

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

1. Original Application No.250/88.

Shri Devanant Baliram.

2. Original Application No.268/88.

Shri Vishnu Mukundrao.

3. Original Application No.269/88.

Shri Yenkanha Narsanna.

4. Original Application No.270/88.

Shri Mohd. Annes Mohd. Haneef.

5. Original Application No.271/88.

Shri Sanjay Bhimrao.

6. Original Application No.279/88.

Shri Ashok Waman Shinde.

7. Original Application No.473/88.

Shri Manik Waman.

8. Original Application No.475/88.

Shri Mahadeo Shridhar.

9. Original Application No.476/88.

Shri Ayubkhan Bhadurkhan.

10. Original Application No.480/88.

Shri Dipak Vithal.

.... Applicants.

V/s.

Path Way Inspector (BG),
Central Railway,
Akola.

.... Respondent.

11. Original Application No.474/88.

Shri Prakash Gopal.

12. Original Application No.478/88.

Sk. Ibrahim Sk.Jamroo.

13. Original Application No.479/88.

Shri Amirkhan Kadarkhan.

14. Original Application No.481/88.

Shri Ramdas Supaji.

15. Original Application No.482/88.

Shri Vishram Motiram.

16. Original Application No.483/88.

Shri Pundlik Vishnu.

17. Original Application No.485/88.

Shri Sitaram Vitthal Sapkale.

18. Original Application No.546/88.

Shri Pratapsing Bhagwansing Rathod.

... Applicants.

V/s.

Permanent Way Inspector,
Central Railway, Shegaon,
District - Buldana.

... Respondent.

19. Original Application No.477/88.

Shri Bhimrao Kisan.

20. Original Application No.484/88.

Shri Suresh Keshar.

... Applicants.

V/s.

Path Way Inspector, Central
Railway, Murtizapur.

... Respondent.

21. Original Application No.936/88.

Shri Suresh Krishna Bhadur.

... Applicant.

V/s.

Chief Inspector of Works,
Central Railway,
Bhusawal & two others.

... Respondents.

Coram: Hon'ble Member(J), Shri A.P.Bhattacharya,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Shri K.G.Dhamecha.
Respondents by Shri J.G.Sawant.

JUDGMENT:-

¶ Per Shri A.P.Bhattacharya, Member(J) ¶ Dated: 20.7.1990

These 21 cases, viz. Original Applications
No.250/88, 268/88, 269/88, 270/88, 271/88, 279/88, 473/88,
475/88, 476/88, 480/88, 474/88, 478/88, 479/88, 481/88,
482/88, 483/88, 485/88, 546/88, 477/88, 484/88 and 936/88
are taken up together as the points involved are the same.

2. All these 21 cases arise out of applications
under section 19 of the Administrative Tribunals Act, 1985
filed by the ^{respective} ~~representative~~ applicants against the Union
of India, represented by the General Manager, Central
Railway and another. The applicants entered services
under the respondents as Casual Labourers in some years
between 1977 to 1985, the details of their dates of
joining will be given later on. It is their case that in
that capacity they had worked for more than two years to
eight years after which all of a sudden their services
were verbally terminated. On some dates of 1986 and 1987,
the details of which will be given later on, Notices ~~were~~
issued to them to show cause within 15 days as to why their
services should not be terminated, as they had secured
their employment as such on producing some cards bearing
some forged and false entries. Thereafter, on different
dates of 1986 and 1987, the details of which will be given
later on, their services were terminated verbally. The
applicants have challenged such termination as illegal
on the ground that without holding any inquiry their
services could not be terminated in that way. Thereafter,

they approached the respondent authority with the request to reconsider their cases and to reinstate them, but in vain. In 1988 they issued notices through their advocate ~~to~~ which also yielded no result. Hence in filing these applications the applicants have prayed for ^{declarations that the} ~~their~~ termination of ^{their} services is illegal and improper and as such they are liable to be set aside. They have also prayed for issuing directions upon the respondents, so that they may be reinstated to their services with full backwages.

