

28

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 186/90.

Date of Decision : 10.10.1990.

T.A.No.

\_\_\_\_\_  
Petitioner.

\_\_\_\_\_  
Advocate for the  
petitioner (s)

Versus

\_\_\_\_\_  
Respondent.

\_\_\_\_\_  
Advocate for the  
Respondent (s)


CORAM :

THE HON'BLE MR. J. NARASIMHA MURTHY : MEMBER (JUDICIAL)

THE HON'BLE MR. R. BALASUBRAMANIAN : MEMBER (ADMINISTRATIVE)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

  
(JNM)  
M(J)

  
(RBS)  
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD

BENCH : AT HYDERABAD :

O.A.186/90.

Date of Judgment: 10.10.1990.

H.Venkateswarlu

...Applicant

Vs.

1. Union of India per General Manager,  
South Central Railway, Rail Nilayam,  
Secunderabad.
2. Assistant Works Manager,  
Office of the Addl.Chief  
Mechanical Engineer, South Central Railway,  
Lalaguda, Secunderabad.
3. Workshop Personal Officer, Office of the  
Chief Workshop Manager, South Central Railway,  
Secunderabad.

...Respondents

- - - -

Counsel for the Applicant : M/s G.Ramachandra Rao &  
M.Rama Rao

Counsel for the Respondents : Shri N.R.Devaraj, SC.for Rlys

- - - -

CDRAM:

HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (J)

HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Judgment of the Division Bench delivered by  
Hon'ble Shri J.N.Murthy, Member (J) ).

- - - -

This is an application filed for a relief  
to quash the Office Order No.3/90 dated 17-1-1990 terminating  
the services of the applicant, and with a consequential  
direction to re-instate the applicant into service with all  
benefits. The facts of the case are briefly as follows :-

2. The applicant was originally engaged as  
Casual Labour in Loco Works Canteen attached to the Loco




contd...2.

Works Shops, South Central Railway, Lalaguda during the years 1982, 1983, 1984 and 1985 with intermetent breaks. Applicant was engaged as such continuously with effect from 1-1-1986 and on completion of 120 days of continuous service, applicant acquired temporary status with effect from 1-5-1986 as per the Office order No.E2/E5/Canteen, dated 6-8-86 issued by the 2nd respondent and he was given regular scales of pay with effect from the said date. Eversince, the applicant has been working continuously and without any break in service. The applicant states that in light of the Supreme Court Judgment the Ministry of Railway, Government of India considered the matter further and it was decided that employees of all other Statutory Canteens on the Railways irrespective of the type and Management of the Canteen should also be deemed to be railway servants with effect from 22-10-1980. It has also been decided that till the Government of India decides otherwise the staff of all these Statutory Canteen continue to be governed by the conditions of service and emoluments as existed on 21-10-80. The employees in the Statutory Canteens should be treated as railway servants for all purposes. The applicant is entitled to all the benefits of a Casual Labour engaged in other Departments of the Railways. He further states that the Lalaguda Work-shops of the South Central Railway would come within the definition of the factory under the

Factories Act, 1948 and the Canteens attached to it is a Statutory Canteen. In view of the above, he was engaged on casual basis was conferred temporary status as per the orders issued by the 2nd respondent.

3. While the matter stood thus, the 3rd respondent by his Office Order No.3/90 dated 17-1-1990 abruptly terminated the services of the applicant with effect from 13-1-90 without issuing any notice and without complaining with the statutory conditions on the ground that one Sri D.Vittal, Bearer in the canteen resumed duty on 13-1-90 and the services of the applicant are terminated as he is the junior-most. He further states that the conditions of the service of Casual Labour who acquired temporary status are governed by the provisions contained in Chapter 25 of the Indian Railway Establishment Manual read with provisions contained in Chapter 23 of the said Manual. He further states that as he was employed in the Statutory Canteen attached to the work-shops, the provisions of the I.O.Act, 1947 are also applicable to him. Hence this petition.

4. A counter has been filed on behalf of the respondents admitting that the applicant had attained the temporary status as casual labour on completion of 120 days of continuous service and that he was continuously working without any break against sick leave vacancies available in



- 4 -

canteen. It is further stated that when the canteen staff reported sick or absented themselves and whenever they reported for duty, the junior-most casual labour<sup>1</sup> terminated<sup>1</sup> with a clear understanding that as and when such vacancies arise in canteen, the casual labour are engaged according to their seniority, and that the cadre strength of the canteen is only 41 and that number should not exceed at any given time. It is further stated that even though the applicant had attained temporary status as casual labour, his engagement is subject to availability of vacancies in canteen. It is a fact that 14 days notice period is to be given while issuing termination orders, but in this case since he was engaged against a sick/leave vacancy and the incumbent who was on long leave have since reported for duty, his services get automatically terminated and the administration cannot make him to wait for posting in view of the vacancy being filled by a casual labour. The applicant since engaged against a sick/leave vacancy he stands terminated as soon as the regular employee reported for duty after a long leave. The authority who terminated the service of the applicant who is holding a higher status<sup>1</sup> than the authority who has appointed him as casual labour. It is further stated that the Asst. Works Manager has appointed the casual labour, the next higher authority has every right to issue the termination orders. It is also stated that there are so many sick/leave vacancies from time to time

contd...5.

- 5 -

in canteen since 1986 and when the last vacancy was occurred due to long leave of Shri D.Vittal and when he reported for duty the termination orders were issued and it is admitted that the applicant was not appointed specifically against the leave vacancy of Shri D.Vittal. The SLPs and the judgements therein as well as the Railway Board's instructions quoted in the Original Application are not applicable to the applicant's case. It is further stated that the applicant has not exhausted the alternative remedy available, hence the application is liable to be dismissed.

