CAT/1/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 703, 704 & 706 OF 1988

T.A.No.

DATE OF DECISION 11/6/91

Salim Abdulbhai & Ors. Petitioner s.

Mr. C.D. Parmar, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

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

(6)

O.A.No.703/88

Salim Abdulbhai,
Mohamdian, Aged 25 years,
Quarter No. 19/N Railway
Colony, Dwarka.

O.A.No. 704/88

Hussen Kasoo
Mohamedian, Aged about 25 years,
District: Jamnagar,
To: Okha.

O.A.No. 706/88

Premji Dadu,
Hindu, Aged about 24 years,
District: Jamnagar,
TO: Okha. ..... Applicants.

(Advocate: Mr.C.D. Parmar)

Versus.

Union of India,
Owning and representing
Western Railway through:

1. The General Manager,
   Western Railway,
   Churchgate,
   Bombay - 400 020.

2. Chief Executive Engineer(Const.)
   Western Railway,
   Railway Station,
   Ahmedabad.

3. Executive Engineer(Const.)
   Western Railway,
   Kothi Compound,
   Rajkot.

4. Executive Engineer(Const.)
   Western Railway,
   Jamnagar. ..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A.NO. 703 OF 1988
O.A.NO. 704 OF 1988
O.A.NO. 706 OF 1988

Date: 11/6/91

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

These three applications under section 19 of the Administrative Tribunals Act, 1985, are heard together by consent of the learned advocate for the parties as they involve identical issues, and are being disposed of by common judgment.

2. The applicant in each application is a casual labourer since 1983 in Western Railway. The applicant in each application has filed this application challenging the termination of service of the applicant (Retrenchment) by the respondents and for quashing and setting aside the same being violative of sections 25-F, 25-G & 25-H of the Industrial Disputes Act and for declaration that the termination of the services of the applicant by the respondents as per notice of retrenchment was illegal and invalid and in violation of the provisions of Industrial Disputes Act and for directions to the respondents to reinstate the applicants as permanent railway employee with full backwages with continuity of service.

3. The applicant of application No. 703/88 has alleged in the application that he was appointed as casual labour on 14th November, 1983 under PWI(C) DWK II that then he was transferred on 30th October, 1984 at Himmatnagar and then again was transferred to PWI(C) Dwarka on 30.4.1985. In para 3 of his application, he has challenged the order of retrenchment on 10th September, 1985 but the date mentioned therein is also 21st August, 1984. He has produced a Annexure A-1, the record of services as casual labour. The notice of termination of service of the applicant dated 9th August, 1985 under section

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25-F(a) of the Industrial Disputes Act is produced by the applicant at Annexure A-2. Thus so far as this application is concerned, though the notice of termination of service of the applicant is dated 9.8.85 and though according to that notice the applicant's services were terminated with effect from 10th September, 1985, the applicant has in para 3 of the application given the date of the termination of services 21st August, 1984 and the same date is given in para 6(A) of his application which seems to be erroneous.

4. So far the applicant of the application No. 704/88 is concerned, he was appointed as a casual labour on 5th October, 1983 under PWI(C)II Dwarka, then he was transferred to Surendranagar and again from Surendranagar to Than. The applicant has produced the record of service card at Annexure-A and the notice of termination of service under section 25-F(a) of the Industrial Disputes Act dated 8.8.1985 at Annexure A-2. The grounds challenging the retrenchment notice and termination of service of the applicant and the relief prayed are identical as in Application No. 703/88.

5. So far as the applicant of the application No. 706/88 is concerned, it is alleged by him that he was a casual labour appointed on 30th October, 1983 under PWI(C) Dwarka and that he was transferred to Morvi and then again to Dwarka on 25th April, 1985. The applicant has produced at Annexure A-1 his service card and at Annexure A-2 the notice of termination of services under section 25F(a) of Industrial Disputes Act dated 8th August, 1985. It is alleged by the applicant that the notice of termination of

the services which is according to him is a retrenchment order is illegal, invalid and in violation of provisions of the Industrial Disputes Act.

6. In all these three applications, the grounds of attack against the notice under section 25-F(a) of the I.D.Act dated 8.8.1985 by which the services of each applicant was terminated with effect from 10th September, 1985 are that the said action is in violation of section 25-F, 25-G and 25-H of the I.D. Act, that they were casual labourers working in the Railway department, that they were in continuous service and therefore the termination be set aside and the applicants be declared and held as permanent railway employee and they should be paid their backwages with continuity of service.

