

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 264 & 265 OF 1986

~~FA No~~

DATE OF DECISION 3-10-1986

BHARATKUMAR P. LAKHALANI &

PRAKASH C. RUPARELIA. Petitioner s

N.D. NANAVATI

Advocate for the Petitioner(s)

Versus

SHRI C.R. CHAUDHARY, DIV. ENGINEER Respondent

TELEGRAPH, JUNAGADH.

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

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J U D G M E N T

OA No. 264 OF 1986

&

OA No. 265 OF 1986

Date: 3-10-1986

Per: Hon'ble Mr.P.M.Joshi, Judicial Member.

Both the petitioners viz; Bharatkumar P. Lakhani (in OA No.264/86) and Prakash C.Ruparelia (in OA 265/86) appointed as temporary telephone operator and posted at Junagadh and Vanthali, respectively, claim to be a quasi-permanent employee under Rule 3 of "The Central Civil Services (Temporary Service) Rules 1965" (hereinafter referred to as "C.C.S. Rules"). They challenge the order of termination of service contending that they had acquired a status of quasi-permanent employee. According to them the impugned action is violative of the provisions contained under Article 14, 16 & 311 of the Constitution of India contending that other juniors to them are still retained in the employment by the respondents.

It is the defence of the respondents that it was clearly stipulated vide appointment order dated 20-9-1982 that their appointment shall be liable to be terminated at any time by a month's notice without assigning any reason and the appointing authority has the right

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to terminate the services forthwith without giving one month's notice by making payment to him of a sum equivalent to the pay and allowances. It is further stated that the services of the applicant were terminated in view of the fact that their work was not found satisfactory for being retained in service.

The order of appointment dated 20-9-1982 (Annexure 'A') and the order of termination of service dated 15-2-1985 (Annexure 'B') are produced in OA No. 265/86. Mr. V.H. Desai, learned counsel appearing for Mr. Nanavati for the applicants concedes that the similar nature of order of appointment and termination of service are passed in the case of Bharatkumar, (in OA No. 264/86). Mr. Desai appears for the petitioners and Mr. J.D. Afmera appears for the respondents in both the cases. As common questions of facts and law are involved in the present applications they are decided by rendering a common judgment.

While relying on the provisions contained under Rule 3 of the "C.C.S. Rules" it is contended by Mr. V.H. Desai that the petitioners had served with the respondents for a continuous period of more than three years and accordingly when they had acquired a status of quasi-permanent employee, the provisions of Rule 5 of "C.C.S. Rules", do not come into play and

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hence the impugned action is bad in law. In order to appreciate the contention canvassed by Mr. Desai, the relevant Rule 3 of C.C.S. Rules is reproduced in extenso as under :

"When a Government servant shall be deemed to be quasi-permanent. - A Government servant shall be deemed to be in quasi-permanent service -

- (i) if he has been in continuous temporary service for more than three years; and (emphasis supplied)
- (ii) if the appointing authority, being satisfied having regard to the quality of his work, conduct and character as to his suitability for employment in a quasi-permanent capacity under the Government of India, has made a declaration to that effect".

It is undisputed that the petitioners were appointed as temporary telephone operators vide order dated 20-9-1982, wherein it was clearly stipulated that their appointments can be terminated at any time without giving a month notice by the appointing authority without assigning any reason. It is also conceded that the termination of service of the petitioners, is by innocuous order. It is straneously urged by Mr. J.D. Ajmera, the learned counsel of the respondents that the petitioners had not acquired a status of a quasi-permanent employee as no suitability certificate by the appointing authority was issued in favour of the petitioners. In his submission before a Government servant can be deemed to be in quasi-permanent service a declaration must be issued under the second sub-clause of Rule 3, for that is the sine qua non for the commencement of quasi-permanent service. In support of his submission he has relied on the cases of Champaklal Chimanlal Shah Vs. The Union of India

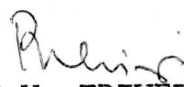
(A.I.R. 1964 S.C. p.1854) and Jaswantsingh and Ors. Vs. The Union of India (A.I.R. 1980 S.C. p. 115).

One of the principal grounds on which the petitioners assailed the order of termination of service is that they have acquired status of a quasi-permanent employee in terms of the "C.C.S.Rules" inasmuch as they had served for a period of continuous period of more than three years. It is impossible to entertain the plea that the petitioners are entitled to claim the status as contended. The Rule 3 of the aforesaid Rules provides that a Government Servant shall be deemed to be in quasi-permanent services, if, (i) he has been in continuous service for more than three years and (ii) the appointing authority being satisfied, having regard to the quality of his work, conduct and character as to his suitability for employment in quasi-permanent employee under the Government of India, has made a declaration to that effect. It does appear that the petitioners have been in continuous temporary service for more than three years but whether they fulfil the second condition or not is a matter to be decided by the appointing authority having regard to the various circumstances mentioned therein. In both the cases the appointing authority, decided to terminate the service of the petitioners, in view of the fact that their work was found to be unsatisfactory and they were found unsuitable for being retrained in service. The circumstances leading to unsuitability are elaborately stated in the Affidavit-in-Reply filed by the respondents.

contd. ... 5

It has been held in "The Manager, Govt. Branch Press and Anr. Vs. D.B. Belliappa (1979 SLJ p. 233) that if the services of a temporary Government servant are terminated in accordance with the condition of his service on the ground of unsatisfactory conduct or his unsuitability of the job and/or for his work being unsatisfactory or for like reason which makes him of a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16 of the Constitution. It is not the case of the petitioners that any allegations of misconduct were levelled against them, thus it is pure and simple case of unsatisfactory work and conduct of the applicants which lead to the termination of their services by the appointing authority. The impugned action i.e., termination of the services of the petitioners who were temporary employee for unsatisfactory conduct and work by innocuous order of termination as per terms of their services condition, is quite valid. Both the applications therefore deserve to be dismissed as they are devoid of any merits whatsoever. The applications, therefore, stand dismissed with no order as to costs.

The certified true copy of this judgement should be filed in the R & P of OA No. 265 of 1986.


(P.H. TRIVEDI)
VICE CHAIRMAN


(P.M. JOSHI)
JUDICIAL MEMBER