IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No.672/91. Date of Judgment: 27.3.1992.

Between:

B. Butchi Ramulu .. .. Applicant

Vs.

1. The Addl. Divisional Railway Manager, Hyderabad (MG) Divn., South Central Railway, Sec'bad.
2. The Divisional Signal & Telecom Engineer (M), Hyderabad (MG) Divn., S.C.Rly., Secunderabad.
3. The Sr. Divisional Personnel Officer, Hyderabad (MG) Division, S.C.Rly., Secunderabad.
4. The Chief Signal & Telecom Engineer, S.C.Rly., Rail Nilayam, Sec'bad.
5. Sig. & Telecom Engineer, Telephone Exchange, Secunderabad . .. Respondents

For the applicant : Shri P.Krishna Reddy, Advocate.

For the respondents : Shri N.V.Ramana, Standing Counsel for Railways

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

X JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J.ROY, MEMBER(J) X

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This application is filed under sec. 19 of the Administrative Tribunals Act, 1985 to setaside the impugned order of termination dt. 6-12-1990 bearing No.ASTE/Tele/11 issued by the Asst. Sig. & Telecom Engineer, Telephone Exchange (MG) Division, Sec'bad (R-5) by declaring the same as illegal, arbitrary and for a direction to the respondents to reinstate the applicant into service as CMR Carpenter with all consequential benefits including back-wages from 7-1-1991.

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2. The applicant states that he joined in Railways as Casual Khalasi in June, 1980 and worked till Feb., 1982. The applicant states that again he was taken into duty as CMR Carpenter in the Signal and Telecom Department under DSTE (M) Hyderabad (MG) Division, Sec'bad and was given temporary status after a period of 4 months. He was paid in authorised pay scale from 17-8-1984. The applicant averred that he was sent for a Trade Test and medical examination, but alleges that result of the trade test was not informed to him. The applicant alleges that 5th respondent had issued notice of termination dt. 6-12-1990 terminating his services with effect from 7-1-1991 on the ground that the funds do not exist in the estimate. The applicant filed an appeal before the 1st respondent on 21-2-1991 and 8-4-1991 in the matter. The applicant alleges that no orders are passed on his appeal. The applicant alleges that the action of respondents is illegal, void abinitio and nonest in the eye of law and constrained to approach this Tribunal. The respondents averred that the/respondent 5th has no right to terminate the applicant from the service as he is not the appointing authority. It is also alleged that no procedure prescribed under the Railway Establishment Code is followed while terminating the applicant as he attained the temporary status with effect from 17-8-1984 and worked continuously for the last seven years. The applicant alleged that the respondents terminated his services with mere suspicion that Casual Labour Service Card produced is not genuine and that the termination on mere suspicion is illegal and liable to be setaside.

3. The respondents filed reply affidavit and opposed the application. The reppondents allege that the applicant's services were terminated as a Casual Labour and therefore this Tribunal has no jurisdiction to take cognizance of the matter. The respondents state that the applicant was first engaged on 18-4-1984 and was engaged in carrying out

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various sanctioned estimates in which labour provision exists and his wages have been charged off to the works from the date of engagement to the date of termination. It is further stated that after completion of the works from 18-4-1984 to 6-1-1991 and on exhausting the provisions for labour existing in these works, and also that the Signal and Telecom Deptt./ Exchanges has no other sanctioned works on hand for continuing the services of Casual Labour, the applicant's services were terminated with effect from 7-1-1991. The respondents averred that the terminations orders were issued by the Asst. Signal and Telecom. Engineer, Exchanges, SCR, Sec'bad, who is superior than the appointing authority. The respondents denied the allegation that the termination orders are not issued by the proper authority. The respondents accept provisionally subject to the verification of the contents and genuineness of the casual labour card with regard to the averment that the applicant had joined the Railways as Casual Khalasi in the month of June, 1980. The respondents deny the allegation that the applicant was given temporary status and state that he was continued to be casual Muster Roll Carpenter and therefore the Railway Servants (Disciplinary and Appeal) Rules are not applicable to the applicant. The respondents state that the applicant was not retrenched but only terminated and that he was noteligible for retrenchment compensation etc. The respondents allege that the services of Casual Labour can be terminated without assigning any reasons by issuing one month's notice. The allegation that the terminatior order was issued on suspicion etc. is denied by the respondents. The respondents further alleged that the payment of monthly wages from 17-8-1984 to the applicant does not confer any permanent or temporary status and as per procedure one month's notice was duly issued by the competent authority on 6-12-1990 terminating the services of the applicant with effect from 7-1-1991. The respondents state that no other casual labour has been engaged in the place of applicant.

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4. The respondents state that for engaging a Casual Labour Artisan, they are required to be trade-tested for considering their continuance/absorption whenever additional posts are sanctioned/vacancies arise. The applicant was not trade tested earlier at the time of initial engagement and therefore he was trade tested subsequently and continued further till he was terminated from ~~xx~~ on 7-1-1991. The respondents allege that the said trade testing will not confer any right of continuance in service, and desired the application be dismissed.

