

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(S)

O.A. No. 546 OF 1989.
~~Texxxxx~~

DATE OF DECISION 7-7-1993

Jayantilal Harchandji Nogiya, Petitioner

Mr. S.V. Raju, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Jayantilal Harchandji Nogiya,
37, Maneklal Chhaganlal
Kachiya's Chawl,
Outside Jamalpur Darwaja,
Ahmedabad.

.... Applicant.

(Advocate: Mr. S.V. Raju)

Versus.

1. Union of India
Notice to be served on
the Secretary, Ministry of
Railway, New Delhi.

2. General Manager,
Western Railway,
Churchgate, Bombay.

3. Senior Divisional Electrical
Engineer, Western Railway,
Baroda.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 546 OF 1989

Date: 7-7-1993.

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

Heard Mr. S.V. Raju, learned advocate for the
applicant and Mr. N.S. Shevde, learned advocate for the
respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
casual labourer, who was working since 5th June, 1976
in the Electrical Power Department, Baroda Division
of Western Railway. It is the case of the applicant
as pleaded in the application that in the statement
showing the names of casual labourers belonging to
Electrical Power Department Baroda Division etc.

his name is shown working from 5th June, 1976 and working for 969 days in all upto 30th June, 1981.

The applicant was working as Senior Electrical Chargeman Refrigeration and Air Conditioning in the Western Railway, Ahmedabad till 8th August, 1980. It is the case of the applicant that he was terminated by a notice of retrenchment, Annexure A-2 dated 8th July, 1980 by the Divisional Assistant Electrical Engineer, Western Railway, Baroda which was challenged by the applicant before the Assistant Labour Commissioner (Central).

It is also alleged that in the course of conciliation proceeding, settlement was arrived at and the respondents agreed to take back the applicant from 4th March, 1981 with full backwages and the termination order was held illegal. The applicant has produced at Annexure A-3 the copy of the said order dated 3rd March, 1981. It is the case of the applicant that then he approached the respondents for compliance of the said agreement but the respondents did not pay any backwages and ultimately somewhere in May 1984 he was asked to be medically examined for the post of Cleaner in the grade of 196-232. Copy of which the applicant to undergo medical examination is annexed at Annexure A-4 dated 30th April, 1984.

It is the case of the applicant that he underwent the medical examination and to his knowledge he has cleared the same, that ultimately the applicant received letter dated 16th March, 1987 asking the applicant to bring necessary certificates etc. in the RAC office at Ahmedaba

on 19th and 20th March 1987, the copy of which is produced at Annexure A-5 dated 16th March, 1987. It is the case of the applicant that he accordingly went to the said office but he was not given any response or appointment. The applicant has therefore, prayed that the respondents be directed to reinstate the applicant in service as Senior Electrical Chargeman, Refrigeration and Airconditioning with full backwages from 8th July, 1980 and to treat him in continuous service with all benefits.

3. The respondents have filed reply contending that the application is barred by limitation because the applicant has challenged the termination order dated 8th July, 1980 and it is further contended that the cause of action having arisen three years before the establishment of the Administrative Tribunal, this Tribunal has no jurisdiction to entertain this application. The respondents have not disputed the fact that the applicant worked under the Senior Electrical Foreman/RAO Ahmedabad dated 8th August, 1980 and his services were terminated due to contraction of cadre vide letter dated 5th July, 1980. The respondents have denied that the letter dated 8th July, 1980 was illegal. It is contended that the letter Annexure A-2 which is a notice of retrenchment shows that the applicant was given one month's notice stating inter-alia that in pursuance of Rule 149 of I.R.E.C. Vol.I

new

and Section 25 of I.D.Act, the Divisional Assistant Engineer, Western Railway, Baroda had given the notice. It is contended that the applicant had not taken any action against the said notice for about three years. The respondents have denied that the applicant challenged the aforesaid termination before the Assistant Labour Commissioner (Central) as alleged. The respondents have not admitted that in the course of conciliation proceedings, settlement was arrived at and the respondents agreed to take back the applicant in service from 4th March, 1981 with full backwages as alleged. The respondents have denied that they agreed to take back the applicant in service. It is contended that the case of the applicant was given to one unrecognised Union, namely, Paschim Railway Karmachari Parishad in the year 1983 and the said Union represented the case of the applicant before the Assistant Labour Commissioner (Central) Ahmedabad, where the demand of the applicant was rejected by the Assistant Labour Commissioner (C) Ahmedabad as the applicant and the said Union were not interested in the conciliation proceedings and the conciliation had failed and the said decision was communicated by the Assistant Labour Commissioner (C) Ahmedabad vide his order dated 20th October, 1987 with no order as to costs. It is contended that the question of taking the applicant back on duty at this stage does not arise. It is further contended that the payment of retrenchment compensation was also arranged in

(13)

favour of the applicant by terminating his services on the expiry of the notice period, but the applicant refused to accept the same. It is further contended that over and above the payment of Rs. 3217.75 had been passed for the period from 8th August, 1980 to 3rd April, 1981 by order dated 9th May, 1983 and 20th June, 1983, but the applicant has not produced the entire copy of Annexure A with the forwarding letter which was issued by the Divisional Office in the year 1986 calling the casual labourers/substitutes for screening in March 1987. It is further contended that the screening of casual labourers as shown in Statement Annexure A-1 was kept at Ahmedabad on 19th March, 1987 and 20th March, 1987 and the Railway Administration had issued notice Annexure A-5 to the applicant that he should remain present on 19th March, 1987 and 20th March, 1987 for screening along with necessary certificates, but the applicant failed to attend the screening with relevant documents on the aforesaid two dates when the screening was fixed and as such the name of the applicant could not be placed on the panel of successful candidates for appointment in class IV service on regular basis. It is contended that if the applicant had appeared before the screening committee, it would have certainly considered the applicant in the said screening and could have taken decision regarding empanelment of the applicant or otherwise. The respondents have specifically denied any agreement having taken place

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during the conciliation proceedings.

