

9

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO.** 169/1990

~~XXXXXX~~

**DATE OF DECISION** 29-3-1995.

Bahilolkhan Arvarkhan \_\_\_\_\_ Petitioner

Mr. G.A. Pandit \_\_\_\_\_ Advocate for the Petitioner (s)

Versus

Union of India & Others \_\_\_\_\_ Respondent

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

**CORAM**

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

**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 fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

N.D

Bahilolkhan Anvarkhan,  
Village Napa,  
Tal. Borsad,  
Dist. Kheda.

..... Applicant

(Advocate : Mr. G.A. Pandit)

Versus

1. Union of India,  
Through The General Manager,  
Western Railway,  
Churchgate, Bombay.

2. The Division Railway Manager,  
Vadodara Divn., Western Railway,  
Pratapnagar,  
Vadodara.

3. The Sr. Division Commercial Supdt.,  
Vadodara Divn., Western Railway,  
Pratapnagar,  
Vadodara.

4. The Station Superintendent,  
Western Railway,  
Anand.

..... Respondents

(Advocate : Mr. N.S. Shevde)

JUDGMENT

O.A. NO. 169 OF 1990

Date : 29-3-1995.

Per : Hon'ble Mr. K. Ramamoorthy, Member (A)

The present application is against the oral order of termination ordered on 10-8-80 of the services of one Shri Bahilolkhan Anvarkhan who was an employee of the Railways. This applicant, however, died on 6-1-1993 and therefore, the suit is being continued by the heirs of this employee for the limited purpose of the heirs getting such other compensation available

to the employee if his applications were to succeed.

2. Briefly the facts of the case are as follows. The original applicant of whom the present applicants are the heirs was employed as a Substitute Ticket Collector on 7-11-1977 and his services were continued upto 10-8-80 on which date his services were orally terminated. Being aggrieved with this order, he had approached the Labour Commissioner for conciliation. On the failure of conciliation on 14-10-82 a reference was sought to be made to the concerned forum. However, such a reference was refused by the Ministry of Labour on 31-10-83 whereupon the applicant sought to get redressed of his grievance by way of a regular Civil Suit No.690/85 filed before the Civil Court at Nadiad. This, however, was transferred as T.A. No.224/87. This T.A. was dismissed on jurisdictional grounds on 31-10-88. Hence the present application was filed on 13-12-88 by the Railway employee in question. This employee, as stated earlier, died on 6-1-93 whereupon the heirs have joined as parties.

3. The short contention of the applicant at the time of filing the application was that having worked with the Railways from 7-11-77 as a Substitute employee till 10-8-80, his services could not have been terminated without following due process of law. Because of the time spent with the respondents, he was entitled to be given temporary status and even otherwise provisions of sec.25 F were attracted since the Railway was an industrial establishment. No such procedure has been followed.

4. The respondents have resisted the application

mainly on two grounds. The first ground of opposition is the factor of delay. It is the contention of the applicant that the matter pertained to the period 10-8-80 well before the three year period preceding the establishment of the C.A.T. There was no satisfactory explanation even otherwise of this long period taken in filing application which has been shown on 13-12-88 regarding a grievance which arose on 10-8-80. The second ground urged by the applicant is that the applicant had not completed the requisite number of days required as casual labour for getting either temporary status or for getting any benefits under the Industrial Disputes Act.

5. Taking the factor of limitation first, the Tribunal cannot overlook the fact that the applicant has been more or less pursuing the matter of the redressal of his grievance almost since 1982 before different fora. As regards the contention that the cause of action actually arose at a period well before the setting up of the C.A.T., the Supreme Court has in more than one case stressed on the need to see that an applicant is not left without a forum for redressal of his grievance which would be the case if this technical view was to be taken since after the Administrative Tribunal Act, the jurisdiction of the Civil Courts has been barred. This Tribunal has, therefore, no hesitation in taking up this case for adjudication since the applicant has no other forum to agitate his grievance at this stage. While we do not deny the technical plea that pursuit of a case before the conciliation forum will not extend the

period of limitation, we hold that the time spent by the applicant in pursuing the matter through different fora is condonable and is so condoned.

