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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

O.A. No.727/1988. Date of decision:

Shri Mohan Surdev and others ... Applicants.

Vs.

Union of India and others ... Respondents.

O.A. No.728/1988.

Shri Ashabha Som & others ... Applicants.

Vs.

Union of India and others ... Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. B.S. SEKHON, VICE-CHAIRMAN (J).

HON'BLE MR. M.M. SINGH, MEMBER (A).

For the applicants (OA 727/88) ... Shri Y.V.Shah, counsel.

(OA 728/88) ... Shri P.H.Pathak, counsel.

For the respondents -do- ... Shri B.R.Kyada, counsel.
Shri N.S. Shevde, counsel.

(Judgment of the Full Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman).

A Bench of the Central Administrative Tribunal at Ahmedabad has expressed its opinion that it is not able to agree with the view of another Bench of the Tribunal at Ahmedabad expressed in the case of MANHARLAL RAMCHANDRA AND OTHERS Vs. U.O.I. & ORS. reported in (1989) 11 ATC 553. The above Division Bench held that the provisions of Section 25-L of the Industrial Disputes Act(I.D.Act) in no way exclude the industrial establishment of the railway from the applicability of section 25-N of the Industrial Disputes Act,1947. The

Bench comprising Shri G.Sreedharan Nair, V.C. and Shri M.M.Singh, AM disagreeing with the view of that Bench have referred the matter to the Hon'ble Chairman for constitution of a Larger Bench.

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?

We have heard Shri Y.V. Shah and Shri P.H.Pathak for the applicants and Shri B.R.Kyada and Shri N.S.Shevde, for the respondents.

The matter arose out of an order of retrenchment. The applicants were all casual workers and they had filed O. A. 728/1988 to suspend the verbal order of termination with effect from 22.11.1988. They have also prayed to set aside the order and reinstate the applicants on their original posts with full backwages and continuity of services, and to direct the respondents to grant the benefits of the judgment of the Supreme Court in the case of Indrapal Yadav's case and pay arrears of salaries and allowances with 18% interest.

In OA No.727/1988, the applicants numbering 31 were initially recruited as casual labourers under P.W.I. (C) Rajkot and they continuously worked upto July,1981 and thereafter they were retrenched from service which action was opposed and they were re-engaged w.e.f. 23.6.1983 under

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P.W.I. (C) Dwarka. They were transferred from construction department to Open Line and were posted under the .P.W.I. Mehsana, Sabarmati, and Chanasma and again Mehsana. The applicants filed an O.A. and obtained a stay against the transfer. They filed a C.P. for flouting the order of stay by the respondents. Their grievance is that the applicants are casual labourers and they have not been selected and made regular Class IV employees. They have further stated that they have passed the requisite medical test and given temporary status. As casual labourers, they are not liable to be transferred in view of the provisions of Para 2501 of the Indian Railway Establishment Manual. They are also entitled to allowances admissible under the Rules on each transfer from 8 K.m. away from their Headquarter. The applicants have also during the hearing of the Contempt Petition pointed out that they had been orally retrenched from service w.e.f. 22.11.1988 and prayed for quashing of the retrenchment order. They have prayed for restraining the respondents from retrenching the applicants from service and to suspend the execution of the order of retrenchment.

Before we proceed further, it will be relevant to mention here that the learned counsel for the parties stated that all the applicants have been retained and absorbed in service. Consequently, the O.As have been rendered infructuous. A question arose as to whether the reference has to be answered or not. We have considered the matter and we think that we should answer the question that arises in this reference.

We proceed to do so.

The first question for our consideration is:whether the provisions of Section 25-N of the I.D. Act are attracted in the present case or not? Section 25-N contemplates that prior permission of the appropriate Government has to be obtained before the workman is retrenched. Relevant provision of Section 25-N, clause (b) reads as follow:

> "(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereafter in this section referred to as the specific authority) has been obtained on an application made in this behalf."

