

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 322 OF 1990

TAX NO.

DATE OF DECISION 21-4-1995

Budhabhai Vachatphai Baria **Petitioner**

Mr. P.H. Pathak **Advocate for the Petitioner (s)**

Versus

Union of India & Another **Respondent**

Mr. N.S. Shewde **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

- 2 -

Budhabhai Vachatphai Baria,
C/o Manubhai Virshingbhai Shops,
Post Sant Road, Godhara,
Panchmahals District.

..... Applicant

(Advocate : Mr. P.H. Pathak)

Versus

1. Union of India,
Through The General Manager (W.R.),
Churchgate,
Bombay.

2. The Chief Telecom Inspector,
Western Railway,
Railway Station,
Ahmedabad.

..... Respondents

(Advocate : Mr. N.S. Shewde)

JUDGEMENT

O.A. NO. 322 OF 1990

Date : 21-4-1995

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

The present applicant challenges the verbal order of termination of the applicant by the respondent No.2 from 21-2-87. The applicant has claimed that the termination was in violation of various provisions under the I.D. Act and he had been wrongly denied the benefits of temporary status as provided for in the Railway Establishment Manual when persons junior to the present applicant had been continued and given such benefits.

2. The short facts of the case are as follows. The present applicant was working as a casual labour under respondent No.2 since 1976. The applicant was given work for a few months and the last spell of work performed by the applicant was for the period from 12-11-86 to

20-2-87. The services of the applicant were verbally terminated by the respondents without giving any reason w.e.f. 21-2-87. According to the applicant, the periods of services rendered by the applicant as casual labour were as under:

27-12-1976 to 31-3-1977	- 96 days
06-08-1980 to 25-4-1981	- 267 days
04-05-1981 to 20-6-1981	- 48 days
30-06-1984 to 20-9-1984	- 82 days
12-11-1986 to 20-2-1987	- 101 days

The applicant has produced service card signed by the Officers of the respondents in support of the above entries excepting for the last but one entry for which purpose he has produced a separate certificate signed by the Chief Telecom Inspector, Microwave, Western Railway. According to the counsel for the applicant, the applicant's case was covered directly by the judgment of this Tribunal itself in O.A. No.204/87 decided on 11-8-88 whereby five employees of the very same respondents who had been appointed later than the present applicant (the present applicant's first appointment date is from 1976 whereas the services of the five applicants stated in the said judgment range from 1979 to 1982) were ordered to be reinstated. The counsel for the applicant stated that the case of the present applicant was also covered by the judgment of the Supreme Court in the case of Inderpal Yadav & Others Vs. Union of India (1985 SCC L&S 526).

3. The counsel for the respondents, on the other hand, contested the claim of the applicant on the ground that the applicant was not entitled to any benefits as asked for. As regards the record of service of the applicant with the Railways is concerned, apart from disputing the last but one entry i.e. for the period 30-6-84 to 20-9-84, the counsel for the respondents pointed out that the period of service is of two distinct types. According to the counsel for the respondents, the period of service of the applicant from 27-12-76 to 31-3-77 and 12-11-86 to 26-2-87 were in the "open line" while the rest of the services were as Project Casual Labour. In view of this feature of the service of the applicant, the applicant was not entitled to the benefits of temporary status. The counsel for the respondents stated that the applicant could have attained temporary status if he had 120 days of service in open line but this had to be continuous. The applicant did not have such continuous service of 120 days as the services of the applicant according to the Service Card were in two spells of 96 days and 101 days separated by a period of 9 years. It is this feature which distinguished the case from that of the applicants in O.A. No.204/87 referred to by the counsel for the applicant because the applicants in the case of 204/87 had clearly the benefit of continuous working in 129 days on "open line" having worked from 15-10-86 as against the present applicant who worked from 15-10-86 as against the present applicant who worked from 22-11-86 only though his services were also terminated by the same order of 21-2-87. The counsel for the

respondents stated that as Project Casual Labourer, he should have worked for 360 days on which count also the present applicant fell short. Even though there is reference to such service having to be "continuous", the counsel for the respondents conceded that in case of Project casual labour, 360 days requirement can be met by adding work in different spells of time. In the case of Ram Kumar & Others V/s Union of India in AIR 1988 S.C. 390, this position had been conceded by the Additional Solicitor General on instructions obtained from the Railway Officers present in Court that in case of Project casual labour "continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account". According to the counsel for the respondents, the present applicant did not have the service of 360 days as Project casual labour also.

