

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

OA No.1051/1988

Vivek Shukla  
s/o Jagdish Prasad  
r/o S-5G, P/4.O.Compound, Meerut .. Applicant

versus

1. Assistant Divisional Engineer  
Cross-Bar, Installation, Meerut
2. Divisional Engineer, Cross-Bar  
Installation, Meerut
3. Telecom District Engineer, Meerut
4. Government of India through  
Secretary, Ministry of  
Telecommunication, Sanchar Bhawan  
New Delhi .. Respondents

Counsel

1. Sri P. Sidhartha - for Applicant
2. Sri P. Mathur - for Respondents

CORUM:

Hon'ble Dr. R.K. Saxena - Judicial Member  
Hon'ble Mr. D.S.Baweja - Administrative Member

Dated: October 31, 1995

JUDGEMENT

By Hon'ble Dr. R.K. Saxena

This OA has been filed to challenge the  
retrenchment order annexure IX.

2. The facts of the case are that the applicant was appointed as daily rated casual labour by the respondents No.1 and 2 on 9.2.1987 and worked as such till 31.5.1988 without any interruption. He was, however, intimated vide annexure IX dated 31.10.1987 that his services would not be required after 30.11.1987. It is contended that neither one month's

B2

notice was given nor was given retrenchment compensation and the salary for the month of May, 1988. It is further contended that the compliance of Section 25-F of Industrial Disputes Act, (ID Act in short) has not been done.

3. The applicant has also cited the case of similarly situated persons who approached the Tribunal by filing an OA 263/1986 which was decided alongwith connected cases on 10.12.1986. According to the applicant, the petitioners of OA 263/86 and other connected matters were retrenched without compliance of Section 25F and the Tribunal had quashed the order. It is, therefore, urged that the judgement of the said OA 263/86 is fully applicable in this case.

4. The applicant has pleaded that the order of retrenchment be quashed and the respondents be directed to retain him in service and regularise the services.

5. The respondents contested the case and came with the case that the applicant was engaged for the project work of New Cross Bar Telephone Exchange, Brahmapuri, Meerut but the said work was completed in October, 1987 and thus those who were engaged in the work, were compelled to be retrenched. It is also pleaded that the instructions dated 30.3.1985 and 22.4.1987 issued by the Ministry of Communication also emphasised that the casual labourer/wiremen engaged in the projects which are on completion or completed, should be retrenched. It was thereupon that the applicant's order of retrenchment was passed.

D

6. It is argued that the applicant was not appointed on regular basis and as casual labour, he worked for 274 days from June, 1987 to May, 1988. It is further stated that the compensation which was due, was remitted to the applicant by Money Order. The plea of the respondents is also that the applicant, before approaching the Tribunal, should have filed petition to the higher authorities.

7. The applicant has also filed rejoinder in which it is stated that the break in service has been shown intentionally to get the claim defeated. He reasserted that he worked for 270 days as is shown in annexure RA-1.

8. We have heard the learned counsel for the parties and perused the record.

9. Before deciding whether the impugned order annexure IX is legal or illegal, it becomes necessary to find out if the Department of Telecommunication is an industry; and the employees working therein come within the purview of workman. The applicant has placed reliance on the judgement of this Bench given on 10.12.1986 in OA 263/86. The copy of the judgement has been brought on record as annexure X. The Bench, while dealing with the matter relied upon the decisions in the cases Tapan Kumar Jaha Vs. General Manager, Calcutta Telephones [1981 Lab.I.C.(NCC)68] and Sharabhai Chemicals Vs. Shubhas Pandya [1984(49)FLR 244] and held that the department was an industry and employee as a workman.

R

(4)

It was further observed that the Tribunal had got concurrent jurisdiction to decide the matter relating to non-compliance of Section 25F of ID Act.

10. This point whether the Department of Telecommunication and Post Office were an industry or not, was considered by the Jodhpur and Ahmedabad Benches of the Central Administrative Tribunal and held that they were an industry. In a recent case of Kandas Vs. UOI & Ors., [(1994)27-ATC-11] the Division Bench of CAT, Jodhpur held that the Post Office was an industry.

Thus, it is ~~fully~~<sup>2</sup> established that the Department of Telecommunication is an industry and the employees of that department whose salary comes within the limits as defined under the provisions of ID Act, 1947, are workmen.

11. The contention of the learned counsel for the applicant is that the applicant was engaged as a casual labour and he worked for about 270 days and therefore his service cannot be terminated without following the procedures prescribed under Section 25F of the ID Act. The contention of the respondents, on the other hand, is that the applicant was engaged for the Project Work of New Cross Bar Telephone Exchange, Brahmapuri and since the work was over, he was retrenched. The respondents could not file any communication to show if the applicant was really engaged as casual labour for the said project. In the circumstances, it is not possible to conclude that the applicant was engaged for a particular project. The respondents could not dispute the number of 270 days worked by the applicant with the

D  
2

respondents. Besides the annexures 1 to 7 giving the details of work done by the applicant, he has also filed details of work (annexure RA-1) clearly indicating by the department itself, that he had worked for 270 days. When the department is held as an industry and the employee as a workman, his retrenchment, which is confessed by the respondents themselves in the counter reply, should have followed the procedure. According to Section 25A of the ID Act, workman employed in any industry and who has worked for not less than one year, shall not be retrenched unless one month's notice in writing or indicating reasons for retrenchment or payment in lieu of such notice for the said period, has been made and also compensation which shall be equivalent to 15 days of his pay, was made. The period of one year is required to be calculated according to Section 25-B of the ID Act. Accordingly, the period of 12 calendar months preceding the date with reference to which the calculation is to be made and to be counted, <sup>comes to 15</sup> the days ~~up~~ 240. Looking from this angle, it is clear from Annexure RA-1 that from May, 1987 to May, 1988, the applicant had worked continuously for 270 days. Therefore, he cannot be retrenched unless the compliance of Section 25A of the ID Act was made. Learned counsel for the respondents submits that Money Order of compensation was sent to the applicant but the receipt of the said money has been denied by the applicant. What is required under Section 25-F of the ID Act is that payment should have been made before he is retrenched. Mere sending money order will not be enough <sup>for</sup> compliance of the provisions. In this way, we find that the respondents had retrenched the service

(6)

of the applicant without following the procedures prescribed therefor. The result is that the retrenchment of the applicant was illegal and is therefore quashed. The respondents are, therefore, directed to take back the applicant in service with all consequential benefits.

12. The OA is decided accordingly. No order as to costs.

~~D.S. Bawej~~  
(D.S. Bawej)  
Member(A)

R.K. Saxena  
(R.K. Saxena)  
Member(J)

/gtv/