

(6)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 346/90  
T.A. No.

DATE OF DECISION 26-7-93

Shri Pursottam Bariya Petitioner

Shri C.D. Parmar Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel

Vice Chairman

The Hon'ble Mr. V. Radhakrishnan

Member (A)

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 ?

No.

Parsottam Mohan Bariya  
Near Old Rly Station Quarter No.56  
Jamnagar.

Applicant.

Advocate: Mr. C.D. Parmar

Versus

Union of India  
Owing and representing  
Western Railway through

1. The General Manager  
Western Railway  
Churchgate, Bombay
2. The Divisional Rly. Manager  
Western Railway, Kothi Compound  
Rajkot.
3. I.O.W. Hapa,  
Western Railway  
Dist. Jamnagar

Respondents

Advocate : Mr. B.R. Kyada

ORAL JUDGEMENT

In

O.A. 346 of 1990

Date: 26-7-1993

Per Hon'ble Shri N.B. Patel

Vice Chairman

The applicant, who was employed as a casual labourer at Viramgam-Okha-Porbandar Project, states that his employment as a casual labourer was terminated by an oral order on 20-3-1986 by the respondent no.3 and challenges the validity of the said alleged oral

termination of his services with effect from 20th March 1986 and prays for reinstatement in the employment with all consequential benefits.

2. T There is no dispute about the fact that the applicant was appointed as a casual labourer somewhere in 1981 and from 1983 to 20th March 1986 he had worked for different spells as casual labourer, as enumerated in para. 2 of the reply filed by the respondents. There is also no dispute about the fact that from 21-3-1986 onwards the applicant is not in the employment of the Railways as a casual labourer. However, it is contended that there was no termination of the employment of the applicant as alleged by him but the applicant himself had voluntarily abandoned his job after 20-3-1986 and was thereafter continuously remaining absent from duty. The applicant has produced his service-card at Annexure-1 showing the number of days on which he worked from 1983 to 1986 which <sup>tallies</sup> substantially L with the statement of number of days, for which the applicant had work from 1983 to 1986, as mentioned in para 2 of the reply. There is no doubt that the applicant had acquired temporary status before March 1986. Looking to the relevant provisions in the Indian Railway Establishment Manual namely, paragraph 2001, there can never be any dispute about the fact that the applicant, having completed more than 120 days of working without <sup>a</sup> break from 2-7-1985 to 17-12-1985, had acquired temporary status. It was the contention of Mr. Kyada that,

even if one completes 120 days of continuous employment, one does not automatically acquire temporary status because certain procedural steps, such as finding out suitability and fitness of the employees have to be carried out and only if they pass such tests that temporary status can be conferred on them. On a bare perusal of para 2001, we are unable to accept this contention raised by Mr. Kyada. We therefore, hold that the applicant had acquired temporary status before March 1986.


3. Once it is held that the applicant had acquired temporary status, as done by us, there cannot be any dispute that his services could not have been orally terminated. That is why perhaps the respondents have come out with the version that there was no question of terminating the services of the applicant as the applicant had voluntarily abandoned service and was not reporting for duty since 21st March, 1986 . The only question which requires to be decided in this case is whether the applicant had abandoned his employment as stated by the respondents or whether the applicant's employment was orally terminated by the respondents as contended by the applicant. The first thing to be noted in this connection is that, at the relevant time, the applicant was working under the respondent no.3 at Hapa. The applicant has clearly stated on oath that, even after 20-3-1986, he was repeatedly reporting for duty but was not allowed to work and was assured that he will be given employment "very shortly".


This version put forward by the applicant is, of course, controverted in their reply by the respondents. But it is material to note that this reply is not filed by any person or officer having personal knowledge whether the applicant was actually reporting for duty or not after 20-3-1986. The reply is filed by D.R.M. having no personal knowledge and whose word cannot, therefore, be accepted as sufficient to controvert the sworn testimony of the applicant that he had not abandoned his job. Apart from this, we are in respectful agreement with the view taken by the Ernakulam Bench of the Tribunal in O.A. 1047/91 that, there is no presumption of abandonment and it must actually be proved and further that a notice has to be given to the employee to resume work and unless such a notice is given, the absence of an employee cannot be treated as abandonment. We have, therefore, no hesitation in accepting the plea of the applicant that his services, along with the services of some other three persons, were actually orally terminated and that there is no substance in the plea that the applicant had left the job.

4. Mr. Kyada contended that the very fact that the application is filed in 1989 by the applicant, even though his case is that his employment is terminated on 20-3-1986, shows that there was no termination of service but abandonment of employment by the applicant. We are not impressed by this argument, because the applicant appears to be extremely poor and, probably, an illiterate person and may not be aware of his rights.

<sup>or</sup>and may not be sufficiently vigilant to enforce his rights. What impresses us is the fact that the applicant's word that he had not abandoned his job, is not adequately controverted by any person who could have legally done so.

5. Since we find that the applicant had acquired temporary status and since we further find that his services have been orally terminated, we hold that the termination of the service of the applicant is illegal and void and requires to be quashed and set aside. However, in view of the fact that the applicant has approached this Tribunal after inordinate delay, we find that, <sup>though</sup> the applicant is entitled to reinstatement, ~~but~~ his claim for back-wages antecedent to the date of this order must be turned down. Accordingly, the application is allowed. The oral termination of the service of the applicant dated 20-3-86 is hereby quashed and set aside and the respondents are directed to reinstate the applicant in employment with all consequential benefits except back-wages till the date of this order. The respondents are directed to reinstate the applicant in service and pay him wages from the date of this order till the date of actual reinstatement, within a period of three months from the date of the receipt of a copy of this order and grant him all other consequential benefits. Application is allowed accordingly. No order as to costs.

  
(V. Radhakrishnan)  
Member (A)

  
(N.B. Patel)  
Vice Chairman