

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A.NO.** 207/89  
**T.A.NO.** with  
M.A. 717/89

DATE OF DECISION

2-4-98

Shri Bachu Badia

Petitioner

Shri Y.V. Shah

Advocate for the Petitioner [s]

Versus

Union of India and Others

Respondent

Shri 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 Judgment ?
- 4, Whether it needs to be circulated to

PC

Shri Banchu Badia,  
C/o Permanent Way Inspector (C),  
Western Railway,  
Lalpur,  
Jamnagar.

... Applicant

(Advocate: Mr. Y.V. Shah)

VERSUS

1. Union of India,  
through the General Manager,  
Western Railway,  
Churchgate,  
Bombay - 20.
2. Divisional Railway Manager (E),  
Western Railway,  
Rajkot.
3. Permanent Way Inspector (C),  
Western Railway,  
Rajkot.
4. Divisional Railway Manager (E),  
Western Railway,  
Bhavnagar.

... Respondents

(Advocate: Mr. N.S. Shevde)

JUDGMENT

O.A./207/89

Dated: 2-4-98

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

The applicant has filed the above OA under Section 19 of the Administrative Tribunals Act and prayed for the following reliefs:

- (A) Be pleased to quash and set aside the impugned action of retrenchment being arbitrary and violative to Rules 76 (A & C) and 77 of the I.D. (Central) Rules, 1957 and 1985 (2) S.C.C. 648 and A.I.R. 1987 S.C. 1153.

*Rn*

Contd..3/-

(AA) Alternatively be pleased to direct the respondents to absorb the applicant in service from the date of his juniors' absorption in pursuant to Sec. 25-H of the I.D. Act, 1947 and in pursuant to the Railway Board's absorption scheme.

(B) Be pleased to grant all the consequential benefits.

2. The applicant is a Casual Labour initially recruited with effect from 21.11.79 and continuously worked up to 8.3.85 under the PWI(C), Lalpur, Jamnagar and thereafter transferred to PWI, Rajkot and continuously worked up to 20.5.85. The applicant had also been conferred temporary status. The applicant was orally retrenched from service w.e.f. 20.5.85. The applicant had challenged the oral termination order on the ground that it was violative of Section 25F, 25G, 25H and 25N of the Industrial Disputes Act, 1947 and Rules 76 and 77 of the Industrial Disputes (Central) Rules, 1957. The applicant also produced the service card showing the service details and the retrenchment as at Annexure A-1. The applicant further stated that the respondents have not followed the absorption scheme framed by the Railway Board which was subsequently approved by the Supreme Court and no efforts were made by the respondents to absorb the applicants in spite of representations dated 26.3.87 and 22.4.88 (Annexure A-2 and A-3). He submitted that several of his juniors in the Seniority List were subsequently screened and absorbed under the Respondents.

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Contd..4/-

The applicant submitted that he belonged to ST community and he is socially and economically backward and therefore has a right to be continued in service in preference to his juniors and new recruits. He also refers to the judgment dated 3.8.87 of this Tribunal in OA No.113/87 in the case of Shri Subramaniam Muthu vs. UOI. The appli-

cant filed MA/717/89 for condoning the delay in filing the OA.

3. The respondents in their reply dated 9.5.92 had denied the facts as submitted by the applicant and called upon the applicant to produce the original service card and other details for perusal of the Tribunal. The respondents also denied that Rule 76 and 77 of the ID(Central Rules would apply to the respondents as the case was not of retrenchment. Subsequently on 3.4.93, the Respondent No.4 (Divisional Railway Manager, Western Railway, Bhavnagar) filed a further reply. In this reply, it was inter alia stated that the applicant did not turn up with the result that his name was not considered for regularisation. It was further stated that <sup>the</sup> letter calling for screening of Project Casual Labour was given wide publicity by sending the same to Divisional Secretary, Western Railway Employees Union and Western Railway Mazdoor Sangh who in turn gave publicity. However, it was admitted by the Respondents that no separate call letter was issued to the applicants. He also produced a list of Project Casual Labour of the Division.

