

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No. 2014/1998

Date of decision: 6.7.2001

Shri Jeetendra Singh Sethi Applicant

(By Advocate: Shri B.S. Mainee)

versus

Union of India & Ors. Respondents

(By Advocate: Shri R.L. Dhawan)

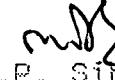
CORAM:

The Hon'ble Shri Kuldip Singh, Member (J)

The Hon'ble Shri M.P. Singh, Member (A)

1. To be referred to the report or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal?


(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2014/1998

New Delhi, this 6th day of July, 2001

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

(18)

Jeetendra Singh Sethi
174A, DDA Flat, Motia Khan .. Applicant
u/Panadganj, New Delhi
(By Shri B.S. Maine, with Mrs. Meenu Maine, Advocates)

versus

Union of India, through

1. General Manager
Western Railway
Churchgate, Mumbai
2. Shri D.S. Baweja
Chief Personnel Officer
Western Railway, Churchgate, Mumbai
3. Divisional Railway Manager
Western Railway
Ajmer (Rajasthan) .. Respondents

(By Shri R.L. Dhawan, Advocate)

ORDER

By Shri M.P. Singh

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 10.7.1995 issued by Respondent No.3 by which the services of the applicant have been terminated.

2. The brief facts of the case are that the applicant was appointed as a Janitor at the Holiday Home at Mount Abu by the Secretary of the Staff Benefit Funds Sub Committee (SBFSC, for short) in the office of D.P.O. Ajmer vide letter dated 8.4.1980. The management of Holiday Home at Mount Abu was taken over by the Western Railway Administration from SBFSC along with all the existing staff with effect from 1.6.1980 and the services of the other employees, except that of the applicant were regularised in the Railways. According to the applicant, his services were subsequently terminated with effect



from 17.9.1981. The applicant challenged the termination order before the Central Industrial Tribunal, Ahmedabad which gave an award on 9.11.1992 and set aside the termination order. The Railway Administration was directed to reinstate the applicant on his original post with back wages. The Railway Administration challenged the said award by filing OA.No.331/94 in Ahmedabad Bench of the CAT which was rejected. Ultimately the respondents implemented the award and paid Rs.66,316/- as backwages and an amount of Rs.3400/- as retrenchment compensation to the applicant on 10.7.95. At the same time the services of the applicant were also terminated with effect from the same date i.e. 10.7.95. Aggrieved by this, the applicant has filed an OA in the Ahmedabad Bench of the CAT praying for quashing of the impugned order of termination of services dated 10.7.95. The Ahmedabad Bench of the CAT held that it had no territorial jurisdiction as the impugned order of the Central Industrial Tribunal was passed partly at Mount Abu and partly at Ajmer which are situated in Rajasthan. The applicant was allowed to withdraw the OA by the Tribunal with the observation that the question of limitation would be reckoned from the date of collecting the OA and presenting it before the appropriate Bench. Hence this OA has been filed by the applicant claiming reliefs by praying for directing the respondents to reinstate the applicant in the original post of Janitor with all consequential benefits and to pay him backwages with interest @ 18% per annum.

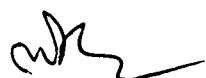
3. Respondents have filed their reply and have stated that the applicant was appointed as Janitor on 9.4.1980 for Holiday Home at Mount Abu which was taken over by



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Railway Administration on 17.9.1981 when his services were terminated. The said order of termination was challenged by the applicant before the learned Presiding Officer, Industrial Tribunal, Ahmedabad who gave his Award on 9.11.92 (Annexure A/4) with the directions to the Railway Administration to reinstate the applicant on his original post with continuity of service. The Railway Administration challenged the said award before the Ahmedabad Bench of CAT who, however, declined to interfere with the Award. In implementation of the said Award, the applicant was paid an amount of Rs.66,316 towards salary for the period from 17.9.81 to 10.7.95, being the date of termination of his services. According to the respondents, the applicant was engaged by SBFSC which is not part of the Railway Administration. It was specifically mentioned in the order dated 9.4.1980 that the applicant has not been engaged by the Western Railway and he will have no right whatsoever on the Railway post. It is stated by them that the Award of the learned Presiding Officer, Industrial Tribunal, Ahmedabad was challenged before the Ahmedabad Bench of the CAT which at the relevant point of time had jurisdiction in the matter. However, as per law laid down by the Hon'ble Supreme Court, this Tribunal has no jurisdiction to entertain an application relating to an Award by the Industrial Tribunal. Moreover, order dated 10.7.95 has been passed under the provisions of Section 25F of the Industrial Disputes Act, 1948. In view of the aforesaid submissions, the application fails and may be dismissed.

