BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT SITTINGS AT NAGPUR

Original Application Nos. 5, 6, 7 & 8/1987

1. Shri Suresh J. Warudkar,
Ex-Khalasi, C.R.Nagpur,
R/o Ajni, Nagpur,
C/o P.T.Trivedi, Advocate
Near Nagarkhana, Mahal,
Nagpur. .. Applicant in O.A.No.5/87

2. Ramdas N. Gaikwad,
Ex-Khalasi, Central Rly.,
Nagpur,
R/o Parwati Nagar, Nagpur,
C/o P.T.Trivedi, Advocate
Near Nagarkhana, Mahal,
Nagpur. .. Applicant in O.A.No.6/87

3. Shri Chhabiprasad T. Bopche,
Ex-Khalasi,
Telegraph & Signal Dept.,
Central Railway,Nagpur
C/o P.T.Trivedi, Advocate
Near Nagarkhana, Mahal,
Nagpur. .. Applicant in O.A.No.7/87

4. Shri Gangadhar V. Chavan,
Ex-Khalasi, C.R. Nagpur,
C/o P.T. Trivedi, Advocate,
Near Nagarkhana, Mahal,
Nagpur. .. Applicant in O.A.No.8/87

V/s.

1. General Manager,
Central Railway,
Bombay V.T.,
Bombay.

2. Chief Signal Inspector,
Central Railway,
Nagpur. .. Respondents in O.A.Nos. 5, 6, 7 & 8 of 1987

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil
Hon'ble Member(A), Shri P. Srinivasan

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Appearance:

1. Shri P.T.Trivedi,
   Advocate
   for the applicants

2. Shri P.S.Lambat,
   Advocate
   for the respondents

ORAL JUDGMENT:- Date: 20.6.1988

(PER: Shri B.C. Gadgil, Vice-Chairman)

These four matters can be decided by a common judgment as the question involved ~~in~~ are identical.

2. We may give facts pertaining to Original Application No.5 of 1987. The applicant was appointed as Khalasi by the Railway Authority on 26.8.1983. A notice terminating his service was issued to him on 16.8.1986 and under that notice his services were terminated from 19.9.1986. Subsequently the applicant was taken back in service on 15.10.1986. The difference, however, ~~is~~ was initially that he was ~~earlier worked~~ working on a monthly salary of Rs. 800/- per month while subsequently he was appointed on a daily wage of about Rs. 15/- . The facts in the remaining three applications are the same except for difference in dates. There is no dispute that each of the applicants had completed 240 days of service when notices terminating their service ~~was~~ were issued to them.

3. The applicants' grievance is that the termination of their services was bad as retrenchment compensation was not paid to them as contemplated in Section 25F of the Industrial Disputes Act. It is on this ground that they

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challenge the termination of their services and pray that they should be re-instated with all back wages.

4. The respondents have resisted the contentions of the applicant by filing their reply to all the applications. In the replies it is not disputed that each of the applicants has completed 240 days of service before their services were terminated. It is also not disputed that the Indistrial Dispute Act applies to their cases. It was, however, contended that there was no intention to retrench the applicants as they were reappointed on daily wage soon after and hence the question of payigg retrenchment compensation did not arise.

5. We have heard Mr. P.T.Trivedi, Advocate for the applicants and Mr. P.S. Lambat, Advocate for the respondents. As already mentioned, it is common ground that each of the applicants had completed 240 days of service, similarly it is an undisputed fact that retrenchment compensation was not paid at the time of termination of their services. The meaning of the retrenchment as contemplated in Section 2(00) of Section 25F of the Industrial Dispute Act was gone into by the Supreme Court in the case of Santosh Gupta V. State Bank of Patiala, A.I.R. 1980 SC 1219. The relevant head notes reads as follows:

> ".... The expression "Termination of service for any reason whatsoever" in Section 2(00) covers every kind of termination of service except those not expressly included in Section 25F or not expressly provided for by other provisions of the Act such as 25FF and 25FFF etc....."

In view of this decision it will not be possible for

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respondents to contend that the termination of the services of the applicant is not retrenchment as contemplated by the Industrial Disputes Act.

6. Reliance is placed on the decision of the Patna High Court in the case of N.P.C.Corpn. V/s. Their Workmen, reported in 1970 Labout and Industrial Cases 907, wherein it ~~is~~ was held that the employment of work-charged or muster-roll workmen is of temporary character and, therefore, it ~~is~~ was wholly inequitable to force the employer to continue to employ them or pay retrenchment compensation. In our view this decision of the High Court is no longer good law in view of the above mentioned decision of the Supreme Court.

7. Though it was not specifically mentioned in the written reply, the respondents have today made an application contending that these applications are premature as the applicants have not exhausted all departmental remedies available to them as contemplated by Section 20 of the Administrative Tribunal's Act. The applicants should have processed the matter before a Labour Court under the Industrial Dispute Act and that without doing so they cannot come to the Tribunal. A plain reading section 20 shows that an applicant should exhaust all remedies under the service rules. Approaching ~~to~~ the Labour Court is not a remedy under the service rules and hence Section 20 will not come in the way of the applicants. We may refer to the Amending Act of 1986 whereby Administrative Tribunals Act was amended. Originally under section 2(b), disputes arising under the Industrial Disputes Act were ~~extended~~ excluded from the jurisdiction of this

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Tribunal. However, clause 2(b) was deleted by the above mentioned Amendment Act. Consequently the applicant had a chance either to approach an authority under the Industrial Disputes Act or to come to us under the Administrative Tribunals Act. Therefore, the objection of the respondents in this regard is rejected.

8. The respondents have today filed the service records of each of the applicants to show that each of the applicants had not served the Railway Administration continuously from the date his first appointment. This is neither here nor there particularly when it is not disputed that each of the applicants has completed 240 days of service.

9. The termination of services is challenged before us on the ground that it amounts to retrenchment and as retrenchment compensation was not paid, the rentrenchment was bad. The claim of the applicants has to be allowed. The retrenchment of the applicants is bad in law and they are entitled to the following reliefs:

10. The applications Nos. 5, 6, 7 & 8 are allowed. The termination of the services of each of these applicants by the notice dated 16.8.1986(which made the termination effective from 19.9.1986) is bad. It is declared that all the applicants shall be deemed to have continued in service from 19.9.1986. Each of the applicants are entitled to the payment of full salary and other allowances from 19.9.1986 till date. It was fairly conceded by Mr.Trivedi that while making such payment of arrears the amounts that have been paid to them by way of daily wages should be

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deducted and only the balance ~~would be~~ paid to them. The Railway Administration is authorised to do so. It is needless to say that the respondents may continue the services of the applicants in the department in which they are now working. However, the applicants should be treated as having continued in service from 19.9.1986 and should be paid from that date full salary and other permissible allowances as they were drawing before their services were terminated less amounts paid to them by way of daily wage.

Parties to bear their own costs.

sd/-
(P.Srinivasan)
Member(A)

sd/-
(B.C. Gadgil)
Vice-Chairman