IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEW DELHI~~

(7)

O.A. No. 313 OF 1987
~~T.A. No.~~

DATE OF DECISION 27-2-1991

SHRI INDULAL JOSHI Petitioner

Mr. M.D. RANA Advocate for the Petitioner(s)

Versus

THE GENERAL MANAGER, TELEPHONES, AND ORS. Respondents.

MR.P.S.CHAPANERI FOR MR.P.M.RAVAL Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI : VICE CHAIRMAN

The Hon'ble Mr. R.C. BHATT : 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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND—12 CAT/86—3-12-86—15,000

Shri Indulal Joshi,
Stand Chawk,
Behind Girls High School,
Jetpur. : Applicant

(Advocate: Mr.M.D.Rana)

Versus

1. The General Manager,
Telephones, Near High
Court, Ahmedabad.

2. Sub-Divisional Officer,
Stand Chawk, Behind Girls
High School, Jetpur. : Respondents

(Advocate: Mr.P.S.Chapaneri
for Mr.P.M.Raval)

O.A./313/87

J U D G M E N T

Date: 27-2-1991

Per: Hon'ble Mr. R.C.Bhatt : Judicial Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the validity of the oral order of termination by Respondent No.2 by which the respondent No.2 asked the applicant not to come to office on and from 1st July, 1987. It is alleged in the application that the applicant was initially inducted and continuously worked as a Casual Driver for driving the departmental-vehicle on Muster-Roll basis under Jetpur Phones, Sub-Divisions of the Respondents. The appointment was made at the end of the month in the year 1985 and the applicant worked upto March 1986 for 106 days. It is further alleged that from the month of April, 1986 till the date of his termination, the applicant has without any interruption served the department continuously till the oral termination and that the applicant has completed more than 240 days in a calendar year previous to the date of oral termination. It is the case of the applicant that the respondents have violated Section 25(F) of the Industrial Disputes Act, 1947 hereinafter referred to the Act. It is alleged that the Telephone Department is

an Industry which would come in the spehre of the Industrial Disputes Act 1947 and the applicant who is a casual driver, is a workman and the respondents are in law bound to follow the provisions of the Industrial Disputes Act before orally terminating the services of the applicant. It is alleged that there is also a breach of the Constitutional guarantee given under Artilces 14 and 16. of the Constitution that the oral order is violative of the Article 21 of the Constitution of India. The applicant has therefore prayed that the oral order asking the applicant not to come to office on and from 1st July, 1987 by the respondent No.2 be set at nought and the respondents be directed to reinstate the applicant with all backwages and the respondents be further directed to pay the applicant the difference in salary on the basis of the proposition 'equal pay for equal work' and to make the pay fixation of that category.

2. The respondents have filed written statement contending that as the applicant has challenged the order without first exhausting the departmental remedies the application deserves to be dismissed in view of the Section 20 of the Administrative Tribunals Act, 1985. It is further contended that the applicant was informed to be careful for the month of May 1987 by his mustering incharge, Shri B.M.Trivedi J.E. outdoor as well as SDOP, Jetpur because Jeep No.GAY 9159 which he was driving became out of order due to his personal carelessness and that the work of the applicant was not found satisfactory. After that also his work could not be improved and the same vehicle again became faulty during June, 1987. The respondents have contended that as the work of the applicant was not satisfactory, and was risky, he was told not to come on duty from 1.7.1987. The respondents have not disputed that the services of the applicant have been put to an end by the respondent

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No.2 by informing him orally not to come or attend office on and from 1st July, 1987. The respondents have denied that the applicant served for 240 days as alleged in the application. It is also denied that any reason is necessary to be given for retrenchment. The respondents denied that the Telephone Department is an 'Industry' which would come within the sphere of Industrial Disputes Act. It is contended that from April, 1986 to June, 1987 the applicant was engaged as casual driver on daily wages and his services were purely temporary.

3. The applicant has filed a rejoinder contraverting the averments made by the respondents in their reply. The applicant has alleged that he has not received any memo with regard to his indiscipline nor about his performance in service and that the termination of his service orally casts ~~and~~ clear slur on his character and conduct.

4. At the time of hearing of this application, the learned advocate for the applicant has confined his arguments to the relief prayed in para 7(a) of the application and has not pressed relief in para 7(b) of the application. The learned advocate for the respondents has not pressed points about limitation and about the applicant having not exhausted the departmental remedies before approcahing this Tribunal.

5. The first contention of the respondents is that the Telephone Department is not an 'Industry' as defined in Section 2 (J) of the Industrial Disputes Act. In this connection, learned advocate for the applicant has relied on the two decisions of this Tribunal in

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G.K.Aparnathi vs. Union of India in TA/69/1987 decided on 10th December, 1987 and Viljibhai K.Solanki & Anr. vs. Union of India and Others in OA/518/88 decided on 19th September, 1990 in which it is held that Post and Telegraph Department is an Industry as defined in Section 2(J) of the Industrial Disputes Act. In these two decisions of this Tribunal, the reliance was placed on the earlier decision in the case of Kunjan Bhaskaran and others vs. Sub Divisional Office, Telegraphs Changanassery (1983 LIC.135) in which it was held that the P & T Deptt. is an industry and if there is a termination even if it is oral, it cannot be done without regard to Section 25 F of the Industrial Disputes Act. In view of these decisions, we find no substance in the contention of the respondents that P & T department is not an industry and we hold that the present applicant is governed by the provisions of the Industrial Disputes Act.