4. The point has to be conceded that the Railways have treated casual labour working in what is called open line and Project casual labour working in Projects differently. IREM does provide for temporary status for the casual labour on completion of their 120 days of continuous work. However, this benefit was not made available to Project casual labour which necessitated the intervention of the Supreme Court in the case of Inderpal Yadav quoted earlier. By the intervention of the Supreme Court, a specific scheme has been formulated which provides for grant of temporary

status on completion of 360 days work even if it be in different spells and not continuous in the literal sense of the term. This has been spelt out in the Railway Board circular of 11-9-86 followed by a specific letter of 9-12-88 by Headquarters of Western Railway. The counsel for the respondents vehemently urged the point that in calculating this period of 360 days one has to take into account only the period of ~~360~~ service put in as Project casual labour. He was not prepared to concede the additive nature of the work put in by the applicant in open line. We are unable to appreciate this argument of the counsel for the respondents. Admittedly, the Railways treat the work in open line as a service entitled to better privileges. The applicant's choice for working in open line therefore, is understood. The fact that Supreme Court had to intervene in the case of Project casual labour was only due to the fact that such labour seemed to be without any specific protection. If, therefore, the applicant thereafter puts in service as Project casual labour, it cannot wipe out the earlier service put in by the same casual labourer. For giving the benefit of Inderpal Yadav judgment referred to earlier, the spirit of the directions of the Supreme Court will have to be taken into account and in sub-para (iii) in para 5.2.1, the Railway Board also has clearly spelt it out as under:

"This will be covered by the direction of the Hon'ble Supreme Court that whether the implementation of this direction involve some adjustment, the same must be done".

We have, therefore, no hesitation in ruling that for the purpose of calculation of 360 days and for giving the benefits of Inderpal Yadav judgment, the services put in by the applicant in open line has to be taken into account. In view of this matter, this Tribunal has no hesitation in declaring that the case of the present applicant will certainly fall under Sr.No.(iv) in the Schedule given in para 3 under 5.1.(b).

5. We cannot also uphold the contention of the respondents that the service put in by the applicant between 30-6-84 to 20-9-84 as indicated in the certificate issued by the Chief Telecom Inspector, Microwave, Western Railway, under its cover of 20-9-84 cannot be accepted as such merely because it was not recorded in the Service Card. Admittedly the service Card is kept by the casual labourer himself but the mere fact that a particular entry has not been recorded cannot deprive him of the service if it has actually been put in. In view of the certificate produced by the applicant, we have no reason to disbelieve his statement on this count. On this finding, the applicant will be entitled to the benefit of 120 days of continuous service in the open line also if the periods of breaks in between the three distinct periods of service in open line rendered by the applicant is involuntary.

6. The counsel for the respondents has also made the point that the Inderpal Yadav judgment did not automatically call for reinstatement. It only

prescribes the mode for regularisation. The Railways had a regular system of recalling casual labourers who have been discharged on the basis of the Live Register and after preparation of the Live Register, casual labourers are re-employed as per fresh recruitment and their services are regularised as per the mode prescribed in the Inderpal Yadav judgment. In this view of the matter, therefore, even if the applicant's claim is accepted, it only establishes his right to be recalled and does not call for an order for reinstatement.