4. The applicant has filed rejoinder in which he has stated that he has challenged the order of termination before Assistant Labour Commissioner and that the settlement was arrived at but the respondents have failed to act according to the settlement arrived at. He has also contended that he has also challenged the termination order in the Labour Court.

5. Though the respondents have contended that the application is barred by limitation and it is not maintainable before this Tribunal. It is necessary to observe that the applicant had filed M.A.768/88 for condonation of delay in filing this application and the same was allowed by the order of the Bench dated 13th December, 1989 and the application was also ultimately admitted by order dated 18th April, 1990. Therefore, the said contention of the respondents can not reagitated at the final hearing. There is no force in the grounds of the applicant that the order is illegal or arbitrary, capricious or violative of the provisions of Article 14, 16 & 311 of the Constitution of India. Article 311 of the Constitution of India does not apply as to the casual labour. So far Article 14 & 16 are concerned, it is not shown how the respondents have violated the said provision. On the contrary, Ann. A-2 shows that as back as on 8th July, 1980, a notice was given to the applicant under Rule 149 of I.R.E.C. Vol.I and

under section 25 of the Industrial Dispute Act. The respondents have also contended that the retrenchment compensation was arranged for payment, but the applicant refused to accept the same. So far the question of violation of provision of I.D. Act is concerned, we do not find any substances in it because as observed above, the notice Annexure A-2 was given and the compensation was also arranged to be paid to the applicant, but who refused to accept it. There is no question of reinstatement on the basis of conciliation proceedings because Annexure A-3 shows the letter written from SR DEE(E) BRC dated 3rd March, 1981 to AEE(BG) ADI. It is not an agreement arrived at during conciliation proceedings. The respondents have denied that there was any agreement arrived at in conciliation proceedings, therefore, there was no question of enforcement of agreement of conciliation proceedings in this case. There is no question of violation of principles of natural justice also. The applicant had ^{not} remained present on 19th March, 1987 and 20th March, 1987 for screening purpose as contended by the respondents. More over, the applicant in his rejoinder has stated that he has challenged the termination order in the Labour Court. Therefore, if the said averment is considered, he can not simultaneously take any proceedings before this Tribunal for the same cause of action. There are many disputed question of fact also as stated above in this case and therefore,

per

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we do not exercise our jurisdiction under Article 226 of the Constitution to entertain this application on the grounds mentioned in the application. The applicant ^{he} _{in} may if thinks fit raise industrial dispute and approach the proper forum under the I.D. Act, but in view of the disputed facts stated above and the averments of the applicant in his rejoinder also, this application is not maintainable before the Tribunal and the applicant is not entitled to any relief. Hence the application is dismissed with no order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

R.C.Bhatt

(R.C.Bhatt)
Member (J)

vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Application No. OA/546/89 of 199

Transfer Application No. _____ Old writ Pet. No. _____

C E R T I F I C A T E

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated : 27/06/93

Countersigned :

C. S. Patel
Section Officer/Court Officer

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Sign. of the Dealing Assistant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE DA/546/89 OF 19

OF 19

NAMES OF THE PARTIES J. H. Negia

VERSUS

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29/2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT AHMEDABAD.

(1), APPLICATION NO. 546 OF 1986

Jayantilal Harchandji Nogiya ... Applicant

Versus

1. Union of India & Ors. ... Respondents

I N D E X

Annx.	Particulars	Page Nos.
	Memo of petition	1 to 8
'A ₁	Copy of the Seniority list.	# 9
'A ₂	Copy of the letter dated 8.7.80, terminating the service of the applicant.	# 10
'A ₃	Copy of the letter dated 3.3.81 of resp.no.3.	# 11
'A ₄	Copy of letter dated 30.4.84 requiring the applicant to undergo medical examination.	# 12
'A ₅	Copy of letter/post card dt. 16.3.87 asking to xxxxxx bring necessary certificates etc. at R.A.C.office at Ahmedabad on 19/20-3-87.	13

DD 7/7/80
S.V.P
2X3

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT AHMEDABAD.

APPLICATION NO. 546 OF 1989

BETWEEN

Jayantilal Harchandji Nogiya,
37, Maneklal Chhaganlal
Kachiya's Chawl, Outside
Jamalpur Darwaja,
Ahmedabad.

....Applicant

Versus.

1. Union of India,
Notice to be served on
the Secretary, Ministry of
Railway, New Delhi.

2. General Manager,
Western Railway,
Churchgate, Bombay.

3. Senior Divisional Elec-
trical Engineer,
Western Railway,
Baroda.

....Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the Applicant:

1) Name of the applicant; - Jayantilal Nogiya

2) Name of Father: : - Harchandji

3) Designation and office - Employed as Senior
in which employed Electrical Chargeman
Refrigeration &
Airconditioning

4) Office address Ahmedabad.

5) Address for service of all notices -
Same as in the Title above.

2. Particulars of the respondent :-

1) Name and/or address of the respondent
2) Office address of the respondent
3) Address for service of all notices } Same as in the
title above.

3. Particulars of the order against which application

is made. The application is made against the

following order:

1) Order No. E/ELS23/1 As stated in para 6 herein
2) Date. 8-7-80 } below.
3) Passed by Divisional Asst. - Electrical Engineer W.R. Barode
4) Subject in brief.) Termination

4. Jurisdiction of the Tribunal

The applicant declares that the subject matter
of the order against which he wants redressal is
within the jurisdiction of the Tribunal.

5. Limitation:

The applicant further declares that the application
is within the limitation prescribed in
Section 21 of the Administrative Tribunals Act,
1985. Still, however, by way of abundant caution
the applicant submits that the following may be
considered for condonation of delay if any in
filing this application.

a) The applicant is a poor casual labourer
He was made to run from pillar to post
with the ~~max~~ hope that he will get his
job back. Even his medical test was
conducted, but no response were given to him.

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b) The applicant has no funds to engage a lawyer;

b) The applicant is an illiterate layman.

Interest of justice requires that the delay if any in filing this application should be condoned.