6. Coming to the facts of the case, it is true that the applicant has not been able to furnish any specific evidence regarding the actual dates of service put in by the applicant. Since the original employee is not alive any more, it would be futile to insist on the present applicants to provide such evidence. On the other hand, we are constrained to remark that the respondents have also not come out with any categorical statement regarding the actual service put in by the applicant, beyond stating that he had not completed the required period of time, the respondents are silent as to whether the applicant has actually put in enough days of work as substitute labour to enable him to get the benefit such as temporary status, etc. than mere casual labour on project, though in a separate communication by the Railways to the Ministry of Labour on 14th October, 1982 when the issue of reference to the Labour Court was under consideration, the Railways have stated, "that the employee used to attend his office only in 5 to 15 days in a month". It is significant that the applicant has been continued in employment till August, 1980 and the applicant has been engaged as Luggage Clerk also which engagement is conceivable only if the applicant has had gained some experience behind him. It is obvious from the written reply received that the provocation for the termination ~~for~~ of the service of

the applicant is alleged negligence in engaging private labour in place of contract labour as has been brought out in para 4 of the written reply of the respondents.

7. In view of the silence on the part of the respondents in giving specific information and in view of the fact that the applicant has been in employment for a period of 33 months with a minimum attendance of 5 days in a month with the engagement coming to an a termination only because of a misdemeanour, the Tribunal has no hesitation in drawing adverse inference that by August, 1980, the applicant had certainly put in enough service of 120 days to earn a temporary status, specially when it is stipulated vide Railway Board No.E(NG) ii-82/SB/8 dated 6-1-1983 that "in case of substitutes the gaps that occur between 2 engagements should be ignored for the purpose of grant of temporary status".

8. It is true that during such period the services can be terminated on detection of any misdemeanour, but in case of even temporary servants, a discharge implicitly or also provides for a minimum notice period. In the case of casual labour who has obtained temporary status, a notice period of 14 days is provided for under the rules of the Railway Civil Servants. In these circumstances, an oral termination without any notice whatsoever is certainly not according to law.

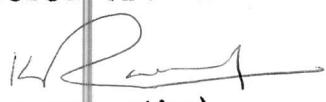
9. Having come to this conclusion, the Tribunal has to decide on the kind of relief that can be given in such a case. Looking to the circumstances of the case where even in respect of an event which occurred

in 1980 the applicant has approached this Tribunal only in 1988, time having been lost in pursuing the matter in different and wrong fora, this Tribunal is inclined to granting of back wages only to the extent of 50% for the period from 13-12-88, date of filing of the petition and upto 6-1-93, the date of death of the deceased Railway servant.

10. The family members will also be entitled to other benefits that may be made available to families of casual labour who would have obtained temporary status, since as per para 2318 of the IREM, "Substitutes should be afforded all the rights and privileges which should be admissible to temporary Railway servant from time to time on completion of six months continuous service". In view of this, it is open to the respondents to reconsider the case of the widow of the deceased Railway servant for compassionate appointment if her earlier application had been rejected only because of the fact that she was not considered to be eligible for any such compassionate appointments in view of the service status of her husband

11. We direct the respondents to see that the back wages as has been ordered above should be paid to the widow of the deceased Railway servant within a period of 8 weeks.

12. With the above directions, the application is disposed of. No order as to costs.

  
(K. Ramamoorthy)  
Member (A)

  
(N.B. Patel)  
Vice Chairman

Date

Office Report

ORDER

13-6-95

As the Hon'ble Vice Chairman is not available, adjourned to 19-6-95.

(K.Ramamoorthy)  
Member (A)

ss

19-6-95

M.A. 366/95

Heard. M.A. allowed. Extension of time to comply with the judgment granted till 31.7.95. M.A. stands disposed of. No order as to costs.

(K.Ramamoorthy)  
Member (A)

(N.B.Patel)  
Vice Chairman

ss

13-10-1995.

At the request of Mr. Shevde adjourned to 13-10-1995.