4. Heard Shri Y.V. Shah for the applicant and Shri N. S. Shevde for the respondents. At the hearing, Shri Shah referred to Annexure A-6 (Letter dated 31.10.91 from DRM, BVP, Western Railway) which contained the seniority list

of the Project Casual Labour. The applicant's name was placed at Sl. No.102, seniority no. 404. This clearly shows that the applicant was engaged from 21.11.79 and had worked for over 1282 days. In terms of this letter, screening test should be held between 26.11.91 and 29.11.91 and that the listed casual labour should be asked to submit necessary documents at the time of screening. However no action appears to have been taken to inform the applicant. Further representations made by the applicant have also been not considered or replied. He further stated that several of the juniors to the applicant were allowed to continue and subsequently screened and absorbed as regular employees. He therefore submitted that the respondents violated Rules 76 and 77 of the rules while making retrenchment and rule 78 of the Rules while making re-employment. In terms of Rule 78 of the Industrial Disputes (Central) Rules, 1957 read with 25H of the Industrial Disputes Act, the respondents are to offer re-employment to the retrenched employees in accordance with the procedure prescribed. The Rule provides that the workmen who are retrenched should be given an opportunity for re-employment before fresh hands are taken for the same post and a notice is required to be given by Registered Post (emphasis supplied). In this connection, Shri Shah, counsel for the applicant relied upon the judgment of the Gujarat High Court in the case of Gujarat State Machine Tools Corporation Ltd. vs. Deepak J. Desai reported in 1987 (1) GIR 387. In this case, the Hon'ble High Court had held that a temporary

worker, if employed in a permanent vacancy, is entitled to the benefit of Section 25H. Where an employer discharges a temporary worker and then tries to make fresh appointment, preference must be given to the retrenched employee by sending a notice by Registered Post to him. The relevant observations of the Hon'ble High Court at Para 4 reads as follows:-

"Mr. Nanavati, the learned Counsel for the appellant submitted that mere advertisement in the newspapers will not in any way offend sec.25H, but on the other hand, it should be taken as invitation for the discharged workman to apply and get himself reinstated. We are not able to appreciate this argument. Sec. 25H is very clear to the effect that the workmen who are retrenched should be given an opportunity as prescribed by the rules before the Management recruits fresh hands for the same post. Rule 82 of the Gujarat Industrial Dispute Rules clearly envisages the method and manner in which such intimation has to be given to the discharged employee. In this case, Rule 82(1)(b) will squarely apply. Hence failure to give registered notice which is admittedly not done in this case is fatal to the argument advanced by the Management as regards compliance of sec.25H. Even on this aspect of the case, we are of the view that the Labour Court is correct in coming to the conclusion that there is violation of sec. 25H and on that ground also, the workman has to be

reinstated in service. The Labour Court, after taking into consideration, the gainful employment of the respondent somewhere has correctly denied the back-wages."


5. Shri Shah also relied upon the judgment of this Tribunal in OA/113/97 (Annexure A-4) in which this Tribunal quashed the order of termination and ordered reinstatement.

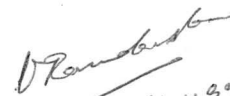
6. The applicant's service was orally terminated with effect from 20.5.85. The applicant ought to have filed an OA within the period of limitation. However, the applicant had filed the present OA on 8.3.89 after a period of about four years alongwith the condonation application MA/717/89 which is also being heard alongwith this OA. The applicant has not furnished any satisfactory explanation for the long delay in filing this application challenging the termination order. The MA is rejected and consequently Prayer A of Para 7 regarding quashing of termination order is rejected. With regard to Prayer AA of Para 7 regarding absorption, the respondents have clearly stated that the applicant was advised to attend the screening test between 26.11.91 to 29.11.91. However, no Registered notice was sent to him at the time of screening/offering re-appointment. In the light of the provisions contained in Rule 78 of the Industrial Disputes (Central) Rules, 1957, the action of the respondents is violative of the provisions of the Industrial Disputes Act. It is also found that a number of casual labourers who were junior to the applicant were subsequently absorbed by the respondents.

7. In the facts and circumstances, we hold that the

*Per*

applicant is entitled to regularisation in service from the date on which his juniors were absorbed (Sl. No.103 onwards) in the seniority list enclosed with the letter dated 31.10.91 (Annexure A-6). It is further directed that the applicant be reinstated treating to be in service and may be absorbed in regular employment as Class IV employee after screening in accordance with the rules. The applicant will be paid a lumpsum of Rs.15,000/- towards compensation in lieu of backwages. The Respondents are directed to implement the order within a period of three months from the date of receipt of the order. There will be no order as to costs.

  
(P.C. Kannan)  
Member (J)

  
24/11/98  
(V. Ramakrishnan)  
Vice Chairman

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