6. Facts of the case:

1) The applicant is a citizen of India and is entitled to the rights conferred by the Constitution of India.

2) The applicant was appointed as a casual ~~xx~~ labourer since 5.6.76 in the Electrical Power Department, Baroda Division of Western Railway. In the statement showing the names of the casual ~~xx~~ labourers/substitutes, the applicant's name is found at Serial No.162. A copy of the said statement, i.e. the Seniority list is annexed hereto and marked as Annexure 'A'. The applicant was working as Senior Electrical Chargeman Refrigeration and Air conditioning in the Western Railway, Ahmedabad till 8.8.80. However, by letter dated 8.7.80, the services of the applicant and one Dipak G were arbitrarily and illegally terminated. A copy of the said letter/order dated 8.7.80 is annexed hereto and marked as Annexure 'A₂'. The applicant challenged the aforesaid termination before the Assistant Labour Commissioner(C). In the course of conciliation proceedings, settlement was arrived at and the respondents agreed to take back the applicant

Annex.'A'.

Annex.'A'.

and the said Dipak G in service from 4.3.81 with full backwages. The termination of the applicant was treated as illegal and void. Hereto annexed and marked Annexure 'A₃' is a copy of the letter dated 3.3.81 of the respondent no.3 agreeing to take back the applicant in service.

Annex. 'A₃'

3) Thereafter, the applicant approached the respondents for compliance of the agreement arrived in the conciliation proceedings. However, the applicant was made to run from pillar to post and ultimately somewhere in May 1984 the applicant was asked to be medically examined for the post of cleaner in the grade of 196-232. A copy of the letter ~~xxxxxxxx~~ dated 30.4.84 requiring the applicant to undergo medical examination is annexed hereto and marked as Annexure 'A₄'. The applicant accordingly underwent the medical examination and to the knowledge of the applicant, the applicant has successfully cleared the medical examination. However, with ulterior motives the applicant was not given any service. Ultimately the applicant received a letter dated 16.3.1987 asking the applicant to bring necessary certificates etc. in the R.A.C. office at Ahmedabad on 19th and 20th March 1987. A copy of the said post card dated 16.3.87 is annexed hereto and marked as Annexure 'A₅'. The applicant accordingly went to the said office, but the applicant was not given any response ~~in~~ or any appointment.

Annex. 'A₄'

Annex. 'A₅'

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4) Being aggrieved by the arbitrary termination of services of the petitioner and the arbitrary non-implementation of the agreement arrived at during the conciliation proceedings, the applicant begs to prefer this application to this Hon'ble Tribunal on the following amongst other grounds that may be urged at the time of hearing.

G R O U N D S

- 1) That the order of termination of services of the applicant is illegal, arbitrary, capricious and violative of the provisions of Articles 14, 16 and 311 of the Constitution of India.
- 2) That the respondents by not reinstating the applicant with full backwages have not only committed violation of provisions of Industrial Disputes Act, but have also committed breach of agreement arrived at in the conciliation proceedings.
- 3) That the respondents are estopped from denying the reinstatement of the applicant in service in view of the agreement arrived at in the conciliation proceedings.
- 4) That the impugned action in not affording reinstatement of the applicant is not only arbitrary, but is also violative of the principles of natural justice as no reasons or personal hearing has been given to the applicant.

5) That the impugned action is even otherwise erroneous.

7. Relief sought:

In view of the facts mentioned in para 6 above, the applicant prays for the following relief:-

a) To direct the respondents, their officers, servants, agents, etc. to reinstate the applicant in service as Senior Electrical Chargeman, Refrigeration and Airconditioning with full backwages from 8.7.80 and to treat the applicant in continuous services right from the date of applicant's joining the resp. Railway for all purposes including seniority and other benefits.

8. Interim order, if prayed for -

a) Pending admission, final hearing and disposal of this application to direct the respondents, their servants, officers, agents, etc. to forthwith reinstate the applicant in service as Senior Electrical Chargeman Refrigeration and Airconditioning from 8.7.80 with ~~xxx~~ full backwages and to treat the applicant in continuous services for all purposes including seniority, and other benefits.

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b) to pass any other and further orders as may be deemed fit and proper;

c) to provide for the costs of this application.

9. Details of the remedies exhausted.

The applicant declares that the applicant has availed of all the remedies available to him under the relevant service rules etc.

10. Matter not pending with any other court, etc.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Bank Draft/Postal order in respect of the application fee :-

1) Name of the bank on which drawn;

2) Demand Draft No.

DD 787346

OR

1) Name of Indian postal order(s)

2) Name of the issuing Post office.

High Court Post Office

3) Date of issue of
Postal order(s)

28/7/84

4) Post office at which
payable

12. Details of Index:

An index in duplicate containing
the details of the documents to be
relied upon is enclosed.

13. List of enclosures.

In Verification:

I, Nogia Jayantilal son of Harchandji
resident of Ahmedabad do hereby verify that the
contents from 1 to 13 are true to my personal knowledge,
and belief and that I have not suppressed any material
facts.

Place: Ahmedabad.

S. V. Rayji
Signature of the applicant.

Dt :

To; The Registrar,

Anneuxes to this
petition are the
true copies
of the original

S. V. Rayji
Advocate

Filed by Mr.
Learned Advocate for Petitioners
with second set of 3 ... copies
copies copy served/not served to
other side

B - A - M -

Dt. 29/7/84 Dy. Registrar C.A.T.O
A'bad Bench

Statement showing the names of Casual Labours/Substitutes belonging to Electrical Power Department Baroda Division, and DEE(C) ADI for the purpose of screening.

