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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.689/91

Date of decision:11.10.93.

Shri Mam Chand

Petitioner

vs,

Union of India through
Secretary,
Ministry of Communication
& anr.

... Respondents

For the Petitioner

...None.

For the Respondents

...Sh.P.P.Khurana, counsel.

CORAM:

THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN
THE HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

JUDGEMENT(ORAL)

(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

The material averments in the OA are these. Since 1.2.1984, the petitioner had been in the employment of the respondents as Beldar on daily wage basis. He was posted in the office of the S.D.O.(Telegraph), Department of Telecommunication, Meerut. He had continuously worked till 1.9.1989 when his services were terminated without assigning any valid reason.

The relief claimed, in main, are these:

1. (a) the order dated 1.9.1989 terminating the services of the petitioner may be quashed.
2. (b) the respondents be directed to reinstate him in service with full back wages and continuity in service.
3. (c) the respondents be directed to regularise the services of the petitioner.

2. A counter-affidavit has been filed on behalf of the Respondents. In it, the categorical averment made by the petitioner in the OA that he was employed on 1.2.84 and continued till 1.9.1989 has not been denied. The only averment

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in reply to para 1 of the OA is that the services of the petitioner were terminated by the order dated 1.9.1989 as per policy of the Department. However, it is stated in para 4 of the counter-affidavit that the petitioner has rendered service only for 45 days as per details given below. However, no details are contained in the affidavit.

3. At this stage, we may refer to the ordersheet dated 8.9.1993. On that day, we directed the respondents to file a proper counter-affidavit. However, that has not been done.

4. In the rejoinder-affidavit filed, the petitioner has filed documents to substantiate his averment that he had worked with the respondents continuously from February 1984 to September 1989.

5. We have perused the said documents. We are satisfied that they substantially corroborate the version of the petitioner as contained in the OA. It is thus obvious that the petitioner has rendered more than 240 days' of service in one particular year.

6. The petitioner has relied upon the provisions of Section 25 F of the Industrial Disputes Act to demonstrate that the order of termination dated 1.9.1989 was void. We have already indicated that it is the petitioner's case that he was working under the S.D.O.(Telegraphs). This assertion has not been denied in the counter-affidavit. In view of the decision of the Supreme Court in THE BANGALORE WATER SUPPLY & SEWAGE BOARD BOARD VS. A. RAJAPPA AND OTHERS,etc. (AIR 1978 SC 548), it can be safely held that the Department of Telecommunication is an "Industry" within the meaning of Industrial Disputes Act.

It, therefore, follows that the services of the petitioner having not been terminated in accordance with the provisions of Section 25F of the Industrial Disputes Act, the order dated 1.9.1989 is void and ineffective. As a corollary to this, it has to be held that in the eye of law, the petitioner continues to be in service and at any rate he shall be deemed to be in service on 1.10.1989.

7. The Casual Labourers(Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunication, 1989 had come into force with effect from 1.10.1989 onwards. Para 5(i) of the Scheme inter alia provides that temporary status has been conferred on all the casual labourers currently employed and who have rendered continuous service of at least one year out of which they must have been engaged for a period of 240 days (206/in the case of officers observing ^{days} five day week). Such casual labourers will be designated as temporary mazdoor. We have already indicated that the petitioner should be deemed to be employed on 1.10.1989. We have also indicated that the petitioner, in any view of the matter, had rendered continuous service for one year with the respondents and during that year he had completed 240 days of service. Therefore, the petitioner is entitled to the benefit of the said Scheme.

8. This OA is supported by a Misc.Petition seeking condonation of delay. In the Misc.Petition, it is averred that the petitioner approached the respondents on numerous occasions requesting them to reinstate him in service but no action was taken by them. Ultimately on 12.4.1990 he

made another representation, true copy of which has been filed as Annexure 'A' to the OA. Having received no reply, he sent a legal notice dated 3.1.1991 through his lawyer. On receipt of the reply to the said notice, he presented the OA. The reply was received on 7.1.1991 (para 2 of the Misc. Petition seeking condonation of delay. In our opinion, sufficient ground has been made out for condonation of delay, if any.

9. We now come to the question as to what relief should be granted to the petitioner. Having considered the matter carefully, we are of the opinion that this is not a fit case where we should quash the order dated 1.9.1989 or direct the reinstatement of the petitioner. We, however, direct the respondents to give fresh engagement to the petitioner. This shall be done within a period of one month from the date of presentation of a copy of this order before the authority concerned by the petitioner. Thereafter, the petitioner's case for regularisation in service shall be considered in accordance with the Scheme on the footing that he is entitled to the benefit of the Scheme.

10. With these observations, this OA is disposed of finally but without any order as to costs.

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

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

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