3. All the cases have been contested by the respondents by filing ~~the~~ written statements. It is the version of the respondents that in view of the judgment passed by the Supreme Court in 1981 to the effect that persons who are in continuous service under the Railways for a period of 120 days or more as Casual Labourers should not be discharged from their services and should be continued, Thereafter the Railway formulated a scheme and introduced a policy of not recruiting any fresh Casual Labourers without absorbing those who had worked in the Railways as such on or before 1.3.1981. Large number of persons took advantage of that policy decision and started using Casual Labourers Cards with forged and false entries therein to the effect that they had worked under the Central Railway as Casual Labourers prior to 1.3.1981. The respondents thought it necessary to verify the genuineness of the entries made in the Casual Labour Cards of the Casual Workers under their employment and it came to light after inquiry that most of them had secured their employments on the basis of some forged and false cards. Seeing that, the respondents issued show cause notices to the applicants on diverse dates directing them

to explain as to why their services should not be terminated as they had secured employments on production of such fake cards. It is the case of the respondents that none of the applicants had submitted any show cause pursuant to their notices. On the other hand, realising the extent of fraud they had practiced on the Railway they had absented themselves from their duties. So it is the case of the respondents that there was no order of termination either verbally or in writing ~~was~~ ever passed or issued to any of the applicants. As and when they had themselves chosen to be absent from duties the question of their reinstatement does not arise.

4. The following table will show the number of case filed by the applicants, their names, the offices to which they were attached on their initial appointments, the dates of their appointments, the dates when the notices of show cause were issued and the dates from when they had not served under the respondents or, according to the applicants, their services were verbally terminated by the respondents.

Sl. No.	O.A. No.	Name	Office	Date of appointment	Notice	Termination
1.	250/88	Devanand Baliram	Inspector of Works, C.R., Akola.	10.02.1982	02.01.1987	17.01.1987
2.	268/88	Vishnu Manikrao	Permanent Way Inspector, Central Railway Akola.	<u>19.04.1981</u> 23.11.1982	03.01.1987	18.01.1987
3.	269/88	Yelanna Narsanna	- do -	<u>19.05.1982</u> 03.10.1982	15.01.1987	04.02.1987
4.	270/88	Mohd. Anees Mohd. Haneef	Inspector of Works (BG), CR, Akola	28.02.1985	16.12.1986	31.12.1986
5.	271/88	Sanjay Bhimrao	- do -	20.08.1978	14.01.1987	29.01.1987
6.	279/88	Ashok Waman Shinde	P.W.I (BG), C.R., Akola	19.06.1978	18.01.1987	02.02.1987
7.	473/88	Manik Waman	- do -	19.01.1983	15.01.1987	30.01.1987
8.	475/88	Mahadeo Shridhar	- do -	21.05.1979	14.01.1987	29.01.1987
9.	476/88	Ayubkhan Bahadur Khan	P.W.I., C.R., Akola.	20.08.1982	20.12.1986	05.01.1987
10.	480/88	Dipak Vithal	- do -	03.07.1978	26.12.1986	10.11.1987
11.	474/88	Prakash Gopal	P.W.I., (R) C.R., Shegaon.	19.04.1984	19.01.1987	25.01.1987
12.	478/88	Sk. Ibrahim Sk. Jamru	P.W.I., C.R., Shegaon	19.02.1984	29.11.1986	14.12.1986
13.	479/88	Amirkhan Kadarkhan	- do -	19.03.1985	29.11.1986	14.12.1986
14.	481/88	Ramdas Supaji	- do -	04.09.1982	12.01.1987	27.01.1987
15.	482/88	Vishram Motiram	- do -	19.08.1980	10.01.1987	25.01.1987
16.	483/88	Pundlik Vishnu	- do -	22.08.1985	12.01.1987	27.01.1987
17.	485/88	Sitaram Vitthal Sapkale	- do -	Few years back	-	14.01.1987
18.	546/88	Pratap Singh Bhagwansing Rathod	- do -	01.02.1982	-	26.01.1987
19.	477/88	Bhimrao Kisan	P.W.I., C.R., Murtizapur.	Few years back	-	06.01.1987
20.	484/88	Suresh Keshav	- do -	22.10.1977	12.12.1986	06.01.1987
21.	936/88	Suresh Balkrishna Bahadur	Chief Inspector of works, C.R., Bhusaval	21.06.1984	18.12.1986	03.01.1987