5. The applicant filed material papers viz. Notice of termination dt. 6-12-1990; Representation dt. 21-2-1991 and 8-4-1991 submitted by the applicant to respondents.

6. We heard Sri P.Krishna Reddy, learned counsel for applicant and Sri N.V.Ramana, learned counsel for respondents and perused the records carefully.

7. The respondents have taken a preliminary objection that this Tribunal has no jurisdiction to entertain this application on the ground that it falls within the jurisdiction of Industrial Tribunal ~~Act~~ in view of A.Padmavalley's case (1991(1) SLR 247). They have also taken an objection that this is not a retrenchment but this is only a termination. To decide the said aspects, we have to look into the law laid down by the Full Bench in A.Padmavalley's case.

8. In the said Judgment it was held in para-40 that "the Administrative Tribunal does not exercise concurrent jurisdiction with the Industrial Tribunal and they must ordinarily exhaust the remedies available under the Act." In this connection, it is of an interest to note that in the same Judgment, the

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Hon'ble Members of the Full Bench in para-33 held that this Tribunal has jurisdiction to entertain the cases though they could approach Industrial Tribunal if the guidelines of Rohtas Industries' case are applicable. The relevant observations are -

> "Our Constitution is sensitive to workers' rights. Our story of freedom and social emancipation led by the Father of the Nation has employed from the highest of the motives, combined action to resist evil and to right wrong even if it means loss of business profits for the liquor vendor, the brothel keeper and the foreign cloth dealer, without expatiating on these seminal factors."

9. In para-36 of the same Judgment, it was held that "if the authority is terminating the services of the employees without following the statutory rules can be assailed as violative of Article 14 of the Constitution. Such a violation or illegal action which amounts to discrimination can in our view be corrected by recourse to the less expensive and effective remedy provided for under Article 32 or 226 of the Constitution. The court could remedy the illegality by quashing the illegal or invalid order and can also direct the officer concerned to perform the mandatory duty cast upon him."

10. In view of the above, the termination of the services of the applicant, applying the above principle, is violative of Article 14 of the Constitution and therefore, this Tribunal can entertain the application.

11. Besides the above, the second observation of A.Padmavally's case that the applicant seeking relief under the provisions of I.D.Act must ordinarily exhaust remedies available under that Act is also considered with careful attention. It is always not possible in certain circumstances which are rare that all the remedies in all the cases would not be exhausted. Importance

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of word "ordinarily" shall in Sec.20 should be taken in its clear meaning should be used, but not extraordinarily. ~~or rarely.~~ Therefore, in rare cases, this Tribunal can entertain the application even in exceptional cases where the departmental remedies are not exhausted and that there is no violation of Sec.20 of the Act. In A.Padmavalley's case they have specifically not considered the word "ordinarily". "ordinarily" means "usually". Therefore, it is only ordinarily and just because the word 'ordinarily' is used, it doesnot deprive thes Tribunal the inherent discretion vested in it in conducting the judicial proceedings. The relevant portion of Sec.20(2) with regard to "Judicial discretion" is that -

> "This leaves a discretion with the Tribunal to entertain an application under sec.19 even where the applicant has failed to avail of all the remedies available to him under the relevant "service rules as to redressal of grievances",..... This discretion has to be exercised judicially and not arbitrarily, and it may be assumed (in view of the language of this section read with that of Sections 14 and 15, ante) that the same principles will govern the exercise of this discretion as are applied by the High Courts and the Supreme Court in respect of the writ jurisdiction vested in them in regard to the bar on ground of existence of alternative remedy. The principles, in short, are the same as distilled from Ferris, above, though in their application one finds considerable flexibility. The exercise of discretion one way or the other would depend on the totality of the circumstances of each case including the merits of the applicant's case, the conduct of the applicant and the conduct of the authorities."

Therefore, in the above case, Their Lordships have not put an embargo on the discretionary power of the Tribunal to admit the cases in rarest of the rare cases whenever they feel that that it is not exactly necessary that all the statutory remedies to be are/exhausted before coming to this Tribunal where violation of Article 14 is involved or some other such cases of similar type.

In A.Padmavalley's case the Hon'ble Members have notheld that in exceptional cases like where violation of Article) is involved as stated supra, and in view of the observations of His Lordship Justice Sri Krishna Iyer in Rohtas Industries' case, this Tribunal can entertain the application. Therefore, without straining much, a homogeneous construction should be given.

12. Besides, in Rehmat Ullah Khan and others Vs. Union of India and others in T.161/86 reported on page-323 in the Behri Brothers Publication entitled "Full Bench Judgments of Central Administrative Tribunals (1986-89), the Full Bench over-ruling the Jabalpur Bench's decision in Anurudh Singh and others Vs. Union of India and others X ATR 1988 (2) 405 X held that since the casual labour work in connection with the affairs of the Union, they fall within the purview of the Central Administrative Tribunal.

13. We are also fortified with the citation X AIR 1982 SC 854 X L. Robert D'Souza Vs. Executive Engineer, Southern Railway, wherein it was held that termination of casual service without notice or enquiry or without following the minimum principles of natural justice is void.