Sr. No. in order of Se- niority	Shri Name of Casual Labour/ Substitutes	Working under engag- ment	Date of birth	Date of engage- ment	Age as on initial of engage- ment	Educa- tional quali- fica- tion	SC/ ST or other	Total work- ing days as on 30/6/81	Whether suitable or un- suitable	Remar- ks. commi- ttee note	Scree- ning note	
1	2	3	4	5	6	7	8	9	10	11	12	
1.	Sursing C	SEE(C) BRC	-	25.11.70	-	VIth	Other	3628	-	-	-	
2.	Kelosbhai C	SEE(C) BRC	1.6.50	21.1.72	21-7-20	1st	II	3234	-	-	-	
3.	Ahsanali M	(P) ADI	25.7.49	30-12-72	23.5.5	VIII	II	3188	-	-	-	
4.	Navalsing M	SEE(C) BRC	1-6-36	6-3-73	36-9-5	IVth	II	2887	-	-	-	
		XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	
		XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	
✓ 162	Jayentilal Nogia	RRG ADI	13-12-59	5.6.76	17-5-22		Other	763+206=969				
		XX	XX	XX	XX		XX	XX	XX	XX	XX	
		XX	XX	XX	XX		XX	XX	XX	XX	XX	

A

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WESTERN RAILWAY

By Regd. post A/d.
No. E/EL523/1.

Divisional Office,
Baroda,
Dtd. 8/7/1980

Specimen Form of Notice of Retrenchment
to be issued to a workman.

In pursuance of Rule No. 149 of the Indian Railway Establishment Code Volume I and Section 25 of the Industrial Dispute Act, 1947, I hereby give notice to Shri Jayantilal H, Casual Labour working under SELCCRACY ADI in Electrical Dept. that his services shall stand terminated with effect from the date of expiry of one month from the date on which this notice is served on or as the case maybe tendered to him. The termination of the services have been necessitated by (reasons for which are being terminated should be mentioned here)

1. The termination of service has been necessitated by a contraction in the cadre of working posts and due to reduction of workload.
2. The termination of services has been necessitated as the workman has not been selected as an Approved candidate for class IV services in _____ Deptt. by the duly constituted Recruitment Board.
3. The termination of the services has been necessitated as the workman has not passed the Medical Examination in Class _____ required for appointment in Class IV services in the _____ dept.

Divisional Assistant Electrical
Engineer
Western Railway, Baroda.

Correction made
on 26/8/84
regarding
Dkt to Advt cl
Mr. S. V. Puri
26/8/88

ANNEXURE 'A'.

16(8)

COPY

Western Railway,
Divisional Office,
Baroda Dt.3.3.81

No.W/EX/523/2.

To:
AEE(BG)-ADI
SELC(RAC)-ADI

Sub:-Alleged illegal termination of services of
Shri Deepak G & Jayantilal N.Casual Labour
under SELF(RAC)-ADI.

Ref: ALC(C)ADI's letter No.ELC/ADI/45/1(48/80) &
(49/80) dated 10.11.80.

During the course of conciliation proceedings held on 23.12.80 and finally on 19.2.81, it was decided that abovenamed 2 workmen were retrenched without observing the rules, Viz. seniority and grant of temp. status to Shri Deepak G in class IV category instead of class III category for the period he has worked in skilled category.

As the abovenamed casual labours were retrenched according to the date of granting temp-status and not from their date of initial engagement, their termination of services is illegal, invalid and inoperative under I.D. Act.

Under circumstances quoted above, both abovenamed casual labours should be taken back on duty immediately and date of taking back on duty may be advised to this office. The payment for the force idel period i.e. from the date of retrenchment viz. 10.8.80 to till they are taken back on duty, may be paid to them provided they are not employed elsewhere. The payment may be arranged after obtaining declaration from the individual.

sd/-
For SR.EEE(E)-BRC

Copy to ELC(C)-ADI with reference to your letters quoted above.
Copy to OS-Pay-Bill, Sr.DAO BRC, Personal case.

A₄

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ANNEXURE A

WESTERN RAILWAY

No. E.EL.840/1

AEE(BG)'s Office,
AHMEDABAD,

Dated 30.4.1984

To: SS(TL) ADI, C/- SEF(RAC) ADI

Sub:- Posting of Shri Jayantilal Nogia
Ref:- DRM(E) BRC's XR No. E.EL.840/8/3 Vil.IV of
27.4.84.

The above named is directed to be posted as Cleaner
in grade Rs.196-232(R) against vacancy.

He should be got medically examined in B-One category.

The date of engagement should be advised to this
office to report to Sr.DEE(E) BRC as desired by him under
jos anpve qipted XR message.

sd/-
AEE(BG) ADI

Copy to Sr.DEE(E) BRC
C/- Case No. E.EL.891/1.

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A5

અનેકુયર- ૧ એ. ૧

તારીખ. ૧૬-૩-૭૭.

આપણીને જ્ઞાવવાનું કે આપણી તારીખ ૧૬/૩ અને તા. ૨૦-૩-૭૭
ગુરુવાર અને શુદ્ધવાર ના દિવસે સ્ક્રીનિંગ માટે આપના (૧) -
એસ.સી. / એસટો. સાઈ (૨) સ્કુલ લીધાંગ સાઈ (૩) આઇ.ટી.આઇ
સાઈ (૪) એસ. એસ. ટી. સાઈ વિગેરે લઈને આર. એ. લી. ઓડિસમાં
સવારના ૮-૩૦ ડલાડે હાજર થયું.

આ નોટીસ ફોકાર્ફાક ડીઇડ સાહેબના હુકમથી લખેલ છે.

11/2
11/2
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD

O.A.NO.546 OF 1989

Jayantilal Harchanji Nogiya ^d ...Applicant

v/s.

Union of India & Others ...Respondents

WRITTEN STATEMENT

Respondents humbly beg to file written statement
opposing admission of the above matter as under:-

1. Contents of para 1 and 2 need no reply.
2. Regarding para 3 it is stated that the contents
need no reply.
3. Contents of para 4 need no reply.
4. Contents of para 5 are not true and are denied.