5. Admittedly, the applicants entered as Casual Labourers under the respondents and they had worked for not less than two years at least under them. It has been argued by the side of the applicants that when over the same points as involved in these cases a judgment had been passed by this Bench of the Tribunal in Original Application No.426/87 i.e. in the case of Ganga Prashad & Ors.V/s. Union of India & Ors. and when Special Leave Petitions filed by the Union of India & Ors. had been dismissed by the Supreme Court on merits in Misc. Petitions No.14288 - 99/89 on 8.5.1989, This Tribunal is bound by that judgment and cannot take a different view. It is true that in the case of Ganga Prashad and Ors. V/s. Union of India & Ors. the termination of services of the applicants were quashed and the respondents were directed to reinstate all of them in service with full back wages and that the SLP filed by the Union of India against that Judgment had been dismissed by the Supreme Court on merits without however, recording any reasons, we do not feel inclined to accept argument so advanced by the side of the applicants. It has been held by the Supreme Court in the cases of Workmen of Cochin Port Trust V/s. Board of Trustees of the Cochin Port Trust and Another and Indian Oil Corporation Ltd. V/s. The State of Bihar & Ors. reported in (1978) 3 S.C.C. 119 and 1987 (1) SLJ page 94 that the effect of a non-speaking order of dismissal of a SLP without anything more indicating the grounds or reasons of its dismissal must, by necessary implications be taken to be that the Supreme Court had decided only that it was not a fit case where an SLP should be granted. In addition, if we are to refer any decision of the Central Administrative Tribunal we would at once refer to the Full Bench decision passed by the Bangalore

Bench in the case of K.Ranganathan & Ors. V/s. Accountant General, Bangalore & Ors. reported in (1989) 9 Administrative Tribunal Cases 864. In that case it has been held that if a Writ Petition under Article 32 of the Constitution is dismissed by the Supreme Court in limine without giving reasons that would not operate as a binding precedent.

In our opinion, when the Judgment passed by this Tribunal in Ganga Prashad & Ors. was not upheld by the Supreme Court in so many words recording reasons we do not find that the same would have any binding effect on us. All what we find that in disposing the SLP filed by Union of India and others the Supreme Court was simply of the view that it was not a fit case where an S.L.P. should be ^{admitted} ~~granted~~ ^{in favour of} to the Union of India & Ors.

6. It is true indeed that there is a conflict of decisions on the point of such termination of service of a Casual Labourer and reinstatement in service with or without back wages amongst the different Benches of this Tribunal. But we think ^{that} the present cases standing on a different footing should be decided by us in our own way.

7. Undisputedly, the applicants having served for not less than two years under the respondents were served with show cause notices. On different dates as mentioned in the tabular statement above they were directed to show cause as to why their services should not be terminated as they had secured their employments on production of fake casual labour cards containing some forged and false entries. It is not in dispute that neither of these applicants had submitted any show cause. It stands further admitted that from some dates as mentioned above either the applicants had refrained themselves from attending their duties or some orders were issued by the respondent authorities terminating their services. The applicants

have not been able to produce any written orders of termination. It is their version that after the expiry of the period of 15 days as mentioned in the show cause notice they were verbally told by the concerned authorities not to come to their respective offices. So the applicants' case is one of verbal termination. We are not prepared to accept the applicants' version that their services were verbally terminated in that way. When it is their own case that at the relevant time they had put in not less than two years of service it is unbelievable that after such alleged verbal termination they would not raise their little fingers against that and would not at least put some representations challenging that verbal termination. When such action had been taken by them we dis-believe their contention that their services were verbally terminated by the concerned authorities. It is the version of the respondents that realising the facts that they had used bogus casual labour cards and under the fear of facing unhappy consequences the applicants had not submitted any show cause and they had chosen it better not to join their work any further. So, according to the respondents, the applicants' cases ^{are} of voluntary abandonment of their services. From the facts and circumstances of the case we have no reason to dis-believe the contentions of the respondents.