Respondents have taken the stand that provisions of Section 25-N are not applicable at all. They have further stated that no prior permission has been taken under Section 25-N of the Act in this case. They urged that Chapter V-B of I.D. Act deals with special provisions relating to lay-off, retrenchment and closure in certain establishments. Section 25-K provides that the provisions of this Chapter shall apply to an industrial establishment in which not less than 100 workmen are employed on an average per working day for the preceding 12 months. The second leg of the argument of the respondents is that Section 25-F of the Act is made applicable in the case of workmen employed in any industry". The respondents say that the Railway is not an "industry".

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In the case of MANHARLAL RAMCHANDRA AND OTHERS (supra) a Bench of the Tribunal at Ahmedabad held that the action of the respondents in terminating the service of the petitioners was vitiated for the reason that no prior permission had been obtained from the competent authority and hence the action of retrenchment of the said petitioners was violative under section 25-N and the same was quashed and set aside.

It may be mentioned here that the Union of India & Ors. filed Special Leave Petition Nos. 10710-12 of 1989 before the Supreme Court against the above decision of Ahmedabad Bench which was dismissed by the Supreme Court. The order of the Supreme Court dated 16.10.1989 was couched in the following words:

"The Special Leave Petition is dismissed."

This means that the Supreme Court did not interfere with the order passed by the Division Bench at Ahmedabad. Since no reasons for the dismissal of the S.L.P. have been given by the Supreme Court, the same would not be a binding precedent.

In the case of KRISHNA DISTT. CO-OP. MARKETING SOCIETY LTD. V. PURNACHANDRA RAO (AIR 1987 SC 1960) the Supreme Court held that:

> "If the employees are 'workmen' and the management is an 'industry' as defined in the Central Act and the action taken by the management amount to 'retrenchment' then the rights and liabilities of the parties are governed by the provisions of Ch. V-A of the Central Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before

the authorities under sub-sections (1) and (3) of section 41 of the State Act."

It was further stated:

"these authorities may exercise their jurisdiction under the State Act but they have to decide such dispute in accordance with the provisions of Ch.V-A".

In the case of NAROTAM CHOPRA Vs. PRESIDING OFFICER, LABOUR COURT (1989 Supp 2 SCC 97) the Supreme Court held that where termination of service is in violation of Section 25-F of the I.D. Act, 1947, it renders the order of termination void ab initio.

In the case of INDER PAL YADAV Vs. UNION OF INDIA ((1985) 2 SCC 648) the Supreme Court held that casual labour employed on Railway projects in continuous service for more than a year - Termination of their services on ground of winding up of the projects is not justified. The Supreme Court further observed that absorption should be in order of length of continuous service. Principle of 'last come first go' or in the reverse 'first come last go' under section 25-G of the Act is to be followed or observed.

The main question is : whether the Railway is an 'industry' within the meaning of Section 25-F of the I.D. Act?

Learned counsel for the applicants Shri P.H.Pathak emphasised that the applicants had to be workmen under the Factories Act and were engaged in manufacturing process. We do not think this to be imperative in every case.

Shri B.R. Kyada, learned counsel for the respondents urged that the applicants were casual labourers and there was no

fixed place or premises where they work and there was no time limit in the project. As for the nature of duty, the work done by the applicants was manual work.

Shri N.S. Shevde appearing for the Railways-respondents stated that the question referred is of a general nature and the issue cannot be properly answered unless facts of the case are there. The applicants were all casual labourers and "project" is not an industrial establishment within the meaning of Section 25-K. He referred to the case of S. STEPHEN AROKIARAJ AND NINE OTHERS Vs. U.O.I. AND ANOTHER (1988 (6) ATC 215) decided by the Madras Bench of the Tribunal. The Bench of the Tribunal in Madras wrongly relied on the plea that Section 25-N was not complied with. It was held in that case that the D.R.M. was not the specific authority to grant prior permission under sub-section 1(b) of Section 25-N of the Industrial Disputes Act. It had to be obtained from the Central Government or from the Secretary, Ministry of Labour.

On the question of 'altering', it was urged that even altering does not pertain to manufacturing.