5. We have heard Shri G.Ramachandra Rao, counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the Railways. It is an admitted fact that the applicant is working in the Railways from 1982 and acquired temporary status on 1-5-1986. While so the respondents by an office order No.3/90 dated 17-1-90 terminated the services of the applicant without complying with the statutory conditions of the service on the ground that he is the junior most casual labour. Shri Devraj argues that the applicant was appointed in a leave vacancy and the person who applied leave was joined in the office. So the Department could not give him 14 days notice before his services were terminated.

6. The Department knows that how many persons have applied for leave and when they are going to join to the office, all the facts are with them and the department

contd...6.

- 6 -

ought to have given the 14 days notice, but they did not  
 though all the Particulars are like them. do so. So the argument advanced by the learned counsel  
 for the respondents is not supported by any reason. So  
 this point is negatived.

7. Shri Devraj further argued that the applicant has  
 not exhausted the alternative remedy available before  
 approaching the Tribunal. So on that ground the case has  
 to be dismissed. For that the learned counsel for the  
 applicant argued that it is not <sup>licence</sup> ~~licence~~ on the part of  
 the applicant. The application can be entertained. In  
 support of this contention he relies upon the Supreme  
 Court decision reported in 1981(58)FJR467, wherein it was  
 held as follows :-

"That though there was no indication whatsoever that the appointment of the appellant was on probation or any indication of the period of probation in the order of appointment, even assuming that as claimed by the employer, there was implied period of probation which was extended for a further period of three months ending on September 5, 1974, the termination of service was effected after the alleged period of probation had expired when the appellant would be either a temporary employee or a permanent employee. Termination of service under such circumstances falls outside the categories which are exempted from the definition of "retrenchment" in section 2(oo) of the Industrial Disputes Act, 1947. This being a case of "retrenchment", where the prerequisites for valid retrenchment as laid down in section 25-F of the Act have not been complied with, such termi-

contd..7,

nation of service would be void ab-initio. I would not bring about a cessation of service of the appellant and he would continue to be in service."

Moreover there is another judgment of the Supreme Court rendered in A.V.Venkateswaran Vs. R.S.Wadhvani (AIR 1961 SC 1506) wherein it was held as follows :-

"We must, however, point out that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion ... ..

"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in RASHID AHMED Vs. MUNICIPAL BOARD, Kairana, (AIR 1950 SC 163 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. Vide also K.S.Rashid and Son Vs. The Income-tax Investigation Commission, (AIR 1954 SC 207). And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Art.226, unless there are good grounds thereof.

... ..

.... the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper



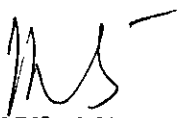
To


1. The General Manager, Union of India,  
S.C.Railway, Railnilayam, Secunderabad.
2. The Assistant Works Manager,  
O/o. The Addl.Chief Mechanical Engineer,  
S.C.Railway, Lalaguda, Secunderabad.
3. The Workshop Personal Officer,  
O/o. Workshop Manager, S.C.Rly, Secunderabad.
4. One copy to Mr.G.Ramachandra Rao,&M.Rama Rao  
CAT.Advocates Bar Association, CAT.Hyd.Bench.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
6. One copy to Hon'ble Mr.J.Narasimha Murty, Member (J) CAT.Hyd.
7. One spare copy.

95/2/200  
11/10/60

exercise of the discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

8. The same principle was discussed at the Bangalore Bench of this Tribunal in Pradi S. Rajanal Vs. Divisional Commissioner (1988 K.S.L.J. p.113) wherein it was held that the Tribunal could exercise its discretion to entertain an application with due regard to the facts of the case even though alternative remedy was available and that the alternative remedies provided under the CCS (CCA) Rules 1965 were not at all efficacious and that the authorities concerned would take long time to dispose of the appeal even if preferred which would only resulted in undue hardship to the official. So, following the decisions in 1988 KSLJ 113 and AIR 1961 SC 1506, we held that the application is maintainable even though the applicant was not exhausted his alternative remedy available to him. In the instant case, the respondents admitted that the applicant was removed from service without any notice. Hence, it attracts Section 25(f) of the I.D.Act. In these circumstances, we feel that the Office Order dated 17.1.1990 on the file of the 3rd respondent herein has to be quashed and accordingly we quash the same and the applicant is entitled to reinstatement into service with all consequential benefits. Accordingly the application is allowed. No order as to costs.

  
(J.NARASIMHA MURTHY)  
Member (Judl.)

  
(R. BALASUBRAMANIAN)  
Member (Admn.)

Dated: 10<sup>th</sup> October, 1990.

ASR  
10/10/90  
CHECKED BY 11/10/90 APPROVED BY  
TYPED BY COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. B. N. JAYASIMHA : V.C.

AND

THE HON'BLE MR. D. SURYA RAO : M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY : M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

DATE: ~~24~~ 10/10/90 ✓

~~ORDER~~ JUDGEMENT:

M.A. / R.A. / C.A. / No.

in

T.A. No.

~~W.D. No.~~

O.A. No.

186/90 ✓

~~Admitted and Interim directions~~  
issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction. 27 OCT 1990

M.A. Ordered/Rejected. HYDERABAD BENCH.

No order as to costs.

Central Administrative Tribunal

DESPATCH

27 OCT 1990

HYDERABAD BENCH.

*[Signature]*  
20/10

*[Signature]*  
11/10/90