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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 622/88
~~P.A.NO.~~

DATE OF DECISION 14.07.1998

Mr. N.R. Valand Petitioner

Mr. B.B. Gogia Advocate for the Petitioner [s]

Versus

Union of India and Others Respondent

Mr. N.S. Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? ~
- 2, To be referred to the Reporter or not ? ~
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? ~

(20)

Natwarlal Rambhai Valand,
Add: Neelam Apartment,
Block No.10/117,
Bapunagar Char Rasta,
Ahmedabad.

... Applicant

(Advocate: Mr. B.B. Gogia)

VERSUS

1. Union of India,
Through : General Manager,
W.Rly., Churchgate, Bombay.
2. Divisional Signal Telecommuni-
cation Engineer (Const.),
W.Rly., Ahmedabad.

... Respondents

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A./622/98

Dated: 14.07.1998

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman

We have heard Mr. Gogia for the applicant and Mr. Shevde for the Railway Administration.

2. The applicant ~~who~~ was engaged in the Construction Wing of the Signals Department of the Railways as a Casual Labour on 24.6.87. Initially, the appointment was only for a period of less than two months. However, he continued as a Casual Labour for some time and by an order dated 8.9.88 as at Annexure A-5, his services were retrenched due to shrinkage of cadre w.e.f. 10.10.88. This retrenchment order also mentions that he will be given retrenchment compensation as per Rule under Section 25 of the I.D. Act. Before the expiry of the notice period namely 10.10.88, the applicant has approached this Tribunal in this OA challenging the termination order.

Contd..3/-

The OA was initially dismissed for default but the application for restoration was allowed and the OA was restored to the file.

3. Mr. Gogia for the applicant submits that the retrenchment order is illegal for the reason that even though he was given one month's notice, he was not given retrenchment compensation as laid down in Section 25 of the I.D. Act. He draws attention to the fact that the applicant was subsequently conferred with temporary status as is seen from the letter from Deputy C.S.T. (Construction) dated 27.12.88 (Annexure A-9) where there is a specific mention that he was granted temporary status. Mr. Gogia also refers to the seniority list of casual labourers circulated some time in September, 1988, where there is a mention that the temporary status was due from 22.6.88 but was not granted. However, subsequently the same had been granted as is clear from letter dated 27.12.88 as at Annexure A-9. Mr. Gogia contends that the Railways had not taken into account the higher entitlement which is available to the applicant on conferment of temporary status while reckoning the retrenchment compensation and according to ^{him} ~~them~~ the termination is vitiated on this ground. Mr. Gogia also says that the General Manager had conveyed his sanction by his letter dated 18.12.89 for regularisation of a number of casual labourers including the applicant as is seen at Annexure A-11. There is no reason as to why the applicant's services should have been terminated when the question of regularisation was under process and sanction, in fact, was received later. Mr. Gogia also ^{says} ~~says~~ that there is nothing to show that the applicant was retrenched on the ground that he

was the junior-most employee and that there was a need for such retrenchment.

4. Mr. Shevde for the Railway Administration resists the OA. He says that the retrenchment notice was duly given to the applicant. He also draws attention to the reply dated 19.10.88 of the Railways to the prayer for interim relief where there is a clear averment that the retrenchment compensation payable to the applicant was worked out and offered to him on 10.10.88 but he refused to accept the offer and left the office. Mr. Shevde says that this position has not been contradicted. The standing counsel also observes that the applicant was conferred with temporary status retrospectively by a later order. He says at this stage it is not possible to conclude that the amount of compensation offered to him was less than what was legally due to him. Mr. Shevde however is not able to meet the contention of Mr. Gogia as to the need for retrenchment of the applicant when his case for regularisation was under process and in fact such a sanction was received from the General Manager by his letter dated 18.12.89. Mr. Shevde brings out that soon after the sanction letter was received, the applicant was re-engaged by the Railway w.e.f. 4.3.90 in another Department of the Railways. This position of re-engagement w.e.f. 4.3.90 is also confirmed by Mr. Gogia. The applicant has thus been regularised in service and is now working in the Office of the Works Manager (Signal), Sabarmati. Mr. Shevde says that he is not entitled to any other relief.

5. We have carefully considered the rival contentions. It is seen that the applicant was given one month's notice by the termination notice dated 8.9.98 as at Annexure A-5. There is

also a clear averment of the Railways that the retrenchment compensation was offered to him before the termination took effect but he had declined the same. This is stated in their reply dt. 17.10.88 which is soon after the date of expiry of the notice period and is pursuant to the order of the Tribunal on 4.10.88 for filing a reply on the prayer for interim relief. The OA came before the court for the first time on 4.10.88. There is no reason to disbelieve the Railway's version. It is also not in dispute that the applicant was conferred with temporary status from a retrospective date after his re-engagement in March, 90. Mr. Gogia says that the retrenchment compensation would have been worked out on the basis of the lower entitlement and not the higher entitlement which is available to him, on conferment of temporary status. It has not been established that whatever was offered was less than his entitlement. We, however, take note of the contention of Mr. Gogia that the concerned organisation had moved the General Manager for regularisation of a number of casual labourers including the applicant and such a sanction was, in fact, received from General Manager's office in December, 1989 (Ann.A-11). The need for terminating the services of the applicant when the matter was under process has not been satisfactorily explained. The applicant has since been re-engaged from 4.3.90 but in another Department and at present has been regularised and serving in the Signal workshop but not in the Signal Department.

6. Taking into account the facts and circumstances of the case and also the admission of the respondents that the temporary status was due to him from 23.6.88, we direct the respondents to proceed on the basis that temporary status was in fact granted to him from that date even though he might not have been in service for the period from October, 1988 till

March, 90. He shall also be regularised with effect from a date not later than the date on which his immediate junior was regularised in the service. We further direct that the period from 23.6.88 onwards which is the date of conferment of temporary status, will count for qualifying service as per rules for reckoning the retiral benefits due to him at the time of his retirement. While doing so, the respondents shall ignore the fact that he had not been in service from October, 1988 till 4.3.90. The applicant however is not entitled to backwages.

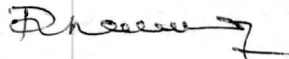
7. Mr. Gogia says that as it appears, the temporary status has been granted to the applicant from a retrospective date, his pay should also be revised by grant of increments on completion of one year from the date of conferment of temporary status. The applicant has approached the Tribunal immediately on getting the termination notice in September, 1988 and the grant of temporary status although from an earlier date is a subsequent development. We are not aware as to how the pay of the applicant has been fixed when temporary status has been granted to him with effect from June, 1988. In the circumstances, we expect that the Department would have followed the normal rules and instructions while fixing his pay taking into account the benefit of increments available on conferment of temporary status. However it is not one of the prayers in the present OA. If the applicant finds that his pay has not been properly fixed, he may submit a detailed representation to the Railway Administration seeking re-fixation of pay with increments and if such a representation is received, the Railway Administration shall dispose of the

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same in accordance with law and in terms of the relevant rules and instructions.

8. Mr. Gogia also says that the applicant would like to move over to the original Department namely Signals Maintenance. If so, he may submit a detailed representation and depending on the availability of vacancies we expect the Railway Administration to consider his case, whenever a vacancy arises. Mr. Gogia makes it clear that this should not result in any loss of seniority. The Railways shall keep in view the ~~service~~^{seniority} question while considering and disposing of the request of the applicant.

9. With the above directions and observations, the OA is finally disposed of. No costs.



(P.C. Kannan)
Member (J)



(V. Ramakrishnan)
Vice Chairman

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