

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Termination

O.A. No. 451/87
T.A. No.

DATE OF DECISION 14-12-1992

Shri M.B. Chavada and others Petitioner

Shri D.K. Mehta Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan

Vice Chairman.

The Hon'ble Mr. R.C. Bhatt

Member (J)

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 ? ✗

1. M.B. Chavada
2. R.N. Pancholi
3. S.K. Parmar
4. G.J. Makwana
5. T.C. Patel
6. N.B. Solanki
7. R.M. Parmar
8. D.K. Dabhi

Applicants.

Advocate

Shri D.K. Mehta

Versus

1. Union of India
Notice to be served through the
Director General Post and Telegraphs
Department, Ministry of Communication
Parliament Street, New Delhi
- 2
2. Divisional Engineer (Telephones)
Near Alankar Talkies
Surendranagar, Dist. Surendranagar
3. Sub-Divisional Officer (Phones)
Trunk Bhavan, Surendranagar.
4. Assistant Engineer (Phones)
Telephone Exchange
Surendranagar.

Advocate

Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 451 of 1987

Date: 14-12-1992

Per Hon'ble

Shri R.C. Bhatt

Member (J)

The eight applicants working in the office
of the Director General of Post and Telegraphs Department
have filed this application under section 19 of the
Administrative Tribunals Act 1985,

challenging their oral termination by the respondents Nos. 2 and 3 on 31st August 1987. It is alleged by the applicants that the impugned order of oral termination of the applicants by respondents no.2 and 3 is illegal, erroneous and violative of Article 14 of the Constitution of India. It is alleged that the respondents have retained the persons who are junior to the applicants and the second ground alleged is that the services of the applicants have been terminated by the respondents nos. 2 and 3 without following the procedure under Section 25-F of the Industrial Disputes Act.

2. The case of the applicants is that they were appointed by the oral order Annex.A-1, dated 8th March 1985, pursuant to which they resumed their duties and they have worked till 31st August 1987 when they were orally terminated by respondents nos. 2 and 3. The applicants have produced Annexure A-3, collectively, a Certificate given by the officer of the respondents which shows that each applicant has worked for more than 240 days within the period of 12 calendar months prior to the date of their termination. The learned Advocate for the applicants, therefore, submitted that the oral order of termination was bad in law, because it amounts to illegal retrenchment. He submitted that the provisions of the Industrial Disputes Act apply to the case of these applicants, because the applicants are workmen and the respondents is an 'industry' within the meaning of the provisions of Industrial Disputes Act. He also invited our attention to the judgment of this Bench given in O.A.No. 597/88 decided on 8th October 1981, in which case, the order of oral termination passed by the respondent no.2 was held illegal and hence quashed and set aside

and respondents in that case were directed to re-instate the applicants in service with back-wages. The learned Advocate for the applicants submitted that the said judgment was given on almost identical facts which arise in the present case also.

3. The respondents have filed the written statement refuting the averments made by the applicants. The respondents have contended in their reply that there is no violation of Article 14 of the Constitution of India as alleged by the applicants and they have also denied that the oral order of termination was bad in law as alleged. It is contended by the respondents that the appointment of the applicants was purely on casual and daily work basis and do not guarantee for future employment, as work itself was Casual and temporary. It is contended that the appointment of the applicants was passed on the terms and conditions mentioned in the letter dated 13th February 1985, and that the provisions of the I.D. Act do not apply.

4. The applicants have filed rejoinder controverting the contentions taken by the respondents in their reply that the applicants are not workmen and the respondents an industry as defined under the Industrial Disputes Act. Now, this point has been decided in number of cases by this Tribunal and also in the case which has been relied on by the learned Counsel for the applicants produced at Annexure A-5. Moreover, we have on record even the copy of the D. O. 270/6/84-ST dated 22nd April 1987, vide Annex. A-2 and in that D. O. the third clause is as under:

" Action may be taken to dispense with the services of DRM's taken on rolls after 30th March 1985, after observing all necessary formalities such as notice period, compensation etc. "

This clause is self explanatory which shows that before the termination of these applicants, it was incumbent on the respondents to give requisite notice along with the compensation according to law. But the respondents have not followed that procedure in the instant case. We are satisfied that the applicants have worked for more than 240 days within 12 calendar months prior to the date of their oral termination and hence they should be deemed in continuous service for one year prior to the date of their termination. In view of these facts it was necessary for the respondents to follow the provisions of Section 25 F of Industrial Disputes Act before terminating the services of the applicants which admittedly the respondents have not followed, hence the oral termination of the applicants by respondents nos. 2 and 3 should be held illegal and violative of provisions of Section 25 F of the Industrial Disputes Act and hence the same shall have to be quashed and set aside.

5. The other contention taken by the respondents in their reply is that the applicants were appointed for specific period and for specific work. The employment of the applicants was casual and not on regular establishment of the Department, as contended by the respondents in the reply. The main contention of the respondents is that applicants were appointed on the terms and conditions of the appointment letter. Examining the appointment letter, it is clear that the appointment of applicants not only continued during the periods specified in the appointment letter but continued thereafter also.

Moreover the applicants having completed 240 days of work within a period of 12 calendar months prior to the date of their oral termination, the respondents were bound to follow the procedure of Section 25 F of the Industrial Disputes Act, before terminating their services which they have not followed hence the contention taken in the reply by the respondents shall have to be rejected.

6. We have perused the documents on record and as observed above, the oral termination of the applicants by the respondent nos. 2 and 3 being illegal and violative of Section 25 F of Industrial Disputes Act, the same is quashed and set aside and hence the respondents are bound to reinstate the applicants in service with back wages. Hence we pass the following order.

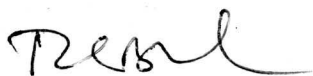
ORDER

7. The oral order of termination dated 31st August 1987 made by the respondents nos. 2 and 3 is held illegal and hence the same is quashed and set aside. The respondents are directed to reinstate the applicants in service within two months from the date of receipt of this order and to pay them all the back wages till the date of reinstatement within four months from the date of receipt of the copy of this order.

The applicants to file an affidavit before the respondents that they have not made any gainful earning during this period and if they have made such gainful earning, then respondents would be entitled to deduct

that amount from the back-wages. The respondents should reinstate the applicants with continuity of service. The respondents may consider the question of regularisation of the applicants according to their seniority and rules applicable to them.

The application is disposed of. No order as to cost.



(R.C. Bhatt)
Member (J).


14/12/92

(N.V. Krishnam)
Vice Chairman