

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

O.A. No. 737/87
~~XXXXXX~~

198

DATE OF DECISION 16.1.1990

Naresh Babulal Yadav Petitioner

D..V.Gangal Advocate for the Petitioner(s)

Versus

Union of India Respondent

R.K.Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J)

The Hon'ble Mr. M.Y.PRIOLKAR, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

9
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.737/87

Naresh Babulal Yadav,
Sant Dnyaneshwar Marg,
OPP. Mahendra Mettle
Gandam Plot,
AKOLA - 444 001.

.. Applicant

vs.

1. The Union of India
through
The General Manager,
Central Railway,
Bombay V.T.

2. The Divisional Railway
Manager,
Central Railway,
Bhusaval,
Dist. Jalgaon.

.. Respondents.

Coram: Hon'ble Member(J) Shri M.B. Mujumdar
Hon'ble Member(A) Shri M.Y. Priolkar

Appearances:

1. Mr.D.V.Gangal
Advocate for the
applicant.
2. Mr.R.K.Shetty
Advocate for the
Respondents.

ORAL JUDGMENT:

Per M.B. Mujumdar, Member(J)

Date: 16.1.1990

The applicant holds a certificate from the Industrial Training Institute in Diesel Mechanic. Since 5.9.1980 he was working as a monthly rated casual labourer under the Chief Telecommunication Inspector at Bhusaval. His services were terminated with effect from 19.7.1985 as his services were no longer required in the department after that date. The applicant has challenged the termination on various grounds.

2. The respondents have filed their written statement justifying the termination and the applicant has filed a rejoinder thereto. The respondents have filed a sur-rejoinder today.

3. We have heard Mr.Gangal learned advocate for the applicant and Mr.R.K.Shetty,learned advocate for the respondents.

4. Mr.Gangal challenged the order of termination on four grounds viz:(i) retrenchment compensation was not paid to the applicant on 18.7.1985,which was his last working day but it was paid on the next day i.e. 19.7.1985 which is contrary to Section 25-F of the Industrial Disputes Act and various decisions of the Supreme Court and this Tribunal;(ii) the respondents have not terminated the services of five ~~xxxxxx~~ other persons who are junior to the applicant;(iii) permission for retrenchment was not taken from the appropriate Government as required under Section 25-N of the Industrial Disputes Act; and (iv) services of the applicant were terminated by the Chief Telecommunication Inspector who is lower than the appointing authority i.e. General Manager.

5. As regards the second point it is not proved ~~xx~~ before us that the respondents have retained any person who is junior than the applicant while terminating the services of the applicant. The applicant had given five names in the rejoinder but it is not proved before us that they are junior to the applicant.

6. As regards the fourth point we find that the services of the applicant were terminated by the Chief Telecommunication Inspector. As the applicant was working as a casual labourer on monthly rated basis there is no appointment order as such. He was working in Microwave Section of the Bhusaval Division. According to the respondents the Chief Telecommunication Inspector was authorised to make

appointment in that section. As the service, of the and applicant was terminated by the same authority/there is nothing to show that he was appointed by the higher authority we find no substance in the fourth point.

7. However, as regards the first point the applicant is having a very strong case. Admittedly the applicant worked upto 18.7.1985. In fact that was his last working day. However, they have paid retrenchment compensation on the next day i.e.

19.7.1985. Section 25F reads as under:-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government, or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Clause(b) is material in this case and in effect it

prohibits retrenchment of an employ unless he has been paid at the time of retrenchment compensation at a particular rate. In Suryakant R.Darole v. Divisional Railway Manager, Central Railway, Bombay (ATR 1988 (1) CAT 158) the Bench comprising of Mr. Justice B.C. Gadgil, the then Vice Chairman ~~of~~ ^{has} and Mr. L.H.A. Rego Administrative Member ~~have been~~ held, after considering all the relevant judgments of the Supreme Court and High Courts that payment of retrenchment compensation on the next date of retrenchment is bad in law. By that judgment 10 original applications filed before this Tribunal were decided. Para 10 of the judgment shows that the applicants in 4 applications were retrenched on 26.1.1986 but they were called upon to collect the retrenchment compensation on the next day i.e. 27.1.1986 as 26.1.1986 was a public holiday. Still this was held to be contrary to the provisions of Section 25F of the Industrial Disputes Act. In all ~~these~~ cases ~~also~~ Mr. R.K. Shetty who appears for the respondents in this case had appeared on behalf of the respondents. He had relied on a number of decisions. Still payment of compensation after retrenchment was held to be illegal. We are bound by this judgment and hence we hold that the retrenchment of the applicant with effect from 19.7.1985 was illegal because he was paid compensation on 19.7.1985 i.e. on the next day of retrenchment.

8. To meet this legal difficulty Mr. Shetty submitted that the services of the applicant were terminated after 19.7.1985. He relied on the notice dtd. 11.6.1985 by which the applicant was informed that his services would be no longer required in the department after 19.7.1985. But in our opinion this argument is a afterthought. The applicant had worked upto and inclusive of 18.7.1985. He was paid his salary

upto that date only including that date. Retrenchment compensation was paid by calculating that he had worked upto that date. According to Mr. Shetty even if the applicant had come to work on 19.7.1985 the respondents would have allowed him to work on that day. But apart from the fact that ^{this} ~~it~~ is not mentioned in the written statement, ^a ~~it~~ is specifically mentioned in the written statement (paras 1 & 4) that the services of the applicant were terminated with effect from 19.7.1985. Hence there is no escape from the conclusion that though the applicant was retrenched on 18.7.1985 after office hours, retrenchment compensation was paid to him on the next date i.e. on 19.7.1985. Though the point is technical we are bound by the law as laid down by the Supreme Court and ~~by~~ this Tribunal. Hence we are constrained to set aside the order terminating the services of the applicant.


9. Coming to the last point, we find that the respondents had not taken any permission of the appropriate Government for his retrenchment as required under Section 25N of the Industrial Disputes Act. In Shri Jivan Govind v. Union of India and others, 1989(3)SLJ CAT 92, Ahmedabad Bench of this Tribunal has held that in the absence of permission of the appropriate ~~authority~~ Government the action of retrenchment becomes illegal and invalid. But Mr. Shetty submitted that hardly 72 employees are working in the establishment in which the applicant was working and hence Chapter 5B of the Industrial Disputes Act in which that section is included will not apply to the facts of ~~this~~ case. On the contrary it was submitted by Mr. Gangal that the establishment does not mean the establishment in which the applicant was working ^{it means} but the entire Division. ~~should be taken as establishment~~. We do not find it necessary to express any opinion on this point in view


13

of the fact that the applicant is bound to succeed because the provision of 25F(b) ^{is} ~~are~~ not fulfilled in this case.

10. In result we pass the following order which is similar to the order passed by this Tribunal in Suryakant R.Darole's case referred to above.

- (i) The application is allowed.
- (ii) The retrenchment order dated 11.6.1985 at Annexure 'D' page 13 of the application is hereby quashed and set aside;
- (iii) It is hereby declared that the applicant continues in service of the respondents and they are directed to reinstate him with full backwages and other benefits permissible to him according to the rules right from 19.7.1985.
- (iv) Respondents shall reinstate the applicant within one month from the date of receipt of a copy of this order and shall pay all the arrears due to the applicant within four months from the date of receipt of a copy of this order.
- (v) Parties to bear their own costs.


(M.Y. PRIOLKAR)
Member(A)


(M.B. MUJUMDAR)
Member(J)