

# CENTRAL ADMINISTRATIVE TRIBUNAL

## AHMEDABAD BENCH



**O.A. NOs.** 53/91 and 54/91

**~~T.A. NO.~~**

DATE OF DECISION 04/5/1995

Additional Divisional Railway Manager **Petitioner**

Mr. B. R. Kyada

Advocate for the **Petitioner (s)**

**Versus**

Shri Bhavansingh Rupchand &

**Respondent**

Shri Kanujilal V. Kahar

Shri B. B. Gogia

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 ?

No.

: 2 :

O.A.53/1991

Additional Divisional Railway Manager,  
Western Railway,  
Rajkot.

(Advocate: Mr.B.R.Kyada)

Versus

Shri Bhavansingh Rupchand,  
Quarter No.177,  
Lal Bahadur Shastri Nagar,  
Rajkot.

(Advocate: Mr.B.B.Gogia)

12

: Applicant

: Respondent

O.A./54/1991

Shri D.K.Bansal,  
Additional Divisional Railway Manager,  
Western Railway, Rajkot.

(Advocate: Mr.B.R.Kyada)

Versus

Shri Kanujilal V.Kahar,  
C/o.B.B.Gogia, Advocate,  
7, Gaikwadi Plot,  
Rajkot.

(Advocate: Mr.B.B.Gogia)

: Applicant

: Respondent

ORAL ORDER

Date:04/5/1995

Per: Hon'ble Mr.N.B.Patel

: Vice Chairman

Both these applications involve the same question, namely, about the legality of the judgment of the Third Labour Court, Rajkot in Central Recovery Applications No.26/86 and 6/84. The workmen in both the cases were removed from service and they ~~are~~ challenged the removal orders and, ultimately, the removal orders were held to be illegal and were set aside with a direction to the Railways

(14)

to reinstate them. In one case, namely; Central Recovery Application No.26/86 (O.A.No.53/91), the removal order was set aside by the District Court and was confirmed by the High Court in Second Appeal with a direction not only to reinstate the workman but also to pay him 60% back-wages. In the other case, namely; Central Recovery Application No.6/84 (O.A.No.54/91), the removal order was set aside by the Court of the Civil Judge, Senior Division, Rajkot with a direction to reinstate the workman and also to pay him arrears of back-wages. It appears that the workmen in both the cases were reinstated and payment of back-wages were also made to them. However, payment of bonus amounts and payment for the leave due to them to the extent that the leave was treated as lapsed was not made to them and, therefore, they had filed Recovery Applications under Section 33-C (2) of the Industrial Disputes Act. It appears that either, before, or, during, the pendency of the Recovery Applications, bonus and back-wages were paid to the two workmen and the only question which remained for consideration by the Labour Court was whether the workmen were entitled to any payment on account of leave which was treated as lapsed having exceeded 180 days which was the limit upto which earned leave was allowed to be accumulated.

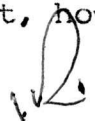
2. The recovery applications were resisted on the ground that workmen, who were removed and removal orders in respect of whom were subsequently declared illegal and who were consequently reinstated in service, were not entitled to cash equivalent of the


13

leave in excess of 180 days of leave which was the maximum permissible limit of leave that can be allowed to be accumulated. This contention has been negatived by the Labour Court in both the cases on the ground that in the case of the applicants-workmen, it was not on account of any fault <sup>on their part</sup> that leave in excess of 180 days had lapsed as they could not have asked for any such leave since they were not in service at that period. Therefore, in their case they were entitled to claim cash equivalent of leave to the extent the leave was treated as having lapsed by way of compensation. We do not find any reason to interfere with this conclusion of the Labour Court, because the reason on which the conclusion is based appears to be quite valid. If the workmen had not been illegally removed and they had continued to be in service, they could have availed of the leave which was treated as having lapsed.

3. On behalf of the Railways, the learned counsel Mr. Kyada made a submission, in passing, that the Labour Court has no jurisdiction to entertain an application under Section 33-C (2) for recovery of cash equivalent of leave. We find that no such contention regarding lack of jurisdiction on the part of the Labour Court was raised before the said Court and, therefore, the same cannot be permitted to be raised here for the first time.

4. In the result, both the OAs are dismissed without, however, any order as to costs.

  
(K. Ramamoorthy)  
Member (A)

  
(N. B. Patel)  
Vice Chairman