

AP6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.226/91

Dated of Order : 29th June, 92

Between

S. Vishnu

.. Applicant

and

The Senior Divisional Accounts Officer (B.G)
S.C. Railway, Secunderabad

The Divisional Cashier (Pay) (B.G)
SC Railway, Secunderabad

.. Respondents

Counsel for the applicant

: Mr. P. Krishna Reddy &
Ms. P. Sarada

Counsel for the respondents

: Mr. D. Gopala Rao & Rajeswara
SC for Railways Rao

CORAM

Hon. Mr. R. Balasubramanian, Member (Admn)

Hon. Mr. C.J. Roy, Member (Addl)

(Division Bench order delivered by Hon. Sri C.J. Roy, Member (J))

This is an application filed by the applicant, Sri Vishnu with a request that the Hon. Tribunal may be pleased to declare the action of the 2nd respondent in retrenching the applicant from 15-5-90 and the proceedings of the 1st respondent in his letter No. A/AD/PAY Office/91, dated 1-4-91 rejecting the representations of the applicant as illegal and without jurisdiction and direct the respondents to reinstate the applicant in the post held by him before retrenchment with all consequential benefits including arrears and give him temporary status from the date he completed 120 days of continuous service and pay him authorised pay scales including arrears and pass such other order or orders as this Hon. Tribunal

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may deem fit and proper in the interests of justice.

2. The brief facts of the case as per the averment made in the application are that the applicant after passing 10th class joined the office of the 2nd respondents as daily rated worker on 14-5-89. He was referred to as Hamali/peon in his wage slips. He used to carry cash box from office of the 2nd respondents to strong room and back to the office of the 1st respondents, attending to bank work and miscellaneous work etc. He worked satisfactorily.

3. While so he was stopped abruptly from the work without issuing any notice nor assigning any reasons on 21-5-90. He filed the above OA.226/91, therefore, for the said relief cited supra. He also submits that one Mohan Kumar working alongwith him was also stopped but Mohan Kumar was taken back again on 2-7-90. He, further learnt that one Laxmaiah engaged in the place of the applicant and states that the said Laxmaiah is a close relative of one of the serving employees. One Yadagiri was also engaged and is being still continuous.

4. Though he was retrenched, he made several requests and a notice dt.6-7-90 requesting the respondents to reinstate him. No action was taken. Therefore, he filed OA.669/90 in this Tribunal, a copy of the judgement which is enclosed herewith as enclosure-4. This Tribunal is pleased to dispose of the said OA at the admission stage ~~thaxxxka~~ with the direction on 28-8-90.

... "In the circumstances while dismissing the application as premature, we direct the respondents to dispose of the representation dt.6-7-1990 preferred by the applicant duly considering the points urged therein and also those raised in this application, within a period of two months. Application is accordingly dismissed as premature with the above direction."

5. He made another representation dt.4-9-90 to the 2nd respondents. Thereafter a letter was filed before the Tribunal to fix time for disposal of the representation preferred by the applicant before the respondents. The Tribunal by order dated 29-11-90 directed the respondents to dispose the ~~xxpx~~ representation dt.6-7-90 within two months. Since no action

was taken, the applicant sent a detailed notice dt.7-9-91 through his advocate. Inspite of that, it was not disposed of. The action of the respondents were assailed by the applicant in terminating his services without following mandatory procedure prescribed by 25 of Industrial Disputes Act, as illegal and without jurisdiction. He also claimed that he had worked continuously for 300 days on retrenching him as casual labour. After more than 240 days labour... Mere 120 days continuous work is sufficient to gain temporary status and that is a worker as defined under section 25 of Industrial Disputes Act. Hence, the procedure laid down by Chapter V of the Industrial Disputes Act should have been followed. On similar other factual grounds also he attacks the termination and claims that he is discriminated with reference to his juniors who are appointed in his place, like Laxmaiah, Yadagiri etc. He also filed additional grounds that the cashiers are authorised by the Railways to engage licenced porters/hamalies to carry vouchers and cash box from strong room to the pay counters. There is also variation according to the applicant in the payment of daily wages day-to-day, and that he has been constantly drawing Rs.8/- per day in addition to Rs.2,3,&5 and any other work for which transport charges were also additionally paid. It was averred he was treated as a patient and out-patient, token was also issued for treatment as out-patient in the Railway hospital. Therefore, he has to be treated as casual labour and that his removal is against law.

