

9

CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 446/88  
~~XXXXXX~~

198

DATE OF DECISION 7.6.1991

Mr. D.S.Gadekar

Petitioner

Mr. Y.R.Singh

Advocate for the Petitioner(s)

Versus

Divisional Railway Manager,  
Bombay V.T.

Respondent

Mr. P.R.Pai

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? *JS*
2. To be referred to the Reporter or not ? *h*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *h*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *h*

*h*  
( U.C.Srivastava )  
Vice-Chairman

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY  
\* \* \* \* \*

Original Application No.446/88

Dattatraya Shankar Gadekar,  
Ashok Nagar, Venubai Nivas,  
Amarnath Road,  
Kalyan

... Applicant

V/s

Divisional Railway Manager,  
Central Railway,  
Bombay V.T.

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava  
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Shri Y.R.Singh, holding the  
brief of Mr. L.M.Nerlekar,  
Advocate for the applicant  
and Mr. P.R.Pai, Advocate,  
for the respondents.

ORAL JUDGEMENT:

Dated : 7.6.1991

(Per. U.C.Srivastava, Vice-Chairman)

The applicant has approached this Tribunal against his termination order dated 19.1.1985. He was engaged on 27.1.1982 as daily rated Carpenter under Inspector of Works, Lonawala against the sanctioned work post. He was appointed as monthly rated Carpenter in the grade of Rs.260-400 on 19.6.1982. Thus he continued to remain as monthly rated Carpenter for about two and a half years. Thereafter his services were terminated. The applicant has challenged the order on the ground that the termination order is in violation of Section 25(F) of the Industrial Disputes Act in as much as the notice of the compensation which is a pre-requisite was not conferred on him and his juniors were retained while he was thrown away. In the counter affidavit it has not been stated that there was no sanction of the said post but so far as

... 2/-

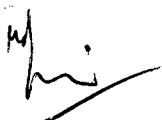
the averments regarding the juniors are concerned that has been denied. Obviously that the applicant continued to remain as a monthly rated worker for two and a half years continuously and the termination of his services will come as retrenchment within the meaning of Industrial Disputes Act. Section 2 (oo) defines the retrenchment as follows:-

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf"

The provisions of Section 25(F) are mandatory and it was obligatory on the respondents to comply with it. Accordingly the order of termination is being violation of Section 25(F) of the Industrial Disputes Act becomes void and it deserves to be quashed and is quashed.

2. The learned counsel for the Railway Administration placed before us that no sanction for the said post was given as such the applicant may get monetary benefit but he will not be reinstated back in service. However, in view of the fact that he is a retrenched employee he will be given priority and preference in the matter of appointment in accordance with the Law over any new comer. In case any new comer has been appointed within this period obviously over him he will get preference.

  
( M.Y. Priolkar )  
Member (A)

  
( U.C. Srivastava )  
Vice-Chairman