Recd (Copy)
18/4/90

It is stated that the applicant challenges order
No.E/EL.523/1 dt.8.7.80 terminating the services

of the applicant in the present application which is
filed on 29.7.88 that is more than 8 years from
the date of issue of impugned orders. This Hon'ble
Tribunal has no jurisdiction to entertain it ... 20-

: 2 :

an application where cause of action has arisen
more than
was at three years before the establishment of
the Administrative Tribunal under the Administrative
Tribunals Act 1985. In the present case the cause
of action to the applicant has arisen on 8.7.80
which is prior to the date 1.11.82 and as such the
present application is liable to be dismissed with
costs. The grounds taken by the applicant for not
filing the application within period of limitation
are not true and are not admitted by the respondents.

5. Contents of para 6(1) need no reply.

6. Contents of para 6(2) are not fully true and
are not admitted. It is not disputed that the
applicant was initially engaged as a casual labour
with effect from 5.6.76 under the senior Electrical
Foreman Refrigeration and Air Conditioning-Ahmedabad
in Baroda division. It is stated that annexure A/1
produced by the applicant is a statement showing
the names of casual labours/substitutes belonging
to Electrical Power Dept. of Baroda division and
Divisional Electrical Engineer, (Construction) ..3/-

Ahmedabad for the purpose of screening and the name of the applicant is shown at sr.no.162 in the said list. The applicant has produced only an extract from the statement prepared by the respondents. It is not disputed that the applicant worked under the Sr.Electrical Foreman/R.A.C./Ahmedabad upto 8.8.80 and his services were terminated due to contraction of cadre vide Asstt.Electrical Engineer, (BG) Ahmedabad's letter No.E/EL/523/1 of 5.7.80. It is denied that by the said letter dt.8.7.80 the services of the applicant and one shri Dipak C. were arbitrarily and illegally terminated. It is stated that the applicant was given one month's notice vide annexure A/2 dt.8.7-80 stating interalia that in pursuance of Rule No.149 of the Indian Railway Establishment Code Vol.I and S.25 of the Industrial Disputes Act 1947 the Divisional Asstt. Electrical Engineer, W.Railway, Baroda gives notice to the applicant, casual labour working under SELC(RACT) Ahmedabad in Electrical Dept. that his services shall stand terminated with effect from the date of expiry of one month, from the date on

which the said notice is served on or, as the

case may be, tendered to him and that the termination

of services has been necessitated due to contraction

in the cadre of working posts and due to reduction

of workload. Respondents rely on the said notice

issued by the competent authority to the applicant.

It is submitted that the applicant did not take any

action against the said one month's notice issued to

him in July 1980 for about 3 years. The applicant did

not file any proceedings in any appropriate forum

challenging the action of the respondents. It is

submitted that the applicant should have taken

legal steps challenging the said notice/termination

order within a period of 3 years from the date of

issue of the said order but no ~~ex~~ action was taken

by him. It is denied that the applicant challenged

the aforesaid termination before the Asstt. Labour

Commissioner(Central), ~~not~~ before the Central Conciliation and Arbitration Commission(Central) as alleged. It is not admitted ~~not~~

in the course of conciliation proceedings, settlement

was arrived at and the respondents agreed to take

back the applicant and the said Deepak C. in service

(3)
X8

: 5 :

from 4.3.81 with full back wages as alleged. It is

denied that the termination of the applicant was treated as illegal and void. The contents of ann.A/3 and the genuiness and correctness of the said letter at Ann.A/3 are not admitted by the respondents.

It is denied that the respondents had agreed to take back the applicant in service vide the aforesaid letter dt.3.3.81 (Ann.A/3). It is submitted that the case of the applicant was given by him to one of the unrecognised Union viz. Paghchim Railway, Karmachari Parishad in the year 1983 and the said Union represented the case of the applicant before the Asstt. Labour Commissioner, (Central) Ahmedabad. It is submitted that the demand of the applicant was rejected by the Asstt. Labour Commissioner, (Central) Ahmedabad as the applicant and the said Union were not interested in the conciliation proceedings and the case-conciliation had failed and the said decision was communicated by the Asstt. Labour Commissioner (C) Ahmedabad vide his orders No.L .410/1/8/81 D.L.B. of 20.10.87 with no order has to costs. It is submitted that the question of taking the applicant back on duty ..6/-

at this stage does not arise. It is submitted that the services of the applicant were terminated due to contraction in the cadre of working post by giving him one month's notice and retrenchment compensation by following the procedure laid down by the Industrial Disputes Act. It is submitted that the payment of retrenchment compensation was arranged in favour of the applicant by terminating his services on the expiry of the notice period, but the applicant refused to accept the same. It is further submitted that over and above payment of Rs. 3217=75 has been passed for the period from 8.8.80 to 3.4.81 vide CO 6 No. 241301 of 9.5.83 and CO 7 No. 24/123 of 20.6.83. It is submitted that the applicant has not produced the entire copy of Annexure A with the forwarding letter. No date has been mentioned by the applicant on the copy at Ann.A. The said list was issued by the Divisional office in the year 1986 calling the casual labour/ substitutes for screening in March 1987. Respondents

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: 7 :

humbly beg to rely on the original letter and the statement issued by the respondents as and when necessary. The applicant is trying to confuse the issue of termination effected on 8.8.80 with the statement (Extracts only) produced by him at Ann.A.

7. Contents of para 6(3) are not fully true and are not admitted. It is not admitted that after the issue of aforesaid letter dt.3.3.81 the applicant approached the respondents for compliance of the agreement arrived in the conciliation proceedings. The said averments are vague and without any details. The applicant has not produced any letter or representation made by him after the alleged conciliation in March 1981. It is denied that the applicant was / to run from pillar to post and / made ultimately some time in May 1984 the applicant was asked to be medically examined for the post of cleaner in the gr. of Rs.196-232(R). The correctness and genuineness of the letter dt.30.4.84, requiring the applicant to undergo medical examination which is produced by the applicant at annexure A/4 is not

admitted by the respondents. It is not admitted that the applicant accordingly underwent medical examination and has successfully cleared the said medical examination. It is denied that with ulterior motive the applicant was not given any service. It is stated that screening of casual labours (as shown in the statement at Ann.A) was kept at Ahmedabad on 19.3.87 and 20.3.87. It is submitted that the Railway Administration issued a ~~xxx~~ notice dt. 16.3.87 (Ann.A/5) with the application to the applicant stating interalia that the applicant should remain present on 19.3.87 and 20.3.87 i.e. on Thursday and Friday for screening alongwith (1) SC/ST Certificate, (2) School Leaving Certificate (3) I.T.I. Certificate, (4) S.S.C. certificate etc. in the office of RAC at 8.30 A.M. and that the said notice was issued as per orders of the D.E.E. It is submitted that the applicant failed to attend the screening with relevant documents on the aforesaid two dates when the screening was fixed and as such the name of the applicant could

(3)

: 9 :

not be placed on the panel of successful candidates

for appointment in class 4 service on regular basis
~~after screening~~.