(V. Radhakrishnan)  
Member (A)

(N.B.Patel)  
Vice Chairman.

\*AS.

Date	Office Report	ORDER
13.10.95		<p>M.A. 661/95 in O.A. 169/90</p> <p>Heard Mr. Shevde and Mr. Trivedi for Mr. Pandit. M.A. allowed. Extension to comply with the judgment granted till 31st October, 1995 making it clear however, that if any contempt proceedings are already filed and if it is ultimately held that the respondents have committed punishable contempt, this extension will not save them from the consequences of contempt.</p> <p>M.A. stands disposed of accordingly.</p> <p><i>VR</i></p> <p>(V.Radhakrishnan) Member(A)</p> <p>(N.B. Patel) Vice Chairman</p> <p>vtc.</p>
13.11.95		<p>Leave note filed by Mr. Pandit. Adjourned to 21.11.95 at the request of Mr. Shevde who states that he furnished a copy to Mr. Pandit's office only today.</p> <p><i>VR</i></p> <p>(V.Radhakrishnan) Member(A)</p> <p>(N.B. Patel) Vice Chairman</p> <p>ab</p>

Date

Office Report

ORDER

2.4.96

M.A. 19/96 in O.A. 169/90

Mr. Pandit is supposed to appear for the respondent (Orig. applicant). Mr. Shevde states that he has served the copy of M.A. to his son. Adjourned to 11.4.1996.

*br*  
(V.Radhakrishnan)  
Member (A)

vtc.

11-4-96

Mr. Pandit is not present. ~~Mr. Shevde~~,  
Adjourned to 2-5-96, at the request of  
Mr. Shevde.

*br*  
(V.Radhakrishnan)  
Member (A)

*V*  
(N.B.Patel)  
Vice Chairman

\*ss

2.5.96

M.A. 19/96 in O.A. 169/90

Notice to the L.Rs of the deceased  
Bahilekhan Anvarkhan as mentioned in the  
cause-title of the O.A. returnable on 10.6.96.

*br*  
(V.Radhakrishnan)  
Member (A)

*V*  
(N.B.Patel)  
Vice Chairman

vtc.

Date

Office Report

ORDER

21-11-1995

M.A. 748/95 in O.A. 169/90

Mr. Shevde states that he had furnished a copy to Mr. Pandit. None is present for the opponent in the M.A. M.A. allowed to the extent of granting time till 15-12-1995 to comply with the judgment. No further extension will be given. It is also made clear that observations made in M.A. No. 661/95 regarding contempt will continue.

*1/2*  
(V. Radhakrishnan)  
Member (A)

*7*  
(N.B. Patel)  
Vice Chairman.

\*AS.

12.1.96

Notice of M.A. returnable on 30.1.96.

*1/2*  
(V. Radhakrishnan)  
Member (A)

vtc.

30.1.96

None present for the parties. Adjourned to 27.2.1996.

*1/2*  
(V. Radhakrishnan)  
Member (A)

Notice returnable on 2nd April 1996.

*1/2*  
(V. Radhakrishnan)  
Member (A)

*7*  
(N.B. Patel)  
Vice Chairman

pmr

We have already  
signed vehicles on  
19/1/96 R.P.A.D. have  
also been in for court's  
order we have again  
signed 26/3/96  
in 13/3/96

16

Date	Office Report	ORDER
10.6.96		<p>None present for the parties.</p> <p>Adjourned to 10.7.1996.</p> <p> (K. Ramamoorthy) Member (A)</p> <p> (A.P. Ravani) Chairman</p> <p>vtc.</p> <p><u>M.A. 19/96</u></p> <p>Mr. Shevde promises to give the copy of M.A. to Mr. Pavan Kumar. Mr. Pavan Kumar promises that necessary form <sup>will</sup> <del>got</del> filled by the legal heirs of the applicant within 2 weeks from today. The respondents are directed that when such form is received by them, necessary action may be taken.</p> <p>M.A. stands disposed of accordingly.</p> <p> (V. Radhakrishnan) Member (A)</p> <p>ssh</p>
10-7-96		