4. Heard the learned counsel for the parties and perused the records.



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5. During the course of the arguments, the learned counsel for the respondents submitted that the OA is not maintainable under Section 14 of the AT Act, 1985 as the applicant does not hold a civil post. He was appointed by SBFSC, which was not part of Railway Administration. Also the applicant had not been paid salary out of consolidated funds of India. In support of his contention, he has relied upon the judgement of the Hon'ble Supreme Court in the case of UOI Vs. Chotelal & Ors. SC SLJ 1999(1) 67. In this case, the apex court has held as under:

"6. In view of the characters of the Regimental Fund as discussed above, we have no hesitation to come to the conclusion that the said Fund cannot be held to be a public fund by any stretch of imagination and the dhobis paid out of such Fund cannot be held to beholders of civil posts within the Ministry of Defence so as to confer jurisdiction of the Central Administrative Tribunal to issue directions relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such Dobhis but on that score alone it cannot be concluded that the posts are civil posts and that payment to the holders of such post is made from out of the Consolidated Fund of India or of any public fund under the control of Ministry of Defence.

7. In the aforesaid premises, the contention of Mr. Mahajan, learned senior counsel that the Central Administrative Tribunal has no jurisdiction to go into the question of service conditions of such dhobis has to be sustained and consequently, the impugned order of the Tribunal has to be set aside. We, accordingly, set aside the impugned judgement of the Tribunal dismiss the OA".

6. On the other hand, the learned counsel for the applicant drew our attention to the letter dated 28/29.3.82 issued by the Divisional Office, Ajmer. According to this letter, Shri A.K.Tandon, DPO/1 has recommended the case of the applicant for his absorption in Class IV post. He has stated that when the Holiday Home was taken over by the Railways for maintenance, one



post of AIOW was sanctioned to function as a Janitor with effect from 17.9.81, but the services of the applicant were terminated. The learned counsel stated that since all other Class IV staff engaged by SBFSC have already been absorbed by IOW, Abu Road, the applicant ought to have been absorbed.

7. After hearing the learned counsel for both parties and perusing the records, we find that the applicant was appointed by SBFSC in 1980 in Holiday Home. When the Holiday Home was taken over by the Western Railway, the services of the applicant were terminated. He filed a suit under the ID Act which gave the award in favour of the applicant and directed the respondents to reinstate the applicant with continuity in service and full backwages for the intervening period. Respondents filed an appeal against the order of the Industrial Tribunal, which was dismissed by the Ahmedabad Bench of the CAT. In pursuance of this, the respondents have implemented the award and paid an amount of Rs.66316/- towards backwages for the period from 17.9.81 to 10.7.95. At the same time, services of the applicant were also terminated. We find from the records that at no point of time, the applicant was holding a civil post nor was he paid salary from the Consolidated Funds of India. Moreover, the applicant has earlier challenged his order of termination of 1981 under section 25F of the ID Act in the Labour Court. The Hon'ble Supreme Court has held that this Tribunal has no jurisdiction to adjudicate the matter of a person who is not holding a civil post. It has also been held that any appeal against the Award of Industrial Tribunal lies in the High Court and not in the CAT. Since the services of the applicant have been



terminated under section 25F of the ID Act, we are of the considered opinion that the present OA is not maintainable and is liable to rejected.

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8. In this connection, it would be pertinent to extract the observations made by the apex court in the case of Ajay D. Panalkar Vs. Management of Pune Telecom Department (1997) 11 SCC 469, which are as under:

"5. The principal question is whether the CAT could entertain application particularly after the Industrial Tribunal had ruled that the respondent was a workman within the meaning of the ID Act and was entitled to retrenchment compensation under Section 25F and since the same was not paid he was entitled to reinstatement with full backwages. That decision could be upset only by the Court within that hierarchy and could not have been brushed aside by invoking the jurisdiction of CAT and having the said Tribunal decide that the Department was not an industry may be based on a judgement of this Court. The CAT also skirted the issue whether it had jurisdiction in the circumstances of the case. The learned counsel appearing for the respondent-department was not able to satisfy us as to how the CAT could assume jurisdiction so long as the decision of the Industrial Tribunal and the Award made by that body stood unaltered. In fact, the learned counsel for the respondent very fairly drew our attention to this Court's decision in K.P.Gupta V. Controller, Printing & Stationery (1996)1 SCC 69, which has taken the view that in such a situation the CAT has no jurisdiction.

6. Therefore, on the limited question that the CAT had no jurisdiction, which entertained the application filed by the respondent-Management we set aside that order of the Tribunal. The appeal will stand disposed of with no order as to costs."

10. In view of what has been discussed above, we find that the present OA is not maintainable and is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/gtv/