7. The respondents have filed written statement in each applications and the contentions taken are almost identical with respect to each application. They have contended that the application is clearly time barred under the provision of the Administrative Tribunals Act, that the Tribunal has no jurisdiction to entertain the said application. It is contended that the applicant in each application was engaged as casual labourer on the date mentioned in the application under the Permanent Way Inspector (Const.) Western Railway, Dwarka that the applicant in each cases was engaged on daily rated wages for completion of Viramgam-Okha-Porbandar conversion work of Phase-II i.e. from Jamnagar to Okha and Porbandar and that at the time of initial engagement as casual labourer, an agreement was made between the applicant and the railway administration that the above engagement is purely for the purpose of completion of VOP work of

Phase-II, and therefore, after the completion of the above work the applicants ceased to be the casual labourer with the respondents railway administration. It is contended that the services of the applicant were to be terminated or discontinued after the completion of VOP conversion work of Phase-II and after the said work was completed in the middle of the year 1984, as per the condition mentioned in the agreement, the service of the applicant was to be terminated but as the High Court of Gujarat had directed in some other cases of casual labourer to avoid retrenchment and to give such casual labourer alternative work possible in other construction units and divisions, and, therefore, according to the seniority of the applicant maintained at that relevant point of time the respondents' authority asked the other units and division as to whether they were in a position to give work to the applicant and other casual labourer or not and as per the demand from the other division the applicant along with the others was directed to Rajkot Division where the applicant resumed his duty under PWI, that he was sent for medical examination as per the rules, but as the applicant was being junior most employee, the Rajkot Division directed the applicant back to the original unit.

8. The respondents have further contended in the written statement that the VOP Conversion work of Phase-II having been completed in all respect and no labour

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strength was required by the VOP organisation which was for time being and for a particular project. The respondents tried to continue the applicant on daily wages under PWI(C) Porbandar, after he was returned back from the Rajkot Division, but ultimately as there was no work with the respondents authority it was not possible for the respondents to pay wages to the applicants without getting the work done from them and therefore finally it was decided that as per the agreement and also after following due process of law i.e. after following the provisions of Section 25F of the Industrial Disputes Act and after paying compensation, pay and all dues, the services of the applicant were terminated with effect from 10th September, 1985. It is contended that pay sheet for his dues were prepared and sent to Accounts Office and the compensation amount etc. have been paid to each applicant. The compensation of Rs. 603.30 has been paid to the applicant of application No. 703/88, Rs. 660.20 to the applicant of application No. 704/88 and Rs. 660.20 to the applicant of application No. 706/88. It is contended that each applicant has accepted the compensation amount and now it does not lie in the mouth of the applicant that their services were terminated without following due process of law and hence the application be dismissed.

9. The respondents further contended that they have followed the provision of I.D. Act and they have denied that the services of the applicants were terminated illegally or wrongly but the services of the applicants were terminated by notice Annexure A-2 produced in each case dated 8th August, 1988 giving clear one months' notice and therefore the applicants

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are not entitled to any relief prayed in the application and the application be dismissed.

10. The applicant of application No. 703/88 & 704/88 have filed rejoinder controverting the averments made by the respondents in their respective written statement contending that the application is not time barred as it is made within three years time before the Tribunal came into existence. They have denied the agreement made between the applicants and the respondents and have also contended that the agreements were against law. It is also contended in the rejoinder that the applicant has not received the full amounts which was due to then as per the provisions of Industrial Disputes Act and therefore the applicants were entitled to get the arrears pay allowance etc.

11. The applicant of application No. 706/88 has not filed rejoinder.

12. These three applications were admitted by this Tribunal by order dated 3rd November, 1988 "subject to limitation". The applicant in each case has filed an application for condonation of delay under section 21(3) of the Administrative Tribunals Act. It is not in dispute that so far Section 21 of the Administrative Tribunals Act is concerned, the Tribunal shall not admit an application in case where a final order such as mentioned a clause(a) of sub section (2) of Section 20 has been made in connection with the grievance unless application is made within one year from the date of which such final order has been made.