8. It has been argued by the side of the respondents that when the applicants had secured their employments by using some forged casual labour cards and when the matter from the very inception is based on forgery, it would be treated as void ab-initio and as such the Tribunal should not grant any relief to them. In support of this contention reference has been made to the Judgment passed

by the Calcutta Bench of the Tribunal in the case of Ashit Sengupta and Ors. V/s. Union of India & Ors. reported in (1987) 4 A.T.C. 109, ^{Quill} Sanjiv Kumar Aggarwal & Ors. V/s. Union of India & Ors. decided by the Principal Bench of the Central Administrative Tribunal reported in (1987) A.T.C. page 990 and the judgment passed by the Patna High Court in the case of Ishwar Dayal Sah V/s. State of Bihar and another reported in 1987 Lab I.C. 390.

In the cases mentioned above it has been held that when an appointment is obtained on the basis of a fake letter, the appointment would be treated as void ab-initio and in such case the Tribunal ^{should} refuse relief to the applicants as that would result in abuse of judicial process or revival of invalid order. In our opinion, the principle of law laid down in those cases cannot be made applicable to the cases before us at this stage. We are constrained to hold that unless and until it is established on giving an opportunity to the respective applicants that in the matter of securing employments they had really used some bogus cards and taken recourse to forgery, the respondents cannot avail of the principle of law laid down in those cases. We must mention that all what the respondents had done in these cases was simply the act of issuing show cause notices ^{on} the applicants, ^{who} ~~They~~ might or might not have submitted any explanation to the allegations made against them. In our opinion, despite that it was obligatory on the respondents to come to the conclusion of using fake cards only after holding inquiries against them. In our opinion, the judgment passed by the Bombay High Court in the case of Gaurishankar Vishwakarma V/s. Eagle Spring Industries Pvt. Ltd. & Ors. reported in

(20)

1988 (1) Current Labour Reports page 38 lays down the principle of law to be applicable in these cases. It has been held by a Division Bench of the ^{Bombay} High Court in that case that even in case of abandonment of service, employer has to give notice to the Workmen calling upon him to resume duty and also to hold inquiry before terminating his service on that ground. From the statements made by the respondents in their reply it is not clear to us whether the applicants lost their employments as a result of their taking penal actions against them by way of terminating their services, or as a result of their abandonment of services. When it is nobody's case that ^{by any order} the applicants' services were actually terminated it would be obviously concluded that their services came to an end because of their abandonment. Now following the decision of the Bombay High Court as mentioned above we hold that even in that case the respondents should have held inquiries against the applicants and without giving them opportunities to defend their cases in such inquiries they cannot absolve themselves from the liability of reinstatement of the applicants.

9. It has been argued by the side of the applicants that as the respondents had not complied with the provisions of Section 25 F of the Industrial Disputes Act, 1947, such termination of services of the applicants' cannot be sustained. We have already held that the services of the applicants had not been terminated by any written order or verbally as alleged by them. When the cases of the applicants were cases of voluntary abandonment

(21)

- 12 -

they would not come within the purview of the word "retrenchment" as contemplated in the said section. So we are of the opinion, that the provisions of Section 25 F of the said Act would have no manner of application to the cases before us.

10. In view of our findings made above we are of the opinion, that as and when the services of the applicants had not been lawfully terminated by holding any inquiry, they are entitled to reinstatement. They should ^{get} ~~give~~ their continuity of services ^{for} ~~during~~ the period they were out of service, but they would not get any back wages for the said period for the present. The back wages would be admissible to them if the inquiries to be held against them as per our directions go in their favour. In the result, all the applications succeed. We allow all these applications making, however, no order as to costs ⁱⁿ ~~to~~ any of them. The respondents are directed to reinstate all the applicants within 3 months from this date ^{and} on such reinstatement the applicants should have their continuity of their service. The respondents are directed to hold inquiries against the applicants on the allegations for which they were directed to show cause earlier, according to rules. The applicants' having acquired temporary status as Casual Labourers would be entitled to prefer appeals if the orders passed in the inquiries go against them. If ultimately the applicants are exonerated of the charges they would be entitled to get their back wages for the intervening period.

...13.

11. This judgment governs all the 21 cases viz.
Original Applications No.250/88, 268/88, 269/88, 270/88,
271/88, 279/88, 473/88, 475/88, 476/88, 480/88, 474/88,
478/88, 479/88, 481/88, 482/88, 483/88, 485/88, 546/88,
477/88, 484/88 and 936/88.