It is submitted that at present there is a ban

~~faces~~

on engagement of fresh ~~as~~ intact of casual labours

with effect from 14.7.81 and on engagement of

at old faces with effect from 1987 without prior

approval of the General Manager. The averments of

~~that~~ the applicant on receipt of postcard dt. 16.3.85

he went to the office of R A C at Ahmedabad on

19th & 20th March 1987 but the applicant ~~was~~ not

given any response or any appointment are not true

and are denied. If the applicant had appeared before

the screening committee which was fixed on 19th

and 20 th March 1987 the screening committee would

have certainly considered the applicant in the

said screening and taken ~~as decision~~ decision

regarding empanelment of the applicant or otherwise.

The applicant was not called for offering appoint-

ment on 19th & 20th March, 1987 but was called

for screening only. The question of offering the

appointment to the applicant would have arisen

: 10 :

only after the applicant was screened and ~~recommended~~

recommended for appointment to class IV Post. It is

submitted that a candidate before appointment in

Railway service has to pass in the Medical category

which is required for the post ~~of~~ for which the

candidate ~~is~~ considered suitable for appointment

8. Regarding para 6(4) it is submitted that the

grounds of challenge taken by the applicant do not

exist. As stated hereinabove no agreement has been

arrived at during the conciliation proceedings.

It is denied that the termination of services of the

applicant is arbitrary. In any case this Hon'ble Tribunal

has no jurisdiction to entertain and try the appli-

cation wherein cause of action has arisen before

the 1.11.82.

(1) Contents of ground No.1 are not true and are

denied. It is denied that the order of termination

of services of the applicant is illegal, arbitrary,

capricious and violative of the provisions or ar-

ticles 14 and 16 and 311 of the Constitution of

(16)
14.

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India. It is stated that article 311 of the Constitution of India is not applicable to the present case. It is further stated that the services of the applicant were terminated by sway of discharge simpliciter in accordance with rule 149 of the Indian Railway Establishment Code Vol. I and S.25 of the I D Act. It is stated that the services of the applicant were terminated due to contraction of cadre of working post and due to reduction of work load. There is no violation of Article 14 & 16 of Constitution of India.

(2) Contents of ground (2) are not true and are denied. It is denied that by not reinstating the applicant with full back wages respondents have committed violation of provisions of Industrial Disputes Act as well as breach of agreement arrived at in the conciliation proceedings. As stated hereinabove the conciliation before the Asstt. Labour Commissioner (Central) Ahmedabad had failed to and there was no agreement arrived at in the conciliation proceedings to reinstate the applicant with full back wages. Once the conciliation proceedings have failed ... 12/-

: 12 :

the applicant has to challenge the order of the Asstt. Labour Commissioner before the competent forum. The applicant has not produced any order passed by the Asstt. Labour Commissioner (Central) Ahmedabad alongwith the application. It is submitted that respondents have not committed violation of any of the provisions of the Industrial Disputes Act or of the agreement ~~or~~ arrived at in the conciliation proceedings. As stated hereinabove when the services of the applicant were terminated he was ~~pay~~ paid retrenchment compensation which was due to him. The termination of the applicant was made after following the procedure laid down in the Industrial Disputes Act 1947 and as such it was legal and proper.

(3) Contents of ground (3) are not true and are denied. It is denied that the respondents are estopped from denying reinstatement to the applicant in service in view of the agreement arrived at in the conciliation proceedings. As stated hereinabove no such agreement has been arrived at during the conciliation proceedings but the conciliation ..13/-

26

: 13 :

had failed . The question of denying reinstatement to the applicant in service therefore does not arise. As stated hereinabove there is a ban on engagement of casual labourers and no casual labour can be appointed without prior personal approval of the General Manager.

(4) Contents of ground (4) are not true and are denied. It is denied that the impugned action is not affording reinstatement to the applicant is not only arbitrary but is also violative of the principles of natural justice since no reasons for personal hearing has been given to the applicant as alleged. It is submitted that the question of affording principles of natural justice or giving any reasons or personal hearing to the applicant did not arise. As stated hereinabove the conciliation had failed and there was no question of reinstatement. When the applicant was called for screening on 19th & 20th March 1987 alongwith necessary certificates he should have ~~appressed~~ appeared before the screening committee. If the applicant had ...14/-

: 14 :

appeared before the screening committee and were placed on panel ,on being found successful in the screening ,the respondents would have offered the applicant an ⁱappointment as per his turn but the said question also does not arise as the applicant has not appeared for the screening.

(5) : Contents of ground (5) are not true and are denied. It is denied that the impugned action is otherwise ~~is~~ erroneous.

9. Applicant is not entitled to any of the reliefs claimed in para 7 of the application.

10. Applicant is not entitled to any ~~of~~ interim relief^s prayed for in para 8 of the application.

11. Contents of para 9 to 13 need no reply.

In view of ~~not~~ what is stated above the application may be dismissed with costs.

Baroda.