6. The learned advocate for the respondents also submitted that the combined reading of Section 14 and Section 28 of the Central Administrative Tribunals Act show that this Tribunal has no concurrent jurisdiction with Labour Court or Industrial Tribunal. He submitted that in view of these two sections, the applicant ought to have approached the Labour Court or Industrial Tribunal for the redressal of his grievance and not to this Tribunal. He submitted that the applicant has challenged the violation of Section 25 F of the Industrial Disputes Act and therefore the proper forum for him for redressal of his grievance was the Labour Court or Industrial Tribunal and not this Tribunal.

7. In order to understand clear position of law on this point, we have a recent judgment of Central Administrative Tribunal Hyderabad Bench consisting of

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five Members
/in A Padmavalley and Another vs. C.P.W.D. and Ors.
reported in ~~Vol~~.III (1990) C.S.J. (C.A.T.) 384 (FB)
in which it is held that the Administrative Tribunal
does not exercise concurrent jurisdiction with those
authorities in regard to matters covered by that Act.
and hence all matters over which the Labour Court or
the Industrial Tribunal or other authorities has
jurisdiction under the Industrial Disputes Act do not
automatically become vested in the Administrative
Tribunal for adjudication. In para 13 of this judgment,
it is held that in view of very wide definition of service
matters it follows that there can be no dispute that the
expression service matters covers not only matters
provided for in the service rules, but also matters
provided for in other laws and statutes including the
I.D.Act. In para 38 of this Judgment, it is held
"In our view, one such situation would be where the
competent authority ignores statutory provisions or acts
in violation of Article 14 of the Constitution. Further,
where either due to admissions made or from facts apparent
on the face of the record, it is clear that there is
statutory violation, we are of the opinion, that it is
open to the Tribunal exercising power under Article 226 to
set aside the illegal order of termination and to direct
reinstatement of the employee leaving it open to the
employer to act in accordance with the statutory
provisions. To this extent we are of the view that
alternate remedy cannot be pleaded as a bar to the
exercise of jurisdiction under Article 226. However,
the exercise of the power is discretionary and would
depend on the facts and circumstances of each case.
The power is there but the High Court/Tribunal may not
exercise the power in every case." Therefore though
the applicant seeking relief under the provisions
of the Industrial Disputes Act should ordinarily exhaust the

remedy available under the said Act, but when the competent authority has ignored statutory provisions or acted in violation of Article 14 of the Constitution, this Tribunal can in the exercise of the discretionary power entertain such application. In this case for the reasons which will follow, we are of the view that the respondents have acted in complete violation of the statutory provisions of the I.D. Act and this is a fit case in which we will exercise our discretion to entertain this application of the present applicant.

8. Now the question is whether the respondents have followed the provisions of Section 25 F of the I.D. Act. Niceties and Semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in Section 2 (00). The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of the employment between the employer and the workman concerned contains a stipulation in that behalf, and termination of the services of a workman on the ground of continued ill health. At this stage it is necessary to consider the contentions of the respondents in their written statement that the work of the applicant was unsatisfactory, risky driving and was very rough which resulted the vehicle out of order again and again and therefore the applicant was told not to come from 1st July 1987. If this is the root cause of the oral termination of the applicant by the respondent then it is a punitive action namely punishment. The applicant in rejoinder has clearly stated that he has not been served any notice of indiscipline or for inefficient or unsatisfactory

work. In this view of the matter, the termination would be ab initio void for violation of principles of natural justice and for not following the procedure prescribed for imposing punishment.

According to Section 25 F of the Industrial Disputes Act 1947, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the requirements of clause (a), (b) and (c) of Section 25 F are fulfilled. The applicant is a workman as defined in Section 2(S) of Industrial Disputes Act. It would be necessary to examine Section 25 (B) Clauses (1) and (2) of the Act. Clause 1 provides for uninterrupted services and Clause (2) comprehends where a workman is not in continuous service. Sub-Section(1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purposes of Chapter V-A. Sub-Section (2) incroporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of Sub-Section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months as the case may be if the workman during the period of 12 calendar months just preceeding the date with reference to which the calculation is to be made has actually worked under that employer for not less than 240 days. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in Sub-Clause (a) of Clause (2). The conditions are that commencing the date with reference to which the calculation is to be made, in case of retrenchment the date of retrenchment if in a period of 12 calendar months just preceding

such date the workman has rendered service for a period of 240 days he shall be deemed to be in continuous service for a period of one year for the purpose of Section 25B and Chapter V-A. In the instant case, the applicant has produced satisfactory evidence that he had worked for more than 240 days in a period of 12 months preceeding the date of the oral termination as mentioned in the job card. In view of these evidence, it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25 F assuming that the oral termination was a termination simplictor. Thus, the applicant was entitled to a notice and also retrenchment compensation in this case. As pre condition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative and he must therefore be deemed to be in continuous service.

10. The learned advocate for the respondents raised the question whether the applicant would be entitled to all the backwages if the termination of service is held inoperative and void. According to him, the applicant is not entitled to full backwages. It is held in Mohan Lal vs. Bharat Electronics Ltd. (1981) 3 SCC 255. that in case of illegal termination of service worker is deemed to be continuing in service and is entitled to reinstatement with full backwages. No case is made out for departure for this normally accepted approach of the Court and Tribunals in the field of social justice and we do not propose to depart in this case.

11. In the result, the application having merits is allowed and the oral order of the Respondent No. II asking the applicant not to come office on and from 1st July, 1987 is held ab initio void. Thus the oral termination being

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inoperative, the respondents are directed to reinstate the applicant at once with all the backwages. The application is thus allowed to the above extent. The relief in terms of para 7(b) does not survive as it is not pressed ~~pursued~~. We pass no order as to costs having regard to the facts and circumstances of this case.

(R.C. Bhatt)
Judicial Member

(P.H.Trivedi)
Vice Chairman