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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 690/88
T.A.NO.

DATE OF DECISION 18th June 1988

Shri Dhamma Tiku **Petitioner**

Mr. K.K. Shah **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 Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Shri Dhamma Tiku,
C/o Kiran K. Shah,
Advocate,
3, Achalayatan Society,
Div-II, B/H Memnagar,
Fire Station,
Navrangpura, Ahmedabad

... Applicant

(Advocate: Mr. K.K. Shah)

VERSUS

1. The General Manager,
Western Railway,
Churchgate,
Bombay.

2. Chief Engineer,
Construction,
Western Railway,
Ahmedabad.

3. Executive Engineer,
Construction,
Western Railway,
Rajkot.

... Respondents

(Advocate: Mr. N.S. Shevde)

JUDGMENT

OA./690/88

Dated: 18-6-88

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

The applicant has filed the above OA and claimed the following reliefs:-

(A) This Hon'ble Tribunal may be pleased to direct the Respondents to reinstate the applicant with full back wages and continuity of service in Rajkot Division from the date of retrenchment with all consequential benefits available to the applicant and also to direct the respondents to absorb him in the 40% construction reserved post. The Hon'ble Tribunal ^{may} also hold that the action of

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the respondent is violative of Article 14 and 16 of the Constitution of India, also discriminatory, arbitrary, unjust, unfair, malafide, against the principle of natural justice, equity and fair play and without providing reasonable opportunity of hearing and against the provision enshrined in the Constitution of India.

(B) The Hon'ble Tribunal may be pleased to allow this application with cost by looking to the status and circumstances of the applicant.

(C) Any other appropriate reliefs as deemed just, proper and fit in the nature and circumstance of the case by this Hon'ble Tribunal may be passed by this Hon'ble Tribunal.

2. The case of the applicant is that he joined railways as Casual Labour in the year 1973 and has been working continuously with the Respondents till July 1986. He was also given temporary status. He also produced a copy of the Service Record (Annexure A-1). By notice dated 4.7.86, the Respondents served a termination notice on the applicant (Annexure A). In terms of the notice, the service of the applicant stands terminated under the provisions of Section 25F of the Industrial Disputes Act, 1947. The retrenchment notice reads as follows:-

"Consequent upon the reduction in work, your service is no longer required, as such your service will stand terminated with effect from 5.8.86 AN in terms of para 25 /F(a) of Industrial Dispute Act. Your retrenchment benefits as due will be paid to you on or before 5.8.86 at par by cashier (C) Rajkot and you should receive the

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same through your subordinate.

This may be treated as one month's notice.

Please acknowledge receipt."

3. The applicant has contended that even though he has been engaged as Mate since 1973, and was conferred temporary status w.e.f. 1.8.81, his services are sought to be terminated in violation of Sec 25F, 25H and other provisions of the ID Act and the rules made thereunder. It is stated that no seniority list as envisaged under the Act and no rules have been prepared or published and consequently, the action of the Respondents on the termination of the services of the applicant by way of retrenchment, is vitiated. The applicant stated that the Respondents has also violated the judgment of the Supreme Court in Indrapal Yadav's case as no division-wise seniority list was prepared, and the senior most persons absorbed permanently/regularly. Even before the issue of retrenchment notice, the applicant has submitted representation dt. 1.8.85 (Annexure A-4) and the Respondent No.2 also forwarded the said representation to the Respondent 3 along with his comments (Annexure A-4). Subsequently on 9.5.88 Respondent No.3 issued a reminder also (R-5). The applicant submitted another representation on 5.7.87 to Respondent No.3 for absorption against 40% construction reserved post and was forwarded to Respondent No.2 for immediate necessary action (Annexure A-6). The applicant has submitted ~~representation~~ ^{The same} against the retrenchment order also, he preferred a representation within one year as per the provisions of the rules. The applicant therefore challenged the retrenchment notice as violative of the provision of the

Industrial Disputes Act and the rules made thereunder and also the instructions of the Railway Board. The applicant also referred to the case of one Shri Kama Pacha who was working with the applicant and stated that he was removed in the same fashion and he filed O.A. No.148/87 before this Tribunal challenging the retrenchment order. This Tribunal vide its judgment dt. 27.4.88 quashed the impugned order. The applicant also filed MA/687/88 for condonation of delay in filing the application.