Section 21(b) will not be applicable in this case. Admittedly these applications have not been made before this Tribunal within one year from the date of 10th September, 1985 the date on which the services of the applicant in each case was terminated as per the notice Annexure A-2 dated 8.8.1985. The applicant, in each cases, therefore, seems to have made application for condonation of delay under section 21(3) of the Administrative Tribunals Act and the grounds for condonation of delay mentioned in each this applications are identical. The applicant has alleged that he is a poor persons and has aged parents that the parents of the applicant do not maintain good health but they were sick and therefore the delay was made. It is also mentioned that after the notice were given the representation were made to the authorities to know about the other person who had obtained stay order from Hon'ble High Court of Gujarat. It is also mentioned in the application that the order of termination of the services was null and void and in violation of principles of natural justice and then the delay be condoned.

13. The learned advocate for the applicant submitted that the grounds mentioned in the application should be accepted as sufficient cause and though these applications have been filed as late as on 20th May, 1988 i.e., after about two years and nine months after 10th September, 1985, and though there was a delay of one year and 9½ months in making these applications, but the applicants being poor persons and as their parents were not maintaining good health, so the delay should be condoned. Learned advocate for the respondents submitted that the grounds mentioned in the application for condonation of delay are

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absolutely vague, and not supported by reliable evidence, and the said grounds do not constitute sufficient cause of condonation of delay.

14. The learned advocate for the applicant however submitted that the question of limitation will not arise in this case because the action of the respondents in terminating the service of each applicant being violative of Section 25-F, 25-G & 25-H of the I.D. Act was void ab initio. In support of his submission, he has put reliance on the decisions in State of Punjab V/s. Ajit Singh, 1988(1)SLR p.96, Union of India V/s. Baburam Lalla, AIR 1988 SC 344, Bhavansinh Babubha V/s. Union of India, (1988) 8 A.T.C. 745, Popat Sidic V/s. Union of India & Ors., (1988) 8 ATC 845, Beer Singh V/s. Union of India & Ors., 1990(14) ATC p.279, Bankim Choudhary & Ors. V/s. Union of India & Ors., 1991(1) CAT Gauhati, SISLJ III 362. Learned advocate for respondents vehemently submitted that respondents have not violated provisions of I.D. Act. In the instant cases, the important point to be considered is as to whether these applications are maintainable before us in view of the latest five member judgment in A. Padmavalley and another V/s. C.P.W.D. and others reported in III (1990) CSJ(CAT) 384 (FB) so we will deal with that point first which goes at the root of these cases, and then if necessary we will consider the point of limitation.

15. In the instant case, the notice under section 25-F(a) of I.D.Act is given admittedly by the respondents to the applicant. The respondents have also catagorically contended in the written statement that the compensation due and payable to the applicant in each case has been paid and each applicant has accepted

the same. The learned advocate for the applicant submitted that the respondents have to comply with all the clauses of Section 25-F, 25-G & 25-H of the Industrial Disputes Act. The applicant of the applications No. 703/88 & 704/88 have contended in the rejoinder that the amount paid by the respondents was not full as per the provisions of I.D.Act. In these matters both the parties have not produced the complete documents necessary to consider the rival contentions and in order to know as to whether the amounts which were paid by respondents to the applicant were full and proper, oral evidence of the parties and witnesses as well as documentary evidence on both the sides would be necessary and detailed calculations are also required because of disputed questions of facts.

16. The learned advocate for the applicants submitted that the Administrative Tribunal in number of cases have treated the retrenchment order illegal and bad in law and such orders have been set aside and the casual labourers have been reinstated in service with full backwages and those judgment should be followed by this Tribunal. The learned advocate for the applicant has relied on the decision in Sukumar Gopalan & Ors. V/s. Union of India (Western Railway) & Ors., decided by the Central Administrative Tribunal of Ahmedabad Bench on 16th February, 1987. In this decision, three types of cases were considered namely the cases of casual labourers who were served with a notice terminating their services, other casual labourers whose services were terminated without notice and some other casual labourers also who apprehend termination of their services at the hands of the respondents and the Tribunal considered the provisions of I.D.Act and Rule 77 of the Industrial Disputes (Central) Rules 1947 and the