Section 25-L (a) of the I.D.Act defines "industrial establishment" as (i) a factory as defined in Cl.(m) of Sec. 2 of the Facteries Act. Section 2-K(i) of the Facteries Act,1948 defines 'manufacturing process' as making, altering, repairing, demolishing, breaking up etc. In this case, the applicants were working in the W.O.P. and the nature of their work comes under the term 'altering'. Admittedly they were engaged in changing the width of the

railway track from one metre to a width of 5 feet 6 inches." Thus the nature of the work comes under the term "manufacturing process."

In the case of WORKMEN OF DELHI ELECTRIC SUPPLY UNDERTAKING Vs. THE MANAGEMENT OF DELHI ELECTRIC SUPPLY UNDERTAKING (1973 (1) SLR 611) the Supreme Court observed that sub-stations and zonal stations are not factories.

Another question is: whether it is an 'industrial establishment' within the meaning of Section 2 (ka) of the I.D. Act?

The definition of 'industrial establishment' is stated in Section 2(ka) of the I.D. Act as under:

> "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:
>
> Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,-
>
> (a) if any unit of such establishment or undertaking carrying on any activity being an industry, is severable from the other unit or units of such establishment or undertaking such unit shall be deemed to be a separate industrial establishment or undertaking;
>
> (b) if the predominant activity or each of the predominant activity carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;"

The expression "industry" has been defined by

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Section 2(j) of the Act in the following terms:

> "unless there is anything repugnant in the subject or context, 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen."

The aforesaid definition has been amended and substituted by section 2 of the Industrial Disputes (Amendment) Act,1982.

The proposed substituted definition is as under:

> "2(j) "industry" means any systematic activity carried on by cooperation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) whether or not,
>
> (i) any capital has been invested for the purpose of carrying on such activity; or
>
> (ii) such activity is carried on with a motive to make any gain or profit, and includes-
>
> (a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948; (9 of 1948);
>
> (b) any activity relating to the promotion of sale or business or both carried on by an establishment, but does not include-
>
> (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.
>
> Explanation - For the purposes of this sub-clause "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; or
>
> (2) hospitals or dispensaries; or
> (3) educational, scientific,research or training institutions; or
>
> (4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
>
> (5) Khadi or village industries; or
>
> (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of Central Government dealing with defence research, atomic energy and space; or
>
> (7) any domestic service; or
>
> (8) any activity being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a cooperative society or a club or any other like body or individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten."

This has, however, not yet been brought into force.

The meaning of the word 'industry' was considered in the case of BANGALORE WATER SUPPLY & SEWERAGE BOARD V. RAJAPPA ((1978) 2 SCC 213) and the Supreme Court observed:

> "(1)(a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services, calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.
>
> (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
>
> (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
>
> (d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking."

Applying the test laid down in the above mentioned case, it is evident that in the Indian Railways there is a systematic activity, organised by co-operation between employer and employees for the production of goods and services calculated to satisfy human wants and wishes, it amounts to an 'industry' in the enterprise.

In the case of WORKMEN OF INDIAN STANDARDS INSTITUTION V. MANAGEMENT OF INDIAN STANDARDS INSTITUTION ((1976) 2 SCC 847), Justice Bhagwati (as he then was) observed:

> "It is necessary to remember that the Industrial Disputes Act is a legislation intended to bring about peace and harmony between 'management' and 'labour' in an industry so that production does not suffer and at the same time, labour is not exploited and discontended and, therefore, the test must be so applied as to give the widest possible connotation to the term 'industry'. Whenever a question arises whether a particular

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concern is an industry, the approach must be bread and liberal and not rigid or doctrinaire. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective."

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.

We, therefore, answer the question by saying:

"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."

The above answer shall be placed before the Division Bench for passing appropriate orders in the O.As.

SD/-	SD/-	SD/-
(M.M.SINGH)	(B.S.SAKHON)	(AMITAV BANERJI)
MEMBER(A)	VICE CHAIRMAN	CHAIRMAN

SKS

15-10-91 Judgment pronounced in the open Court.

Prepared by :- Rtshah 15/10/91

Compared by :-

TRUE COPY

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

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