

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NUMBER 291 OF 1994

TUESDAY, THIS THE 6TH DAY OF JULY, 1999.

Shri Justice S.Venkataraman, .. Vice-Chairman.

Shri S.K.Ghosal, .. Member(A).

Selvaraj Kapirvel,
Ex-Khalasi, Working under
Permanent Way Inspector,
Panvel and now residing at
C/o Permanent Way Inspector,
Central Railway, Kurla, Bombay. .. Applicant.

(By Advocate Shri D.V.Gangal)

v.

1. The General Manager,
Central Railway, Bombay V.T.
Bombay-400 001.
2. The Divisional Railway Manager,
Central Railway, Bombay V.T.
3. The Executive Engineer Constn.,
Central Railway Panvel.
4. The Permanent Way Inspector,
Central Railway, Panvel,
Dist:Raigad. .. Respondents.

(By Standing Counsel Shri V.S.Masurkar)

O R D E R

Justice S.Venkataraman, Vice-Chairman:-

The applicant who was taken as casual labourer on 29-11-1983 alleges that he was retrenched from service on 18-10-1984 and that the respondents who ought to have prepared a seniority

list of casual labourers as per Annexure-A3 scheme and absorbed the applicant, have failed to re-employ the applicant though many persons junior to the applicant have been so re-employed. He wants a declaration that he is entitled to be considered for regular appointment as per his turn in the seniority list under Section 25 H of the Industrial Disputes Act.

2. The respondents' case is that the applicant was not retrenched, that he was working only for 4 months, that he ceased to attend work on and after 28-1-1983 and left the job from 31-1-1983. They have also pleaded that the applicant had filed an application before the Bangalore Bench of this Tribunal in O.A.No.1168 to 1172 of 1988 along with others challenging his retrenchment and that the applicant's application was rejected on 10-7-1989 and that the present application filed by him is barred by time, delay and laches and also by res judicata.

3. The fact that the applicant had filed an earlier application before the Bangalore Bench challenging the order of retrenchment is not disputed, that application was rejected on the ground of limitation pointing out that the respondents had produced reliable records which showed that the services of the applicant stood terminated either in 1983 to 1984. Even in that application, the respondents had taken up the plea that the present applicant had not been retrenched and that he stopped working from 31-1-1983.

4. That application having been rejected in 1989, the applicant has come forward with this application in 1994. Though

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he has alleged that his juniors have been re-employed, neither the date of such re-employment nor the names of such juniors has been given to explain as to how the application is in time. We do not want to go into the question as to whether the earlier order would be a bar to the present claim of the applicant. The applicant has not placed any material to show that he was actually retrenched from service.

5. The learned counsel for the applicant contended that even if the applicant was not retrenched and he himself had discontinued the work, still the respondents are bound to include the applicant's name in the seniority list as per the scheme and absorb him when the vacancy arises. The very fact that the applicant has contended that the respondents have violated the provisions of Section 25 F, G and H of the Industrial Disputes Act and he has sought for a declaration that the applicant has a right to be re-appointed under Section 25 H of the ID Act shows that he is basing his claim on the basis that he is retrenched from service. That apart, Annexure-A3 scheme on which he has relied in para 5.1 there is reference to the directions of the Supreme Court and reference to the principle of 'last come first go' as enunciated in Section 25G of the Industrial Disputes Act. It is in pursuance of the Supreme Court direction the scheme has been formulated. Para 5.2.3 on which the learned counsel for the applicant has relied reads as hereunder:-

"The seniority list of project casual labhour engaged

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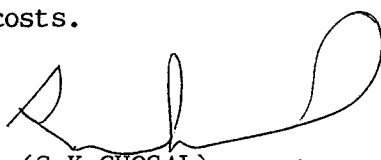
by project organisations will be recast by Zonal/Construction Railway Administrations in the aforesaid manner as on the 1st April, 1985 to cover all project casual labour who have been in employment at any time from 1-1-1981 onwards. The lists so prepared will be used for any subsequent engagement/re-engagement/discharge of project casual labour. Any such discharge, where so warranted, due to reduction or completion of work or for other administrative reasons will be effected after complying with the relevant provisions of the Industrial Disputes Act, 1947, the Industrial Disputes (Central) Rules, 1957 and the orders applicable to project casual labour."

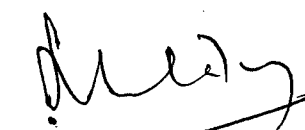
(emphasis supplied)

The above para clearly shows that it is only those casual labourers who have been in employment as on the date the scheme came into force, the question of including their names in the seniority list would arise. There is nothing in the above para to indicate that it is applicable even to casual labourers who had on their own left ~~off~~^{off} employment prior to the scheme coming into force. Para 5.2.1 also indicates that the seniority list is in respect of the project casual labour "employed on works". In the circumstances, we are unable to hold that the applicant is entitled to the relief which he has sought for.

6. For the above reasons, this application is dismissed.

No costs.


(S.K.GHOSAL)
MEMBER (A)


(S.VENKATARAMAN)
VICE-CHAIRMAN.

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