

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(B)

O.A. No. 1786/87
T.A. No.

199

DATE OF DECISION 17.1.1992

<u>Shri Antoo Dass</u>	<u>Petitioner</u> Applicant
<u>Shri V.P. Sharma</u>	<u>Advocate for the Petitioner</u> Applicant
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Smt. Raj Kumari Chopra</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhaundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as a casual labourer in the office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order of termination of his services and for his reinstatement with full back wages. At the time of the hearing of the case, the learned counsel for the applicant, however, gave up the prayer for back wages.

2. According to the applicant, he was initially engaged as a casual labourer in the Office of Assistant Engineer (Civil), All India Radio, Aligarh (U.P.) in 1984 and in the same year, the staff of Aligarh All India Radio was transferred to Agra, when he was also posted at Agra in the Office of Assistant Engineer (Civil), Civil Construction Wing, All India Radio. He worked there till he was further transferred to the Office of the Assistant Engineer, All India Radio, Lodi Road, New Delhi. He has annexed to the application a certificate issued by the Assistant Engineer (Civil), Agra, to the effect that he has worked from 1.8.1984 to 30.4.1985 on muster rolls. The applicant joined at New Delhi Office on 2.7.1985 but he was asked not to report for duty on 4.8.1987.

3. The version of the respondents is that the applicant, on his own, abandoned service and he was not asked by the respondents not to report for duty, as alleged. On 4.8.1987, he was brought by the Electrical Contractors to whom he sold Government cement on 31.7.1987. To avoid any police action, he gave an undertaking and left his work without any intimation.

4. The applicant has denied the above version of the respondents. He has stated in his rejoinder that he never sold any cement at any time.

5. We have gone through the records of the case and have considered the rival contentions. The legal position in regard to abandonment of service is well settled. It must be voluntary relinquishment and it must be total and under such circumstances as clearly to indicate an absolute relinquishment. Such an intention cannot be attributed to an employee without adequate evidence in that behalf (vide G.T. LAD Vs. Chemical & Fibers of India, Ltd., 1979 S.C.C. (L&S) 76; Buckingham and Carnitic Company Vs. Venkatiah, A.I.R. 1964 S.C. 1272; M/s Jeewan Ltd. Vs. its Workmen, A.I.R. 1961 S.C. 1567).

6. In G. Krishnamurthy Vs. Union of India & Others, 1989 (9) A.T.C. 158, the Madras Bench of this Tribunal observed that in the case of abandonment of service, the employer is bound to give notice to the employee calling upon him to resume his duty and also to hold an enquiry before terminating his services on that ground. The Tribunal followed the decision of the Bombay High Court in Gauri Shankar Vishwakarma Vs. Eagle Industries (P) Ltd., 1988 (1) LLN 259.

7. We are of the opinion that in the case of abandonment of service by a casual labourer, the employer is bound to give notice to the employee calling upon him to resume his
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duty. In the case of the employer intends to terminate his services on the ground of abandonment of service, he should hold an enquiry before doing so.

8. In the instant case, no such enquiry was held, nor was any notice issued to the applicant calling upon him to resume his duty. We ~~are~~^{do}, therefore, reject the plea of abandonment of service raised by the respondents.

9. The records of the case clearly indicate that the applicant has worked for more than three years as casual labourer, though with some breaks in between. In view of this, we hold that the termination of his services on the alleged ground that he had abandoned service, is not legally sustainable.

10. In the facts and circumstances of the case, the application is partly allowed. The respondents are directed to re-engage the applicant as casual labourer wherever the vacancy exists in their office within a period of three months from the date of communication of this order. The applicant would not, however, be entitled to back wages.

11. We make it clear that after reinstatement of the applicant as casual labourer, the respondents will be at liberty to take appropriate action against the applicant for any alleged misconduct on his part, in accordance with law, if so advised.

12. There will be no order as to costs.

B.N. Dhundiyal
(B.N. Dhundiyal) 17/1/82
Administrative Member
SLP
150192

Amrit
17/1/82
(P.K. Kartha)
Vice-Chairman(Judl.)