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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Regn.No.OA.1777/90

Date of Decision: 03.05.1991

Shri Anil Kumar

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Applicant

Vs.

Union of India & Ors.

...

Respondents

CORAM:

Hon'ble Shri P.K. Kartha, Vice Chairman(J)
Hon'ble Shri B.N. Dhoundiyal, Member (A).

For the Applicant

...

Shri Sant Lal, Counsel

For the Respondents

...

Shri P.H. Ramchandani,
Senior Counsel.

(Judgement of the Bench delivered by
Hon'ble Shri B.N. Dhoundiyal, Member(A))

The applicant, who had worked as Casual Labourer (Mailman) in New Delhi Sorting Division of Postal Department filed this application under Section.19 of the Administrative Tribunal's Act, 1985 seeking following reliefs:-

- i) To direct the respondents to reinstate him in service forthwith;
- ii) To direct them to extend the benefits of the Judgement/Order in the case of Ram Avtar (OA-1788/89), Khem Chand(OA-2502/89) and others decided on 18.05.1990 (ATJ-1990(2) CAT, PB-71) and regularise him in accordance with the direction of the Supreme-Court and the regularisation scheme; and
- iii) To grant the consequential ^a / back wages and continuity of service with original seniority.

2. The applicant has stated that he was engaged as daily wage Mailman on 23.06.1982 and was eligible for regularisation, having rendered more than 240 days service. Due to sickness, he remained absent from October 1983 to March, 1988 and was allowed to join duty

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from May 1988. However, his services were terminated on 16.08.1988 under the verbal orders of the Senior Superintendent, New Delhi Sorting Division.

3. The respondents have stated that the applicant was engaged from the open market as a Casual Labourer on daily wage basis w.e.f. 23.06.1982 and his services were being utilised as and when required. He remained absent unauthorisidely w.e.f. 13.10.1983 till March 1988 i.e. for 4 years and 6 months. He was given casual work w.e.f. 03.05.1988 to 11.08.1988 for 88 actual working days. The abnormal break of over 4-1/2 years cannot be condoned. His services were terminated as a result of reorganisation of sets in RMS.

4. The applicant has relied upon the judgements of the Principal and Jabalpur Benches of the Tribunal holding that the Post and Telegraph Deptt. is an Industry, that he is entitled to the protection of the provisions of Chapter VA of I.D. Act 1947 and that his services cannot be treated as automatically terminated due to his unavoidable absence. According to him, the respondents are bound to fulfil the requirements of 25F of the I.D. Act by holding a proper enquiry before terminating his services. No such enquiry was held in the instant case.

In Hari Mohan Sharma Vs. U.O.I. & Ors. (Regn.No.M.48(G)T of 1986) decided on 30.05.1986, the Jabalpur Bench of the Tribunal has held that the Railway Mail Service of Department of Posts is an Industry as defined in Section 2(J) of the I.D. Act 1947.

The other decisions of the Principal Bench of the Tribunal relied upon by him are:

Vs.U.O.I.

- Netrapal Singh/(OA.1920/88) with other connected cases decided on 15.12.1989 and Hari Shankar Swamy Vs. U.O.I. & Ors. with other connected cases decided on 18.05.1990 (ATJ-1990(2)page 71).



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5. We have gone through the records of the case and have considered the contentions of both the parties. Under the directions of the Supreme Court in P & T Department Vs. U.O.I. & Ors. AIR 1987 SC 2342, a scheme for regularisation of Casual Labourers has already been prepared by the P&T Department and put into operation from 01.10.1989 in respect of employees for their regularisation in Group 'D' posts.

In our view, the break of 4-1/2 years in the instant case deserves to be condoned on two grounds. Firstly, as mentioned above, no enquiry was held before terminating his services. Secondly, condonation seems to be implied by the Conduct of the respondents who permitted the applicant to resume his duties by their order dated 4.5.88.

6. In the facts and circumstances of the case, the applicant is entitled to the benefits of the Judgements of this Tribunal in the cases of Ram Avtar (OA-1786/89) and Khem Chand (OA-2502/89) decided on 18.5.90 (ATJ-1990(2), Pg-81).

7. The application is disposed of with the following orders and directions:

- i) The impugned verbal order of termination of services w.e.f. 16.08.1988 is set aside and quashed. The respondents are directed to reinstate the applicant in service within a period of three months from the date of communication of this Order.
- ii) We do not direct payment of any back wages to the applicant.
- iii) After reinstating him, the respondents shall consider regularising his services in accordance with the scheme prepared by them. For this purpose, the break in service shall be deemed to have been condoned by the respondents. Till regularisation, he shall be paid the minimum pay in the pay scale of regularly employed Mailmen.
- iv) There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN(J)