

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 222 of 1986 **X~~28~~8**
KAXXO.

DATE OF DECISION 27/03/1987

Bhojani Alpesh Ramniklal **Petitioner**

B. B. Gogia **Advocate for the Petitioner(s)**

Versus

Union of India & Others. **Respondent**

J. D. Ajmera **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. P. H. Trivedi : **Vice Chairman**

The Hon'ble Mr. P. M. Joshi : **Judicial Member.**

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

(6)

JUDGMENT

OA/222/86

27/03/1987

Per : Hon'ble Mr P. H. Trivedi : Vice Chairman

The petitioner Bhojani contends that he was appointed as Casual Labourer on 23rd June, 1983 at Rajkot in P&T Department. He has completed, he stated, service for 2 years and he is entitled to be regularised in terms of Ministry of Personnel circular dated 13/10/1983 and 13/09/1985. His services have been terminated by a notice dated 3rd May, 1985 although his juniors whom he has named according to him are continuing. He also claims during hearing that he is a worker in terms of Industrial Disputes Act and no procedure for retrenchment has been followed in terms of that Act. The respondents deny that the applicant has been in continuous service for 2 years and also that the benefit of regularisation is available to him in terms of the circulars he has relied upon. The respondents also deny that termination of the applicant's service is discriminatory in so far as his juniors have been retained. The case of the respondents is that the termination of services of the petitioner is because of his being not suitable and therefore the question of discrimination does not arise.

2. We have heard the learned advocates for the petitioner and the respondents. The respondent has produced Government of India's order under which notification has been issued that daily-rated staff paid from contingencies and daily-rated workman paid by the day, week, month etc. of Posts and Telegraph Department of Ministry of Communication are excluded from the operation of Civil Services (Classification, Control and Appeal)

Rules, 1957 now (1965). The respondents have asked that the petitioner should be put to proof for his claim that he has been in continuous service for 240 days. The petitioner has already furnished a certificate from Assistant Registrar of the Respondents Department at Rajkot giving monthwise details from July, 1983 to June, 1985 the number of days for which he was working on the muster roll. This certificate shows that he has been working for 655 days during this period. Beyond denying the petitioner's claim for continuous service the respondent has not said anything in reply to the specific proof given by the petitioner. In reply to the petitioner's claim that he is entitled to regularisation, the respondent has not stated anything beyond non-application of the relevant instructions to the case of the petitioner.

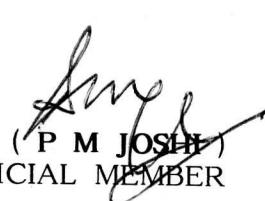
3. We are unable to uphold the contention of the respondent that the applicant has not given sufficient proof that he is in continuous service for more than 240 days. The petitioner has cited 1978-I LLJ 349 AIR 1981 SC 422 1980 LAB I.C.1292 for showing his entitlement for regularisation on the basis of fulfilment of requirement of continuous service. He has shown ~~that~~ how the term continuous service is to be interpreted. This decision clearly shows that the computation of the period is not limited to any particular period of the callander year. The respondent has not produced a copy of the letter dated 01/10/1984 on the basis of which he has given a notice of termination. By claiming the retrenchment compensation the petitioner has claimed a status of a workman under the Industrial Disputes Act and this also the respondent has not challanged in his written statement. The respondent's stand is that because the petitioner was not found suitable and so he is not entitled to the protection of Central Civil Service (Classification, Control and Appeal) Rules, Act, and therefore the notice issued to him for termination

is quite in order. We do not agree with this view. The case of the petitioner is that having put in the requisite number of days of service he is entitled to be regularised has not been answered by the respondent. We are unable to resist the conclusion that the petitioner has a claim for regularisation on account of the period of service he has put in and a simple order of termination on the ground of un-suitability before regularisation cannot be resorted to, for getting rid of him.

4. We find that the application has merits and allow it, and quash and set aside the impugned order dated 03/05/1985 and direct that the petitioner be reinstated from that date and allowed back wages which may be paid within a period of three months from the date of this order.

No order as to costs.


(P H TRIVEDI)
VICE CHAIRMAN


(P M JOSHI)
JUDICIAL MEMBER