Dt. 4.4.90 Vidhu Kashyap
File No 1840

76 26/12/90 ~~Mr.~~ Divisional Personnel Officer

(18)
18

: 15 :

VIDHU KASHYAP
I, A. K. Nigam, Sr. Divisional Personnel Officer,

Western Railway, Baroda, do hereby state that what is stated above is true to my knowledge and information received from the records of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dt. 4.4.90

VIDHU KASHYAP

Reply/Rejoinder/written submissions
filed by Mr. ~~A. S. S. Shinde~~
Learned Advocate for petitioner/
Respondent with second copy
Copy served/ not served ~~on other side~~

Dt. 28/12/90 ~~By~~ ^{M. R. Patel} Dy. Registrar C.A.T. (J)
A'bad Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

(59)

M.A./O.A./T.A. No. 768 1988 in or stamp no 538/88J. H. Negia

Applicant(s)

Versus

S V Raju

Adv. for the petitioners.

Union of India & Ors

Respondent(s)

N S Sherde

Adv. for the respondents.

Sr. No.	Date	Orders
		Combination & delay (Copy Served)
1	2-12-88 P/O	Mr. N.S. Sherde requests for time. Mr. S.V. Raju has no objection. Allowed. Adjourned to 21/1/89 for hearing on orders.
	21/12/88	Reason for adjournment Disposed of <u>Colle</u> A. V. Kadi Deputy Registrar (J) Central Administrative Tribunal Ahmedabad Bench
2	2/1 Adj 5 F/O	Mr. N.S. Sherde requests for time. Mr. S.V. Raju not present. Adjourned to 30/1/89 for orders.
	2/1/89 PSM	A. V. Kadi Deputy Registrar (J) Central Administrative Tribunal Ahmedabad Bench
3	30/1/89 Adj 5 F/O	Mr. N.S. Sherde, advocate for respo. informed to Mr. N.S. Sherde, advocate for respo. 21/1/89
	9/8/89 F/O	Mr. N.S. Sherde, advocate for respo. informed to Mr. N.S. Sherde, advocate for respo. 21/1/89

Sr. No.	Date	Order
	19/10/89	Deto (Det. change from 9-8-89 to 19-10-89 due to oral instruction for not to be filed any matter of PA/Po/PO during mondays (Wed. & Fridays))
	19/10/89	matter is not placed on board of 19-10-89 as per oral instructions from Honble Mr. May be placed in D.C.
	6/12/89	
	13/12/89	Deto

Deto

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Submitted.

C.A.T./Judicial Section.

Original Petition No. : _____ of _____.

Miscellaneous Petition No. 768 of 1988.

Shri J H Nogia Petitioner

Versus

Union of India & a

This application has been submitted to the Tribunal by Shri S V Ryu under Section 19 of the Administrative Tribunals Act, 1985. It has been scrutinised with reference to the point points mentioned in the check list in the light of the provisions contained in the Administrative Tribunals Act, 1985 and Central Administrative Tribunal (Procedure) Rules, 1985.

The application has been found in order and may be given to concerned for fixation of date.

The application is not been found in order for the same reasons indicated in the check list. The applicant may be advised to rectify the same within 21 days/Draft letter is placed below for signature.

MA is not in possible purport

5/10/88
We may inform accordingly
objec^d

Asst

Draft
5/10/88

5/10/88

we may issue objection letter

B/10

Asst

objec^d
6/10/88

Draft

objec^d
6/10/88

100

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT AHMEDABAD.

MISC. APPLICATION NO. 768 OF 1988
(For condonation of delay)

IN

O.A. NO. of 1988

*Tom sent to N.S. Level
1/11/88*
Jayantilal Harchandji Nogiya,
37, Maneklal Chhaganlal
Kachiya's chawl, Outside
Jamalpur Darwaja, Ahmedabad.

.....Applicant

Versus

1. Union of India,
Notice to be served on
the Secretary,
Ministry of Railway,
New Delhi.

2. General Manager,
Western Railway,
Churchgate,
Bombay.

3. Senior Divisional Elec-
trical Engineer,
Western Railway,
Baroda

.....Respondents

The applicant herein submits as under:-

1. The applicant has filed Original Application
No. of 1988 in this Hon'ble Tribunal. However
delay has occurred in filing the aforesaid O.A.
on account of the following reasons:

- 1) That the applicant is almost illiterate person and was not aware of the period of limitation. There was correspondence going on and no intimation was received from the respondents after letter dated 19/20-3-87.
2. The applicant, therefore, prays that this Hon'ble Tribunal be pleased :-

- a) to condon the delay in filing the O.A. No. of 1988;
- b) To pass any other and further orders as may be deemed fit and proper;
- c) to provide for the costs of this application.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE APPLICANT AS IN DUTY BOUND SHALL FOR EVER PRAY.



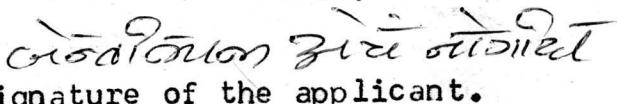
(S.V.RAJU)
ADVOCATE FOR THE APPLICANT.

Ahmedabad,

Dt 21/8 -10-88.

Verification

I, Jayantilal H. Nogita, residing of Ahemedabad do hereby varify that the contents from 1 to 2 are true to my personal knowledge and belief that I have not suppressed any material facts.


Signature of the applicant.

(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT AHMEDABAD.

MISC. APPLICATION NO. 768 OF 1988
(for condonation of delay)

IN

O.A. NO. OF 1988

Jayantilal Harchandji Nogiya ... Applicant

Versus

1. Union of India & Ors. ... Respondents

I N D E X

Annex.	Particulars	Page Nos.
	Memo of application	1 to

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT AHMEDABAD.

MISC. APPLICATION NO. OF 1988
(For condonation of delay)

IN

ORIGINAL APPLICATION NO. OF 1988

Jayantilal Harchandji Nogiya,
37, Maneklal Chhaganlal
Kachiya's Chawl, Outside
Jamalpur Darwaja, Ahmedabad. Applicant

Versus

1. Union of India,
Notice to be served on
the Secretary,
Ministry of Railway,
New Delhi.

2. General Manager,
Western Railway,
Churchgate,
Bombay.

3. Senior Divisional Elec-
trical Engineer,
Western Railway,
Baroda. Respondents

DETAILS OF APPLICATION

1. Particulars of the : As shown in the title
Applicant. : above.

2. Particulars of the : As shown in the title
respondents : above.

3. Particulars of the order against which application is made.

The application is made for condonation of delay in filing O.A. No. of 1988.

4. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation:

The applicant further declares that the application is within the limitation prescribed in Sec.21 of the Administrative Tribunals Act 1985.

6. Facts of the case:

The brief facts of the case are as under:-

6. 1) The applicant submits that on account of the following facts, delay has taken place in filing O.A.No. of 1988.

- a) The applicant is almost illiterate person and was not aware of the period of limitation. There was correspondence going on and no intimation was received from the respondents after letter dated 19/20-3-87.

7. Relief(s) Sought:

In view of the facts mentioned in para 6 above, the applicant prays for the following relief.

a) to condon the delay in filing the O.A.

No. of 1988.

8. Interim order, if prayed for -

9. Details of the remedies exhausted:

The applicant declares that the applicant has availed of all the remedies available to him under the relevant service rules, etc.

10. Matter not pending with any other court, etc.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Bank Draft/Postal order in respect of the application fee :-

1) Name of the bank on which drawn;

Information required

2) Demand Draft No.

OR

1) Name of Indian Postal order:

2) Name of the issuing Post Office:

3) Date of issue of postal order(s):

4) Post office at which payable:

12. Details of Index:

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosures.

.....6

170.823

VERIFICATION

I, Jayantilal, son of Archanji Nogia, aged about 28, years residing at Ahmedabad, do hereby verify that the contents from 1 to 13 are true to my personal knowledge, and belief and that I have not suppressed any material facts.

diverit wint orat zio

Place: Ahmedabad:

Date : -9-88

To:

The Registrar,

29
28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO.546 OF 1989.

Jayantilal Harchandji Nogiya

... Applicant

Versus

Union of India & Ors.

... Respondents.

REJOINDER

*Copy send to Mr. N.S. Sevdele
to me for
Advocate for
Opposite side
of you*
2/4

I, Jayantilal Harchandji Nogiya, the applicant herein on solemn affirmation state as follows:-

1. That I am conversant with the facts of the present case. That I have perused a copy of the Written Statement filed by the respondents and in rejoinder thereto I have to submit as under.
2. With reference to para 4 of the Written Statement I deny the contents thereof. I submit that I have challenged the order of termination before Assistant Labour Commissioner and there the settlement was arrived at. But the respondents have failed to act according to the settlement arrived at and they have not taken me back in the services. Further more, I have also challenged this termination order in the Labour Court. Thereafter, I have filed the present application in this Hon'ble Tribunal. I submit that though the present application has been filed by me on 29.7.1988(after 8 years of passing of the termination order on 8.7.1980), this Hon'ble Tribunal

2/4
S. T. Regd
P.D.W
P.D.W
7.7.83

has allowed the delay in filing this application.

3. With reference to para 6 of the Written Statement I deny the contents thereof. I submit that my services were arbitrarily and illegally terminated by the department. I deny that my services were terminated due to reduction of work load, but due to prejudice. In fact, the workload has not been reduced. On the contrary it has increased. I submit that I had made a representation regarding the termination of services to RAC-ELC-APS Department. I had also made a representation before Assistant Labour Commissioner(C) after receiving the Show Cause Notice. I submit that I have challenged the order of termination before the Assistant Labour Commissioner(C), and in the course of conciliation proceedings, settlement was arrived at (letter dated 3.3.81) and the respondents had agreed to reinstate the applicant and the said Dipak G. I submit that the termination was treated as illegally void. I submit that the Union, i.e. Pashchim Railway Karmachari Parishad is a recognized Union. I submit that I have refused to accept the notice pay because if I had accepted the said payment, all my rights would have been ceased.

4. With reference to para 7 of the Written Statement I deny the content's thereof. I submit that I have approached the respondents after receiving the order of Assistant Labour Commissioner dated 3.3.1981. I submit that I have gone for the screening test on 19.3.87 and 20.3.87, but uptill now no reply was given by the department in this connection. The respondents have made me unfit with prejudice.

5. With reference to para 8.2 of the Written statement I deny the contents thereof. The order of the termination of services is illegal, arbitrary, capricious and violative of the provisions of Art.14, 16 and 311 of the Constitution of India. I submit that my services were terminated due to prejudice.

6. With reference to para 8.3 of the Written Statement I deny the averments made therein. I deny that there was no agreement arrived at in the conciliation proceedings. I submit that my services were not terminated after following the necessary legal procedure. Thus it was illegal and improper. Further I submit that no prior permission of the General Manager is needed when casual labourers are appointed.

7. With reference to para 8.4 and 8.5 of the Written Statement, I deny the contents thereof.

8. With reference to paras 9, 10, and 11 of the Written Statement, the same needs no reply.

9. In view of what is stated hereinabove and in view of other submissions to be made

Explaned in
my answer to
the defendant
Lalji Singh
Advocate

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5. With reference to para 8.2 of the Written statement I deny the contents thereof. The order of the termination of services is illegal, arbitrary, capricious and violative of the provisions of Art.14, 16 and 311 of the Constitution of India. I submit that my services were terminated due to prejudice.

6. With reference to para 8.3 of the Written Statement I deny the averments made therein. I deny that there was no agreement arrived at in the conciliation proceedings. I submit that my services were not terminated after following the necessary legal procedure. Thus it was illegal and improper. Further I submit that no prior permission of the General Manager is needed when casual labourers are appointed.

7. With reference to para 8.4 and 8.5 of the Written Statement, I deny the contents thereof.

8. With reference to paras 9, 10, and 11 of the Written Statement, the same needs no reply.

9. In view of what is stated hereinabove and in view of other submissions to be made at the time of hearing, I submit that the present application requires to be allowed with costs.

What is stated herein above is true to the best of my knowledge, ~~and~~ information, and belief and I believe the same to be true.

Ahmedabad

Dt. 7-4-93.

grizzled giant otter

DA 8/16/1993 Dy. Registrar U. H.
A'bad Benc