6. The respondents filed a counter opposing the application stating that it is false that he was working as daily rated worker since 14-6-89 in the office of the Divisional Cashier. But they say he was working as Hamali for carrying cash box voucher box from the ground floor and to the pay building, to the first floor and back. That he was working as paid Hamali. ~~xxxxxx~~ He was paid then and there and issued receipt.

7. They also averred that casual labour can be engaged only with the approval of the General Manager, as per the letter No.E/NG/II 88/CL 39 dt.22-04-88 of the Railway Board. They say that General Manager did not appoint him in this case. The administration also not engaged workers under rule but the subordinates like Divisional Casher were permitted to raise services of hamalies like that of the applicant if necessary. The appointment is made out of the contingencies and that there was no appointment ^{by} made / the admn. question of stopping the applicant ~~from~~ attending the duties does not arise. All the said persons were working on and off. There was no muster roll maintained and there was no fixed timing to work. Whenever there is work their services are utilised otherwise not.

8. The applicant is not a Railway employee and they also stated that the rules are not applicable to the applicant. There is nothing to ^{show} ~~say~~ that he worked continuously for 120 days on daily rate basis. They denied Section 25 of IB Act applies to him, and that he was not appointed as casual labour. ~~He~~ He must have approached the Labour Court that he was paid Rs.2/- to Rs.10/- from out of the contingencies.

9. The applicant's services are used for only carrying the cash & voucher boxes and also paid conveyance charges and was paid Rs.2/- to ~~Rs.2/-~~ Rs.10/- for individual work. They claim that Mohan Kumar ~~has~~ work also utilised as and when they were available. ~~otherwise~~ There is no replacement of the applicant. They have engaged the others because the applicant was not regularly available and that his services were engaged only on few occasions.

10. That he was sent to the hospital when he received a leg injury is false. That the authorities have not violated any Act or provision of any law, hence, the application may be dismissed.

11. The applicant filed additional grounds also. He denied all the allegations made by the respondents in his additional counter. He claims not only for carrying out his works as Hamali, carrying cash boxes but also attending bank work, going to LIC office. He was working as Peon regularly and put in more than 240 days and Sec. 25(f) of the I.D.Act be applicable in addition to Sec. 25(h) of the I.D.Act. He is entitled to be engaged as and when vacancies arise. He denied that the General Manager was the appointing authority and stoppage of work by himself was also not correct and that he is entitled to all benefits of Chapter 5 of the I.D.Act. He says that he was sent to Railway Hospital for treatment on 20.6.1989 by the Divisional Cashier (Pay) and he was described correctly as Peon.

12. We heard Sri P.Krishna Reddy, learned counsel for the applicant and Sri N.Rajeswara Rao, proxy counsel for Sri D.Gopala Rao, learned counsel for the respondents, and perused the records carefully.

13. The short question involved in this case is whether the applicant was a casual labourer and entitled to the relief claimed by him. Both the sides have presented their documents in addition to the annexures already in the pleadings. We have gone through the receipts for almost one year produced by the applicant wherein he is continuously paid Rs.8/- and only on occasions like 1st September, 1989 in addition to Rs.8/- he was also paid Rs.3/- and Rs.2/- on separate receipts. Shri Krishna Reddi stated that in addition to the fixed Rs.8/- per day, Rs.2/- etc., was paid for transport charges as and when undertaken.

14. In O.A.No.669/90 filed by the applicant herein, this Tribunal had delivered the judgement on 28.8.1990. In para 2 of the judgement, the Hon'ble Members observed as under -

"In these situation, we dismiss the application as pre-mature. We direct the respondents to dispose-of the representation dt. 6-7-1990 preferred by the applicant duly considering the points urged therein and also those raised in this application within a period of two months. The application is accordingly dismissed as pre-mature with the above directions. No order as to costs."

Having not received the benefits of the disposal of the application, he filed the present O.A. after a period of six months, more or less, with the same relief.

25-F and 25-H of Industrial Disputes Act, 1947 are reproduced below:

25-F - Conditions precedent to retrenchment of Workmen:

No Workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

25-H - Re-employment of retrenched workman:

Where any workman are retrenched, and the employer proposes to take into ~~his~~ employment any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons.

WEST Bengal - Sections 25-H of the Principal Act shall be re-numbered as sub-section (1) of that section and after sub-section (1), as so re-numbered, the following sub-section shall be inserted:-

"(2) When a closed unit is re-opened the workman on the roll of the unit immediately before its closure shall be given an opportunity to offer themselves for re-employment in the manner provided in sub-section (1)" - W.B.Act N1.LVII of 1980 S-14."

