

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 675 of 1999

New Delhi, this the 2nd day of November, 1999

HON'BLE MR. R. K. AHOOJA, MEMBER(ADMNV)
HON'BLE MR. KULDIP SINGH, MEMBER(JUDL)

Shri Bakhtawar Singh
R/o RZE 1/4, Mahaveer Enclave
Palam Road, New Delhi

.... Applicant

(By Advocate: Shri M. M. Sudan)

Versus

1. Union of India
Through the Principal Secretary
Department of Telecommunications,
Sanchar Bhawan,
New Delhi-110001
 2. The Chief General Manager,
Department of Telecommunication
Dehradun, U.P.
 3. The Telecom
District Engineer,
Department of Telecommunication
Dehradun, U.P.
 4. The Telecommunication Consultants India
Through the General Manager,
Chiranjeev Tower, 3rd Floor,
46, Nehru Place,
New Delhi-110019
- Respondents

(By Advocate: Shri K. R. Sachdeva)

O R D E R (ORAL)

By Hon'ble Mr. R. K. Ahooja, Member(Admnv)

The facts relating to the present O.A. are as under. The applicant joined as a casual worker/daily rated Mazdoor on 1.6.83 with respondent no.3. In the year 1989, he was granted temporary status. The applicant submits that he alongwith three other temporary mazdoors submitted his application to respondent no.3 for deputation with respondent no.4, the Telecommunication Consultants India Ltd. (in short 'TCIL') sometime in the year 1993. The said application was recommended and forwarded to TCIL. By letter dated 23.6.94 (Annexure

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A-2), respondent no.4 wrote to respondent no.3 regarding the selection of the applicant alongwith three other mazdoors with the request that they may be relieved to join TCIL and also mentioning that the daily rated mazdoors will be repatriated to the concerned units after serving in the Projects/Headquarters for the required period. Respondent no.3 was, however, not willing to relieve the applicant. He submits that as the deputation assignment was relatively more paying in ~TCIL, he was pressurised to give a declaration that after being sent for deputation to TCIL, his lien in the Telecommunication department will not be kept and he will not be entitled to any claim in future. A copy of the said declaration has been annexed as Annexure A-4 to the OA. The applicant submits that he was repatriated from TCIL on 9.11.98 alongwith a communication to respondent no.3 regarding the completion of his deputation period. His grievance is that though he reported for duty to respondent no.3 on 10.11.98, he was not allowed to join. His representations in that regard have also not been considered obliging him to file this OA.

2. The case of the respondents is that the applicant was not sent on deputation but was relieved after he had clearly stated that his lien would not be maintained in the Telecom department and he would have no further claim with the department.

3. We have heard both the learned counsel.

On

4. Shri M. M. Sudan, learned counsel for the applicant has drawn our attention to Annexure A-8 which is a copy of the letter issued by the department of telecom dated 14.1.88, addressed to all General Managers of telecom department. The subject is the safeguarding of interests of casual mazdoors who were already working in TCIL, New Delhi. It has been stated therein that casual mazdoors drafted from the Deptt. of Telecom and serving in TCIL will, for all purposes like regularisation and other benefits be treated on par with the casual mazdoors serving in the deptt. of Telecom. Shri Sudan submitted that this indicates the policy of the department itself that the casual mazdoors sent to TCIL would be treated ^{as} on deputation. He further points out that the request for the services of the applicant was also in terms of deputation to TCIL and further the TCIL had written by their letter dated 18.7.94 (Annexure A-5) that the selected officials including the applicant were being treated as on deputation and that they would be repatriated on completion of their deputation period.

5. We are not convinced by the aforesaid arguments. The deputation of workers entails the fulfilment of three conditions. These are the consent of the lending department, the consent of the borrowing department and the consent of the official who is to be sent on deputation. It is clear that the lending department, namely, the Telecom Department was not willing to send the applicant on deputation. It is under these circumstances that the applicant in order to better his career prospects, agreed to sever his connection with the Telecom department and it was only on that

(J)

condition that the lending department gave its consent to relieve the applicant. Obviously, the applicant would not have been relieved if he had not agreed to sever his lien and further prospects with the department. Shri Sudan has, in this context, cited the observations of the Hon'ble Supreme Court in the case of Delhi Transport Corporation vs. D.T.C. Mazdoor Congress & ors., 1991 Supp(1) SCC 600. The apex court had observed in the context of the termination of services of D.T.C. employees as under:-

"It is to find whether the citizen, when entering into contracts of service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position of either to "take it or leave it" and if it finds to be so, the Court would not shirk to avoid the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial contract law, it is not an absolute and immutable one but is subject to change in the changing social conditions. In the absence of specific head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest invent new public policy and declare such practice or rules that are derogatory to the Constitution to be opposed to public policy. The rules which stem from the public policy must of necessity be laid to further the progress of the society in particular when social change is to bring about an egalitarian social order through rule of law. In deciding a case which may not be covered by authority courts have before them the beacon light of the trinity of the Constitution i.e. Preamble, Part III and Part IV of the Constitution and the play of legal light and shade must lead on the path of justice, social, economic and political. Lacking precedent, the court can always be guided by that light and the guidance thus shed by the trinity of our Constitution."

6. Shri Sudan contended that the applicant was placed in such a similar situation and, therefore, he was compelled to submit his undertaking under the compelling

circumstances. We do not consider that the ratio of the aforesaid order applies to the present case. In the above case, the apex court was dealing with the termination of services of the D.T.C. mazdoors who were in the situation of distress need and under the compelling circumstances had no choice but to enter into a contract on dotted lines. The situation herein is different in as much as the applicant was already working with respondent no.3 and it was not as if he was thrown out of service. He himself stated that he wanted to go to TCIL as the payment there was better than in the Telecom Department. In these circumstances, it cannot be said that he was in a distress situation and therefore was under compulsion to sign on the dotted line in respect of foregoing his lien in the telecom department.

7. Learned counsel for the applicant also made two further points. Firstly he contended that the refusal by respondent no.3 to allow the applicant to proceed on deputation was contrary to the ~~above~~ policy of the Telecom Department as manifested in Annexure A-8 to allow the casual Mazdoors to proceed on deputation to TCIL. We have gone through Annexure A-8. It specifically deals with Mazdoors who ~~have~~ been drafted and were working with TCIL on the date of issue of that order. This circular does not state that all those who are selected by TCIL must be relieved to go on deputation by the Telecom Department. We do not therefore agree with the contention of the learned counsel for the applicant that the action of respondent no.3 was contrary to the guidelines and policy of the department.

(B)

8. Shri Sudan secondly submitted that the department followed a policy of discrimination in as much as two other persons who had similarly been selected for deputation to TCIL, were so relieved by the Telecom department but the applicant was refused this facility. We consider that if the applicant had a grievance on that score, he should have agitated the same at the appropriate time.

9. In the light of the above discussion, we find no merit in this O.A. and it is accordingly dismissed.

No costs.

Kuldeep Singh
(KULDIP SINGH)
MEMBER(JUDL)

R.K. Ahuja
(R. K. AHOOJA)
MEMBER(ADMNV)

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