7. We have carefully considered this point made by the counsel for the respondents. This argument would however, not help if a particular workman has already acquired certain rights which had been infringed. Even if the record of the service in open line of the applicant is not treated as continuous and the breaks are not considered as involuntary and even if the 180 days period of continuous work in Project Labour is not considered as applicable for giving a temporary status to this particular applicant, in this particular case, the applicant is admittedly in service on 1-1-81 and is clearly covered by para 6.1(b) in para (iv) of the Supreme Court judgment of 11-8-86 specifically referred to in para 3 of the Railway Board letter of 11-9-86 in view of the first two entries in the Service Card of the applicant admitted by the counsel for the respondents by virtue of our finding mentioned in para 5. By virtue of

this, the applicant has already acquired a temporary status on completion of 360 days i.e. on 11-5-1981 when he was in service. Thereby the termination of his service on 20-6-81 without adhering to the safeguards granted to the temporary employees is clearly illegal and void. For the very same reason, in O.A. No.204/87 decided on 11-8-88, this Tribunal had held that the Railway Administration should be directed to reinstate the petitioner. On the same analogy, we have no hesitation in holding that action of the respondents, Railway Administration, in terminating the services of the petitioner is bad in law and the same is hereby quashed and set-aside.

8. In view of the above reasoning, the action taken by the Railway Administration in terminating the services of the petitioner is quashed and the respondents are directed to reinstate the petitioner within a period of three months from the date of this judgment. As regards back wages, in view of the fact that the delay has been condoned back wages will become payable only for a period of one year prior to the filing of this petition i.e. w.e.f. 1-9-1988. The respondents are directed to see that this payment is effected within a period of four months.

9. In the result, the application is allowed leaving the parties to bear their own costs.


(K. Ramamoorthy)
Member (A)

kvr


(N.B. Patel)
Vice Chairman

Date	Office Report	ORDER
4-10-1995		<p><u>M.A.636/95 in O.A. 322/90</u></p> <p>The applicant to furnish copy of the M.A. to the opponent's counsel Mr. Pathak. Adjourned 11-10-1995.</p> <p><i>(V. Radhakrishnan)</i> <i>(N.B. Patel)</i> Member (A) Vice Chairman.</p> <p>*AS.</p>
11.10.95	<i>Received copy of MA Notice may not be issued in Rail in the matter Rail</i> <i>13/10/95</i>	<p>Notice of M.A returnable on 6.11.1995 unless copy of the M.A. is furnished to Mr. Pathak within four days. Adjourned to 6.11.1995.</p> <p><i>(V. Radhakrishnan)</i> <i>(N.B. Patel)</i> Member (A) Vice Chairman</p> <p>vtc.</p>
6.11.95		<p><u>M.A.636/95 in O.A.322/90</u></p> <p>Heard Mr. Shevde and Mr. Pathak. The matter has been pending with the Railway Board since long for taking decision whether SLP should be filed or not. The request for extension of time will be considered only if the Railway Board takes decision and communicates the same to this Tribunal through its advocate latest by 16.11.95.</p> <p><i>(V. Radhakrishnan)</i> <i>(N.B. Patel)</i> Member (A) Vice Chairman</p> <p>vtc.</p>

Date	Office Report C.R.	ORDER
16.11.95		<p><u>M.A. 636/95 in O.A. 322/90</u></p> <p>We do not see any ground to extend the time. M.A. 636/95 is rejected.</p> <p><i>Ab</i></p> <p>(V.Radhakrishnan) Member (A)</p> <p>(N.B. Patel) Vice Chairman</p> <p>vtc.</p>
3-1-96		<p>Adjourned to 9-1-96.</p> <p><i>Ab</i></p> <p>(V.Radhakrishnan) Member (A)</p>
9-1-96		<p><u>M.A. 802/95</u></p> <p>The time requested for has already expired. M.A. has become infructuous and disposed of accordingly.</p> <p><i>Ab</i></p> <p>(V.Radhakrishnan) Member (A)</p>
		<p>AS*</p>