

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPURxOxxNx
T.A. No. (N) 264/87

198

DATE OF DECISION 19-1-1989

S.S.Vishwakarma & 33 Ors.

Petitioner(s)

Shri N.C.Phadnis for
Shri C.G.Madkholkar

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondent

Shri S.K.Sanyal

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. P.S.Chaudhuri, 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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Tr.(N)264/87

1. S.S.Vishwakarma,Driver A
2. Sohan Singh, Driver A
3. G.N.Gour,Driver A
4. N.B.Kondhalkar,Driver A
5. P.N.Shinde,Driver A
6. Prem Singh Meshram Singh,Driver C
7. S.C.Dutta
8. S.T.Mudliar,Driver C
9. Jarnail Singh Raghubirsingh Dr.C
10. D.C.Maske, Shunter
11. Nathoo Bhagat, Shunter
12. Nilkanth Bhadoo, Shunter,
13. Newton Elaiza,Shunter
14. Bhimrao Digambar Bagul,Shunter
15. Bansilal Biharilal,Diesel Asstt.
16. Navrang Sadashiv,Diesel Asstt.
17. Alexander John, Diesel Asstt.
18. Shriram Sitaram,F/Man
19. Gobichand Pandoo,F/Man.
20. Ganpat Sambha,F/Man
21. Sambha Arjoon,F/Man
22. Bharat Singh,F/Man
23. Shriram Chaube,F/Man
24. Kisan Waman Bagul,F/Man
25. Dayaram Narayan,F/Man
26. H.D.Cauthani,Driver A
27. J.C.Sasan,Driver A
28. Ballo Singh,Driver C
29. Jugal Kishore Yadav,Driver C
30. M.G.Bapat,Driver C
31. Gulab D.Driver Asstt.
32. Gulab B.Driver Asstt.
33. R.S.Khilnani,Driver
34. Kacha Bhaga,Diesel Driver

All are employed as Asstt.Diesel
Drivers or Shunters in Central
Railway at Loco Shed,Ajni,Nagpur. .. Applicants

vs.

1. Union of India
through
Ministry of Railways,
New Delhi.

2. Divisional Railway Manager,
Central Railway,
Nagpur.

3. Senior Divisional Mechanical
Engineer(P),
Central Railway,
Nagpur. .. Respondents

Coram:Hon'ble Member(J)Shri M.B.Mujumdar
Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances:

1. Shri N.C.Phadnis,
for Shri C.G.Madkholkar
Advocate for the
applicant.

2. Shri S.K.Sanyal,
Advocate for the
Respondents.

ORAL JUDGMENT
(Per M.B.Mujumdar, Member(J)

Date: 19-1-1989

Writ Petition No.656/83 filed by the
34 applicants in the Nagpur Bench of the Bombay High
Court is transferred to this Tribunal on 21-10-1986
under Section 29 of the Administrative Tribunals Act,
1985, and is numbered as Tr.(N)264/87.

2. At about 0.30Hrs. on 27-1-1981 i.e.
half an hour after the mid night between 26 and 27-1-81
Shri Newton Elaiza(applicant No.13)handed over 60 sick
notes in the Asstt.Loco Foreman's office at Ajni. They
included the sick notes of all the applicants before
us. They remained absent on 27-1-1981. The Asstt.
Personnel Officer, Central Railway, Nagpur issued
notices dtd. 28-1-1981 to the applicants. The notices
were served on most of the applicants by pasting on
their houses on the same day. However, some of the
applicants were served on later dates. A specimen copy
of the notice is annexed as Annexure 'A' to the appli-
cation and it reads as under:-

"You have absented from duty in an unauthorised and fraudulent manner. This action on your part is clear violation of extant instructions. You are hereby warned again that your action to be absent from duty tantamounts to serious misconduct. You are therefore hereby warned that your action in absenting from duty as mentioned above has rendered you liable to suffer loss of wages for the period of absence with the following consequences:

- (i) Forfeiture of all earned leave;
- (ii) Postponement of date of increment;
- (iii) Commencement of service afresh as a new entrant on resumption of duty for the purpose of:
 - (a) Eligibility of leave
 - (b) Passes, PTOs etc.
 - (c) Sanction of SCPF, Pension on retirement, etc.

You are therefore again directed in your own interest to report for duty immediately in any case not later than 8.00 hours on 29-1-1981."

3. Thereafter letters were sent to all the applicants stating that the competent authority had decided that they had suffered break-in-service and consequential results thereof. A specimen of the letter is annexed as Annexure 'B' and it reads as under:

"Sub: Mass absenteeism and illegal stoppage of work.

Ref: Notice No. P/CON/79 of 31/1/81 issued by APO, NGP

Despite bringing to your notice the consequences of your refusal to report for duty in terms of the Notice dated 31-1-1981 issued by APO NGP on 31-1-1981 at your residence you did not resume duty on 1-2-1981.