It is pertinent to note that having seen all the receipts for about one year produced by the applicant as well as confirmed from the department, it is clear that the Railways are permitting the Cashiers to engage persons for miscellaneous work and also for carrying cash boxes regularly. They are paid out of the contingent funds made available to them out of the Railway funds. The work is done in the Railways in the Cash Department. Sometimes he is called 'Hamali' or 'Peon'. They are regularly using him as a Peon. The work taken from the applicant is regular in nature, ~~like the~~ ^{like the} type of work that is entrusted to casual labour in other areas like Open Line etc. The learned counsel for the respondents contended that the applicant was like a Porter in a Railway Station. A Porter is not paid by the Railways. The passengers pay him though supposedly at fixed rates. The comparison is not correct. Rule 2001 of the Indian Railway Establishment Manual defines Casual Labour as follows:-

"(a) Casual Labour (Open Line): Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day-to-day working of the Railway system. This includes labour required for unloading and loading of materials, special repair and maintenance of tracks and other structures, supplying drinking water to passengers during summer months, (recoupment of man-days lost on account of absenteeism), patrolling of tracks etc. Casual Labour so engaged in the operation and maintenance of railway system is referred to as Open Line Casual Labour, as distinct from Project Casual Labour described in para (b).

(b) Casual Labour (Project): Casual Labour are also engaged on Railways for execution of railway projects, such as new lines, doubling, conversion, construction of buildings, track renewals, Route Relay Interlocking Railway Electrification setting up of new units etc. Casual Labour so engaged are referred to as 'Project Casual Labour'.

"Casual Labour refers to labour whose employment is intermittent, sporadic or extends over short periods or continued from one work to another. Labour of this kind is normally recruited from the nearest available source.

They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour."

'Industrial Worker' is also defined under the Industrial Disputes Act, 1947 under Sec.2(s):

Sec.2(s):

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

But, the Indian Railway Establishment Manual (I.R.E.M. for short) Rule 2001 says that casual labour is engaged in Open Line or Project Line, but taking the above two definitions it can be seen that the applicant is doing the work as defined in those two sections. The continuous engagement of the applicant indicates that he had been utilised as a casual labour not on Open Line or Project but in an office. From the letter No.A/CP/4/0 dt. 13.7.91 from the Chief Cashier/SC to the A.A.O.(Expenditure)/SC it is seen that services of persons like the applicant is of a regular nature and a substitute arrangement to engage casual labour since the latter costs the Railways more. The arrangement is to enable the Railways to remain free from commitments to casual labour. They are not to be compared with water boys employed during summer or labour engaged for patrolling of lines in monsoon.

To

1. The Senior Divisional Accounts Officer (B.G)
S.C.Railway, Secunderabad.
2. The Divisional Cashier (Pay) (BG)
S.C.Railway, Secunderabad.
3. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
4. One copy to Mr.D.Gopal Rao, SC for Rlys, CAT.Hyd.Bench.
5. One copy to Hon'ble Mr.C.J.Roy, Member(J)CAT.HYD.
6. One copy to Deputy Registrar(J)CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.
8. One spare copy.

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15. The respondents are very reluctant to call the applicant as Daily Rated Casual Labour because if he is called as such, he has to be given the benefits of employment. In 1989(2) (CAT) ALSLJ 293 between Rehmat Ullah Khan & others Vs. Union of India & others, the Full Bench held that the Casual Labourers can approach the Central Administrative Tribunal, since they are paid out of consolidated Funds of India. The applicant is no doubt paid out of office contingencies. Nevertheless, the nature of work is no different from that of Casual Labour as evident from the type of jobs performed and the intention of the Railways. Hence, the contention of the respondents that the applicants are not within the jurisdiction of Central Administrative Tribunal is not acceptable since they are to be treated like Casual Labour.

16. The prayer is in two parts:

(a) to re-engage him because persons like Lakshmiah and Yadagiri are subsequently employed. The termination from 15.5.90 is challenged.

(b) to confer on him the temporary status.

We, therefore, direct the respondents to re-engage him if there is work and Lakshmiah and/or Yadagiri are continued to be employed. We also direct the respondents to consider the applicant for conferment of temporary status in accordance with rules. The respondents are directed to carry out this direction within three months of receipt of this order.

17. The application is disposed of accordingly. No order as to costs.

R.Balasubramanian
(R.Balasubramanian)
Member(A).

Ch. Roy
(C.J.Roy)
Member(J).

Dated: 29th June, 1992.

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Deputy Registrar(J)