14. In view of the above two citations, we see no point in favour of respondents. The respondents contention that this Tribunal has no jurisdiction nor it is not the service matter and so the application does not lie is not accepted. We, therefore, hold that the matter is service matter and that this Tribunal has jurisdiction.

15. It may be seen from the citation X AIR 1982 SC 854X L. Robert D'Souza Vs. the Executive Engineer, Southern Railway and another that Their Lordships held clearly stating what amounts to retrenchment and if that is so what is remedy in para-7 -

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Para-7:

"If termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) 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; (iv) or termination of the service on the ground of continued ill-health. 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 would nonetheless be retrenchment within the meaning of expression in S.2 (oo). It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment."

While deciding the same in the said Judgment in para-11 it was observed by Their Lordships that -

"If a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chap.XXIII."

i.e. Casual Labour or Seasonal Labour acquires status of temporary railway servant, which is referred to in Railway Establishment Manual, Rr.2501 & 2505 which is as follows:

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R.2501 of IREM:

"Definition" -

(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic orextends over short periods, Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely:-

(i) Staff paid from contingencies except those retained for more than six months continuously - Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment;

(iii) Seasons labour who are sanctioned for specific works of less than six months duration. If suchlabour is shifted from one work to another of the same type, e.g. relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

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Note:- (1) ....

(2) Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (iii) above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature he does not lose his temporary status.

(3) xx xx xx xx

(4) Casual Labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

(5) xx xx xx xx Rx. "

...10.

Rule 2505 of IREM:

"Notice of termination of service - Except where notice is necessary under any statutory obligation, no notice is required for termination of service of the casual labour. Their services will be deemed to have terminated when they absent themselves or on the close of the day.

Note: In the case of a casual labourer who is to be treated as temporary after completion of six months' continuous service the period of notice will be determined by the rules applicable to temporary Railway Sefvants."

16. Here, the acquisition of temporary status of the applicant has not been denied by the respondents in so many categorical terms. By virtue of operation of law, and in view of the above rulings, we hold that the applicant acquired temporary status. When once he acquires temporary status, the law laid down with reference to termination comes into operation. The applicant having attained the temporary status with effect from 17.8.1984 and that he has been working since last about seven years, the services cannot be terminated by giving one month's notice. The said termination amounts to Retrenchment within the meaning of Sec.25(F) of the I.D.Act. Sec.25(F) of the I.D.Act says -

"Sec.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 Govt.

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In this regard the following citation is also relevant - X AIR 1981 SC 1253 X para-17:

> "Where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits, namely, back-wages in full and other benefits."

The applicant was not provided with any retrenchment compensation as contemplated in Sec. 25(F) of the I.D.Act as aforesaid. The action of respondents is, therefore, wrong.

17. When once the applicant acquires temporary status, the "Railway Servants (Discipline & Appeal) Rules," are applicable. Rule-6(v) to 6(ix) says about Major penalties, and Rule-9 says procedure for imposing major penalties viz.

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Rule-6(viii) - Revmoval from service which shall not be a disqualification for future employment under the Government or Railway Administration;

xx xx xx xx

Rule-9(1) Procedure for imposing major penalties: No order imposing any of the penalties specified in clauses (v) to (ix) of Rule-6 shall be made except after an enquiry held, as far as may be, in the manner provided in this rule and rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1950 (37 of 1850) where such inquiry is held under that Act."

Here, we see that the applicant acquired Temporary Status. If there is any suspicion in the minds of the respondents with reference to the service card as produced, they ought to have held enquiry after giving reasonable opportunity in terms of Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968 before terminating the services of the applicant as the said action amounts to major penalty. The said penalty cannot be imposed without holding any enquiry as stated supra.

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(36)

As no enquiry was held in the instant case in terms of Railway Servants (Disciplinary & Appeal) Rules, or retrenchment compensation was paid, the termination of applicant is illegal. Therefore, we setaside the impugned notice of termination issued by the 5th respondent bearing No.ASTE/Tele/11 dt. 6.12.1990 and direct the respondents to take the applicant on duty and consequently should be paid all back-wages.

18. Under the circumstances, the O.A. is allowed accordingly with the observations supra. The respondents are directed to implement this order within ~~two~~ four months from the date of communication of this order. No order as to costs.

(R. Balasubramanian)
Member (A)

(C.J.Roy)
Member(J)

Dated 27th March, 1992.

Deputy Registrar(J)

To

1. The Addl.Divisional Railway Manager, Hyderabad (MG) Division, S.C.Rly, Secunderabad.
2. The Divisional Signal & Telecom Engineer (M) Hyderabad (MG) Division, S.C.Rly. Secunderabad.
3. The Sr.Divisional Personnel Officer Hyderabad (MG) Division, S.C.Rly Secunderabad.
4. The Chief Signal & Telecom Engineer, S.C.Rly, Railnilayam, Secunderabad.
5. The Signal & Telecom Engineer, Telephone Exchange, Secunderabad.
6. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
7. One copy to Mr.N.V.Ramana, SC for Rlys, CAT.Hyd.
8. One spare copy.

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