of para 7 of the judgment in Manharlal's case reproduced in para 8 above, the notice of

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retrenchment referred to Section 25F of the Act, implying that the establishment from where the applicants services were terminated is an industry and the applicants were workmen.

11. There is another matter which, with great respect, should also have been considered and that refers to making the question more precise, keeping in view the provisions of the Act. Section 25N applies to retrenchment from an establishment, only if that establishment is an 'industrial establishment' as defined in clause(a) of Section 25L. In very simple terms,'industrial establishment' is meant to be a factory or a mine or a plantation. None has pleaded that the Railways or any establishment thereof is a mine or a plantation. That leaves only the question whether the Railways or any of its establishments, is a factory.

12. The expression 'factory' is defined in clause(m) of Section 2 of the factories Act, 1948 as follows:

> "(m) "Factory" means any premises including the precincts thereof -
> (i) whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, -

but does not include a mine subject to the operation of the Mines Act, 1952) (a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place):

Explanation.- For computing the number of workers for the purposes of this clause all the workers in different relays in a day shall be taken into account;)"

Thus a factory must be located in well defined premises. Keeping this definition in view, it seems to us that it would be possible to give an answer only to questions such as the following -or those similar to it - which are illustrative, where there is a reference to the specific premises of location of an establishment.

i) Is the establishment known as the Railway Junction, Ahmedabad, a factory?

(ii) Is the establishment known as the Golden Rock Workshop, Tiruchirapalli - the subject matter of the decision of the Madras Bench in (1988) 6 ATC, 215 as to who is competent to grant permission under clause (b) of subsection(i) of Section 25 N - a factory ?

(iii) Is the establishment known as Chittaranjan Locomotive Works, Calcutta a factory?

(iv) Is the establishment known as the office of the District Electrical Engineer, Western Railway (Over head equipment) Railway Electrification Railway Yard, Pratapnagar, from where the present applicants are retrenched, a factory ?

In other words, this question can be asked only in respect of an establishment, the premises of which have a definite demarcated location in space. That question cannot, perhaps, in our view, be asked about the Railways as a whole, because, the Railways as a whole do not have definite premises, while establishments thereunde are located in definite premises. In other words, this question, in regard to the Railways as a whole, is totally inappropriate. We therefore feel, with great respect, that the declaration given by the two Division Benches are inappropriate unless we take the declaration to mean that they actually refer to the premises in which the applicants in those two cases were working and from where they were retrenched.

13. Therefore, we feel that it is only an answer to the question, viz. "Whether or not the

establishment from where the applicants were retrenched is an 'industrial establishment' as defined in clause (a) of Section 25L of the Act", that can help Benches of the Tribunal to decide whether, on the facts and circumstances of each case, the applicants therein are entitled to the protection of section 25N of the Act.

14. It is, no doubt, true that at page 4 of its judgment, the Full Bench has stated that the first question for its consideration was whether or not the provision of Section 25N of the Act are attracted in the two original applications they were considering. Unfortunately, we do not find any discussion with reference to the facts of these cases in this regard. That question should have led to the consideration of the extent of application of Chapter V-B of the Act and the definition of 'industrial establishment' in Section 25L for the purposes of that Chapter and finally to the question whether the establishment where the applicants were working is such an industrial establishment i.e., a factory.

15. The Full Bench also considered (para 13 of reported judgment) whether the Railway is an industry within the meaning of Section 25F of the Act

(sic) or it is an 'industrial establishment' as defined in clause (ka) of Section 2. There is a conclusion (para 22) that the Indian Railways is an industry as defined in clause (j) of Section 2 of the Act, but none regarding the latter question.

16. The Full Bench judgment concludes its discussion (in para 24) and gives its answer as follows:

> "Indian Railways employ more than 16 lakhs employees, most of whom are doing the work of the movement of traffic on the railway tracks and the maintenance and renewal of the tracks as also the signalling and providing power for haulage of trains. We are of the view that the railway is an 'industry' within the meaning of Section 25-K of the I.D. Act.
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> We, therefore, answer the question by saying:
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> "That the railway is an 'industry' as defined in Clause (a) of Section 25-L of the I.D.Act and the employees of the Railway Department are entitled to claim the benefits of retrenchment as enshrined under Section 25-N of the I.D.Act."

17. May be, the intention was to state that the railway is an industrial establishment as defined in clause (a) of Section 25L of the Act and hence section 25N will govern retrenchment. There is, however, no such explicit declaration. With deep respect, we are unable to presume that this is the import of the Full Bench judgment for two important reasons. Firstly, there is no discussion as to whether the establishment from

which the applicants are retrenched is a factory or not. Secondly, the matter is too serious to be decided by inferences and further, considering the widespread repercussions of such a conclusion, we felt that it would not be safe to draw such an inference.

18. Our predicament is that while we are conscious of the fact that the Full Bench judgment has to be followed by us, we note, with great respect, that the Full Bench judgment does not give us a comprehensive guideline as to whether it can be held that the protection of section 25N is available to the applicants on the facts of the present case. In our view, unless the judgment is further clarified, or reviewed or even reconsidered by a Larger Bench, it may be difficult for Division Benches of the Tribunal to apply the dictum of that judgment to the specific situation raised by parties. It is because of this difficulty, that we felt it necessary to make this reference, though the respondents have also applied for a review of that judgment. Therefore, we refer this case to the Hon'ble Chairman of the Central Administrative Tribunal with this statement of the difficulties encountered by us in following the

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Full Bench judgment, for such action as he may consider appropriate and necessary.

16.9.92

(R.C.Bhatt)
Member(J)
16th Sept. 1992.

(N.V.Krishnan)
Vice Chairman
16th Sept. 1992.

vtc.