

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI.

ORIGINAL APPLICATION No. 1137/1993

Date of Decision: 20.3.1997

Ramsukh Rameshwar Yadav

Petitioner/s

Shri K.G.Dhamecha

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Ms.L.Swaminathan for
Smt.Indira Bodade.

Advocate for the
Respondent/s

GORAM:

Hon'ble Shri M.R.Kolhatkar, Member(A),

Hon'ble Shri A.K.Mishra, Member(J).

- (1) To be referred to the Reporter or not ? ☒
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? ☒

M.R. Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI,
CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 1137/1993.

Thursday, this the 20th day of March, 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A),
Hon'ble Shri A.K.Mishra, Member(J).

Ramsukh Rameshwar Yadav,
Gaddam Plots,
Akola Taluk,
Dist. Akola.

... Applicant.

(By Advocate Shri K.G.Dhamecha)

V/s.

1. Union of India, through
General Manager, Central
Railway,
Bombay V.T.
2. Divisional Railway Manager,
Central Railway,
Bhusawal.
3. Asstt. Engineer,
Central Railway (West),
Akola.
4. Chief Permanent Way Inspector,
Central Railway, Akola. ... Respondents.

(By Advocate Ms.L.Swaminathan for
Smt.Indira Bodade)

ORDER (ORAL)

{Per Shri M.R.Kolhatkar, Member(A)}

In this O.A. the applicant has challenged the
order dt. 18.8.1992 by the Assistant Engineer, Akola
which reads as below :

"You have resorted to illegal hunger strike and
stoppage of work from 20.11.1991 without following
the proper procedure. The break in service has
been imposed by DRE-BSL from 20.11.1991 to
12.1.1992. You will be treated as - freshly
employed MRCL from 13.1.1992. (The date you
have reported for duty after hunger strike)."

2. The applicant contends that he is alleged to have
indulged in stoppage of work, but actually he was on

...2.

hunger strike on 20.11.1991 and 22.11.1991, that the Respondents had separately issued a charge sheet for conducting departmental inquiry vide Memo dt. 4.1.1992 in which the charges were similar viz. "he absented himself from duty unauthorisedly during the period 19.10.1991 to 3.1.1992, that he has disregarded and disobeyed to work and that he absented himself from duty unauthorisedly and participated in illegal strike at Akola from 20.11.1991 to 22.11.1991". The applicant had filed a written statement of defence which is at (Annexure - VII) of the O.A. and it is not disputed that the said inquiry is still pending.

3. The contention of the applicant is that the action taken by the respondents of treating the period from ~~from~~ 20.11.1991 to 12.01.1992 as break in service by proper construction has to be treated as a major penalty and since the major penalty has been imposed on the applicant without complying with the requirements ^{since} of Railway Servants (Discipline & Appeal) Rules and it is not disputed that the applicant is entitled to protection under Railway Servants (Discipline & Appeal) Rules as he is a Monthly Rated Casual Labour who has attained temporary status, the penalty is bad.

4. The respondents have contended that the action was taken against the applicant because the applicant in consultation with other 54 employees had indulged in Dharna and other activities which had caused loss and inconvenience to the public at large and therefore in the interest of administration and in terms of Railway Board's instructions on the point dt. 31.3.1979 on the subject of work stoppage the action was taken to impose the break in service on the applicant. It appears from the

last para of the reply of the respondents that they are treating this penalty as a minor penalty for which an elaborate inquiry is not necessary.

5. So far as the instructions dt. 31.3.1979 are concerned, the respondents relied on the paragraph which reads to the effect that in case of work stoppage break in service should be automatic.

6. According to the counsel for the respondents such a break in service automatically comes into force by virtue of the orders referred to viz. 05.09.1966.

7. The counsel for the applicant contends relying on L.Robert D'Souza V/s. Executive Engineer, Southern Railways and Anor. ¶ A.I.R. 1982 SC 854 ¶ where it is laid down that "once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement it would nonetheless be retrenchment within the meaning of expression in S.2(OO)." that there can be no automatic action. Undoubtedly, the present case is not that of retrenchment, but in our view, the proposition laid down by the Supreme Court regarding automatic discharge from service applies with full force mutatis mutandis to the present case.

8. We have considered the provisions of Sec.6 of the Railway Servants (Discipline & Appeal) Rules laying down the penalty. In the explanation thereto it has laid down as to what actions are not treated as penalty "Break in service" is not one of the excepted categories. Break in service is dealt with F.R. 17 -A which reads as below :

"Without prejudice to the provisions of Rule 27 of the Central Civil Services(Pension) Rules,1972, a period of an unauthorised absence -

- (i) in the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force;
- (ii) in the case of other employees as a result of acting in combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of, the competent authority and
- (iii) in the case of an individual employee, remaining absent unauthorisedly or deserting the post,

shall be deemed to cause an interruption or break in service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in

departmental examinations, for which a minimum period of continuous service is required.

Explanation 1. - For purposes of this rule, "strike" includes a general, token, sympathetic or any similar strike, and also participation in a bundh or in similar activities.

Explanation 2. - In this Rule, the term "competent authority" means the Head of the Department, as defined in Schedule I to the Delegation of Financial Powers Rules, 1978 and in the case of the Indian Audit and Accounts Department "Head of the Department" means the authority declared as such by the Comptroller and Auditor-General."

There would of course, be corresponding provisions in the Railway Establishment Code which would be para materia. In Government of India's Order No.1 under F.R.17-A it has been directed relying on the decision of Lucknow Bench of the Allahabad High Court on a similar action of break in service without reasonable opportunity that issue of an order of break in service without giving reasonable opportunity of representation or being heard in person would be against the principles of natural justice and the Government has directed that these observations of the Lucknow Bench of the Allahabad High Court are required to be kept in view.

9. We have no doubt that the Railway authorities' action of imposition of break in service is not proper. We also observe that it is neither a recognised penalty nor it is an action covered by explanation to Sec.6 of the Railway Servants (Discipline & Appeal) Rules. It is a recognised mode of action to be taken against Railway employees indulging in stoppage of work, but the settled position is that the break in service even if it is envisaged to be automatic cannot be imposed on a Railway employee except by giving him an opportunity of being heard. This opportunity can be a simple show cause notice giving facts to which the Railway employee is expected to file a reply showing cause. On receipt of the reply, if the Railway authorities are not satisfied with the reply they would be within their rights in imposing the action of break in service without violating the principles of natural justice.

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In view of this position the order dt. 18.8.1992 cannot be sustained, the same is therefore quashed and set aside. The respondents are of course not required to make payment to the employee for the days for which he has not worked. The respondents are also given liberty to proceed against the applicant for imposing the action of break in service by following the principles of natural justice as observed by us above within one month. Unless action is taken availing of liberty granted, Respondents are also required to give to applicant all consequential benefits entailed by quashing of order of break in service. The O.A. is disposed of in these terms with no orders as to costs.



(A.K. MISHRA)
MEMBER (J)



(M.R. KOLHATKAR)
MEMBER (A).

B.