The competent authority, has, therefore, decided that you have suffered break-in-service and consequential results thereof by forfeiture of leave, postponement of the date of increment, commencement of the service afresh as a new entrant from the date of your resumption of duties."

A handwritten signature consisting of a stylized 'V' and a looped 'J'.

Receipt of this may please be acknowledged."

4. The applicants filed this Writ Petition on 6-4-1983 under Section 226 of the Constitution of India praying that orders or directions issued against the petitioners giving them break-in-service may be quashed and set aside and it may be held that the applicants are in continuous service of the railway without any break.

5. Respondents filed their reply on 6-2-1985 when the case was pending in the High Court itself.

6. On 8-4-1985, while the Writ Petition was pending in the High Court, the applicants had filed Civil Application No.1182/85 in the High Court for allowing the petition in terms of the Supreme Court decision in Writ Petitions Nos.13705-06 of 1984 (Shri Shiv Shankar and Others vs. Union of India and others) decided on 23-1-1985. Along with the application a copy of the judgment of the Supreme Court was produced.

7. The question before the Supreme Court was whether the principles of natural justice should be observed when an order of forfeiture of service on the ground of participation in an illegal strike is to be made. The Supreme Court pointed that neither para 1301 nor 1304 of the Railway Establishment Manual excludes the observance of the principles of natural justice either expressly or by necessary implication. Hence the Supreme Court allowed the Writ Petitions and quashed the orders by which break-in-service with consequential results, such as, forfeiture of all leave earned upto the strike, postponement of date of increment and commencement of service afresh on resumption of duty, etc. were ordered. The impugned orders in that case which were

On struck down are quoted in the judgment of the

struck down are quoted in the judgment of the Supreme Court and they are similar to Annexure 'B' in this case cited ~~at~~ para 3 above.

8. We have heard Shri N.C.Phadnis for Shri C.G.Madkholkar for the applicant and Shri S.K.Sanyal, with Law Assistant Shri D.N.Dadilwar, for the respondents.

9. On 3-11-1988, when this case first came up for final hearing, we were told on behalf of the respondents that orders regarding condonation of break-in-service were already passed except regarding applicants No.13 (Newton Elaiza), No.26(H.D.Cauthani) and No.27(J.C.Sasan).

* Thereafter, on 17-1-1989 we were told on behalf of the respondents that an order condoning break-in-service was passed regarding applicant No.27 also. However, no orders condoning break-in-service had yet been passed in respect of applicants No.13 and 26. In view of these statements, Shri N.C.Phadnis, learned advocate for the applicants did not press **this application** regarding the other applicants(i.e. the applicants other than Nos.13 and 26) and fairly submitted that, ~~therefore~~, this application survives in respect of applicants No.13 and 26 only.

10. Shri S.K.Sanyal, the learned advocate, for the respondents submitted that the respondents have observed the principles of natural justice in this case by giving notices similar to the specimen at Annexure 'A'. But after carefully considering that notice we are of the view that by giving that notice the respondents cannot be said to have followed the principles of natural justice as is contemplated in the judgment of the Supreme Court. By the notice the applicants were not called upon to give

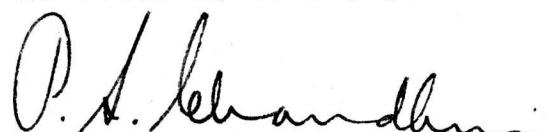
their explanation as to why action should not be taken against them for remaining absent on 27-1-1981. What the applicants were asked by that notice was that they should report for duty immediately. In fact, after the judgment of the Supreme Court dated 23-1-1985 mentioned above, the Railway Board issued instructions on 3-7-1985 to the effect that: "The Railways are, therefore, directed to issue a Show Cause Notice to the concerned Railway Staff indicating therein as to why the 'break-in-service' is proposed to be imposed and his reply thereto obtained within a period of 10 days. The authority competent to impose break in service should examine the reply and record reasons for accepting rejecting the explanation given by the employee. The competent authority may impose 'break in service' only after following the above procedure." By a Circular dtd. 30-7-1985, the Railway Board further clarified that "suitable opportunity required to be provided to the concerned staff before imposing break-in-service in order to comply with the spirit of Supreme Court's judgment, should include personal hearing also if the concerned staff makes a specific request to that effect." Hence we hold that the respondents had passed the impugned orders, similar to Annexure 'B', without observing the principles of natural justice and hence they are liable to be quashed and set aside.

11. In result we quash and set aside orders regarding applicant No.13 (Newton Elaiza) and applicant No.26 (H.D.Chauthani) similar to the order at Annexure 'B' to the application by which they have suffered break-in-service and other consequential results such as forfeiture of leave, postponement of the date of increment, commencement of the service afresh as a new entrant from the date of resumption of duties, etc. They should be treated to be in continuous service without any break for the period specified in the above mentioned notice.

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These two applicants should be given all the consequential benefits due to them according to the rules.

12. The application is disposed of accordingly with no order as to costs.



(P.S.CHAUDHURI)
Member(A)



(M.B.MUJUMDAR)
Member(J)