4. The Respondents in their reply stated that on completion of the Project Work in which the applicant was engaged, his services were terminated w.e.f. 5.8.86 by way of retrenchment after complying with the procedure under Sec. 25F of the Industrial Disputes Act. The applicant was also given compensation and therefore the present application is without any cause of action. The Respondents denied other allegations. So far as preparation of division-wise seniority list is concerned, the Respondents admitted that the same was published only in September, 86 after the applicant was retrenched and also contended that the judgment of the Supreme Court in Inderpal Yadav's case is not applicable to the applicant. It was also stated that the applicant's name has been included in the list published by the D.R.M. (E) Rajkot vide letter dt. 15.12.87. In the reply, the respondents did not make any comments regarding the maintenance of seniority list as required under the provisions of the ID Act or the case of Shri Kama Pacha (OA No.148 of 1987).

5. We heard Shri Shevde, the learned counsel for the respondents and examined the records of the case and the judgments referred to by the counsel. Shri Shah, counsel for the appli-

cant, being unwell, furnished written submissions.

6. The applicant was engaged as Mate (as Casual Labour) in 1973. He was given temporary status in 1981 and he continued to discharge ^{Services} as Mate till his services were retrenched by the impugned order dt. 4.7.1986. The main contention of the Respondents is that the applicant having accepted the retrenchment notice and compensation, cannot question the termination of his services. Apart from this contention, the Respondents did not produce supporting evidence like the seniority list etc., as directed to be produced before this Tribunal vide our order dt. 30.7.92 in MA/219/91 at the time of final hearing. In the case of retrenchment of a Casual Labour, it is the duty of the Respondents to show that they strictly observed the requirement of the rules and the provisions of Sec. 25F of the I.D. Act. Shri Shah who filed his written submissions, contended that the facts of the present O.A. is identical with the case of Shri Kama Pacha (OA/148/87) and the judgment of this Tribunal in the aforesaid is applicable to this case also. A copy of the judgment furnished by the counsel for the applicant in the said OA was also taken on record.

7. In this case, admittedly the respondents have not prepared division-wise seniority list as required in the case of Inderpal Yadav (1985 S.C.C. (L&S) 526) and also under Rule 77 of the Industrial Disputes (Central) Rules, 1957. The respondents had also failed to establish that the principle of "Last come first go" has been complied with in this case. In the circumstances, the action of the respondents in terminating the services of the applicant is therefore vitiated. Where the termination is illegal, there is neither termination nor

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cessation of service and a declaration follows that the workmen concerned continues to be in service with all backwages and all consequential benefits. (See Mohan Lal vs. Management of M/s. Bharat Electronics Ltd., 1981 SCC (L&S) 478). The impugned notice therefore cannot be sustained.

8. The services of the applicant was terminated by notice dated 4.7.86. The applicant had filed the above OA on 2.8.88 after the period of limitation of one year prescribed under Section 21 of the Administrative Tribunals Act. The applicant however has filed an application for condonation of the delay in filing the application. For the reasons stated in the MA, we condone the delay.

9. In view of the aforesaid decision and the reasons stated in the judgment in OA/148/87, and the circumstances of the case, we allow the application and quash the impugned notice. Consequently the applicant is declared to be in continuous service of the respondents - railway administration and they are directed to reinstate him with consequential benefits. However, the applicant will be entitled to backwages only with effect from 1.8.87 (i.e. one year prior to the date of filing of the OA). The respondents shall reinstate the applicant and pay the backwages within three months from the date of receipt of a copy of this order. There will be no order as to costs.

P. Kannan

(P.C. Kannan)
Member (J)

V. Ramakrishnan
18/6/1998

(V. Ramakrishnan)
Vice Chairman