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applications were allowed and the order of termination were set aside and the backwages were paid. The next decision relied on is Narayan Ala & Ors. V/s. Union of India & Ors., (1987) 4 ATC 179 in which Section 25-F & 25-G of the I.D.Act and para 2501, 2512 & 2514 of Railway Establishment Manual were considered and the Tribunal quashed the orders of termination of the services of the applicant in those cases and they were reinstated with backwages. The next decision relied on was Surya Kant Raghunath Darole & Ors. V/s. The Divisional Railway Manager, Central Railway, Bombay, ATR 1988(1) C.A.T.158 in which also the Tribunal considered Section 25-F of the I.D. Act and as the respondents had not followed the requirement of Section 25-F of the I.D. Act, the termination of the services of the applicant of that case was held bad in law and illegal and applicant was reinstated in service with full backwages. The next decision is Narotam Chopra V/s. Presiding Officer, Labour Court & Ors. 1989 Supp(2)S.C.C. 97 in which considering Section 25-F of I.D. Act, the Hon'ble Supreme Court held that the Labour Court erred in awarding only one month's pay in lieu of period of notice of retrenchment and compensation and the Hon'ble Supreme Court directed that the appellant was entitled to reinstate with full backwages. The next decision is Madhu Dhola & Ors. V/s. Union of India & Ors. A.T.R. 1989(1) C.A.T. 115 in which it was held that the casual labourer who has attained temporary status has to be given a notice before discharge and the termination of such a casual labourer by giving verbal intimation will be illegal. This decision would not apply to the facts of the case. There is another decision in Bhavansingh Babubha Vs. Union of India reported in (1988) 8 ATC 745 in which Section 25-F of the I.D. Act and Rule 77 of the Industrial Disputes (Central) Rules 1957, were considered.

But the latest decision on the question of

the jurisdiction of the Administrative Tribunal with respect to the case covered under the Industrial Disputes Act has been pronounced by the Central Administrative Tribunal consisting of five members in A. Padmavally & Anrs. V/s. C.P.W.D. & Ors. reported in III(1990)CSJ(CAT) 384 (FB). The law is laid down in paras 38 and 39 of this judgment. They read as under :

> "38. In the Rohtas Industries case the decision in Premier Automobiles case was cited with approval and it was held that if the I.D. Act creates rights and remedies it has to be considered as one homogeneous whole and it has to be regarded as unoflato. But it was made clear that the High Court could interfere in a case where the circumstances require interference. This is clear from the following observation in regard to exercise of jurisdiction under Article 226:
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> > "This court has spelt out wise and clear restraint on the use of this extraordinary remedy and the High Court will not go beyond those wholesome inhibitions except where the monstrosity of the situation or exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered."
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> In our view, one such situation would be where the competent authority ignores statutory provisions or acts in violation of Article 14 of the Constitution. Further, where either due to admissions made or from facts apparent on the face of the record, it is clear that there is statutory violation, we are of the opinion, that it is open to the Tribunal exercising power under Article 226 to set aside the illegal order of termination and to direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. To this extent we are of the view that alternate remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226."
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> "39. However, the exercise of the power is discretionary and would depend on the facts and circumstances of each case. The power is there but

the High Court/Tribunal may not exercise the power in every case. The principles of exercise of power under Article 226 have been clearly laid in the case of Rohtas Industries by Krishna Iyer, J. cited above. Issues No.2 and 3 are answered accordingly."

Then follows the conclusions of the Larger Bench in para 40 of the judgment as under :

"(1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(3) The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra).

(4) The interpretation given to the term 'arrangements in force' by the Jabalpur Bench in Rammoo's case is not correct."

It is clear from the above that the jurisdiction of the Tribunal in challenges under I.D.Act is by direction to be conferred to such cases as may fall

within the guidelines of para 38 and 39.

17. Previous to the decision in Padmavalley's case (supra), different benches of the Central Administrative Tribunal took different views about the jurisdiction of the Central Administrative Tribunal with regard to the cases coming before them under the provisions of Industrial Disputes Act. The decisions of the Central Administrative Tribunal, relied upon by the learned advocate for the applicant, were the cases decided prior to the decision of this Padmavalley's case. Therefore those decisions can not be considered as good law in view of the Padmavalley's case. In our opinion, now the latest decision given by the Central Administrative Tribunal consisting of larger bench of five members bench in Padmavalley's case will prevail. The larger bench, while considering the various decisions of the different benches of the Central Administrative Tribunal expressing and giving different judgments in past about the jurisdiction of the Central Administrative Tribunal with regard to the cases coming before them involving the provisions of the I.D.Act, observed that the Industrial Disputes Act is a comprehensive piece of legislation made in 1947 and polished in the course of time providing for the investigation of the settlement of Industrial Disputes. For the settlement of Industrial disputes, Industrial Disputes Act has made elaborate provisions. The gamut of disputes contemplated is wide and covers almost all kinds of Acts which may arise between the parties. It is also observed in this decision that the machinery under the I.D.Act is not compelled to decide matters by applying law, that they have got wide powers to give awards on issues referred to them creating some times new rights to the parties. If such matter is brought to this Tribunal, this Tribunal can not give such reliefs. It is also further observed that

the concurrent jurisdiction of this Tribunal and the machinery under the I.D.Act not only will shatter the machinery forget for the preservation of industrial peace but will also bring anamolous results. For instance under the I.D.Act, the Labour Court in case of dismissal or removal has got the discretion under section 11(A) to set aside the order of discharge or dismissal and direct reinstatement of workman on such terms and conditions, if any as it deems fit or give such other relief to the workman including the award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case be required. Such a power is not exercised by this Central Administrative Tribunal. Therefore, if one case is brought to the Labour Court and another case of similar nature is brought before this Tribunal, patent differences in decision is likely to emerge. Even otherwise conflict of decisions will occur and will remain if this Tribunal and the Industrial Disputes Machinery work side by side and if decisions are given on similar matters by both the forums, if the decision by the forum under the I.D. Act is not brought for scrutiny before this Tribunal. Thus as per the latest decision of larger bench in Padmavalley's case (supra) applicants before us seeking a relief under the provisions of the I.D. Act must ordinarily exhaust the remedies available under that Act and this Tribunal does not exercise concurrent jurisdiction with the authorities in regard to matters covered by the I.D.Act. The matters over which the Labour Court or the Industrial Tribunal or other authorities have jurisdiction under the I.D.Act do not automatically become vested in the Administrative Tribunal for adjudication. Chapter III of the I.D.Act refers to the reference of disputes to Tribunals and other forums. Chapter IV refers to procedure, powers and duties of authorities. The conciliation officers are appointed for

the purpose of enquiry into any existing or apprehended industrial disputes and Section 11-A deals with powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Industrial Disputes (Central) Rules 1947 also deal with the procedure of reference of Industrial Disputes before Labour Courts, Tribunals and National Tribunals etc. and also these rules deal with the power and duties of the conciliation officers. Labour Courts, Tribunals, National Tribunals etc. It is not in dispute that the applicants seek relief under the provisions under the I.D.Act and Rules and it is also not dispute that they have not exhausted the remedies available under that Act before the said forum. Therefore, this Tribunal having no concurrent jurisdiction in regard to these matters over which Industrial Tribunal has jurisdiction, these applications will not be maintainable before this Tribunal.

18. The next question is whether we should exercise our discretion in terms of the guidelines of para 38 of the Padmavalley's judgment above. As observed earlier, in the instant cases admittedly the notice under section 25-F(a) of the I.D.Act was given to each applicant. The respondents have contended in the written statement that they have paid all dues and compensation to the applicants which they were entitled to under section 25-F of the Act. The applicant in rejoinder have stated that they have not been paid the full amount. They also raise other disputes which require the detailed calculations of the amount received by them and the detailed oral and documentary evidence with regard to their duration of work, continuation of service or intermittent service, attendance, agreements. As there are many disputed

questions of facts in these matters which require the detailed evidence by both parties, and the evidence produced before us being scanty, both parties will have opportunity to lead evidence oral and documentary before forum under I.D.Act. Under these circumstances, these are not the fit cases in which this Tribunal should exercise discretionary power under Article 226 of the Constitution of India.

19. Since we hold that the applicants should exhaust the remedies available to them under the I.D. Act before the forum under that Act, and that these applications are not maintainable before this Tribunal having regard to the decision in Padmavalley's case (supra) and also having regard to the facts of these cases, we do not decide the question of limitation raised in these three application by the respondents. Hence the result is that applications shall have to be dismissed as not maintainable.

20. The applications are dismissed as not maintainable with no orders as to costs.

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

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

Prepared by : 
Compared by : 14/6/91
TRUE COPY

(K. B SANE)
Section Officer (J)
Central Administrative Tribunal,
Ahmedabad Bench.