

(9)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 499 of 1987  
XXXXXX

DATE OF DECISION 24-02-1988

Shri Mahesh B. Dhobi Petitioner

Shri Y. V. Shah Advocate for the Petitioner(s)

Versus

Central Water Commission Respondent

Shri 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.

(19)

JUDGMENT

OA/499/87

24/02/1988

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

The petitioners are work-charged Khalasis on muster roll. Initially recruited from 17-6-85 through Employment Exchange they claim to have worked continuously upto 15-7-86 and were retrenched arbitrarily, according to them on or about 15-7-86. Initially recruited on 17-6-85, their services have been extended from time to time inspite of permanent nature of work. By orders of this Tribunal on 1-7-87 they were directed to be reinstated within one month as temporary Khalasi. They were reinstated on 28-7-87 but the orders of appointment on ad hoc basis of reinstatement gave them a term only upto 15-10-87 that and/ their services will be automatically be terminated on 15-10-87 without any separate order being issued. A representative sample of the order annexed at A/2 dated 28-7-87 shows that the appointment is on ad hoc basis for a fixed period upto 15-10-87, that the services can be terminated at any time without any notice or assigning any reason and that the services will automatically stand terminated on 15-10-87 A.N. and no separate termination order will be issued. The applicants contend that this order is violative of Article 14 and 16 of the Constitution as several juniors have been recruited after their appointment. Not only are there new recruits but similarly situated Khalasis are also continued in service. The petitioners accordingly contend that the order 25-H is violative of Section 25-F, 25-G/ and 25-N of the Industrial Disputes Act, 1947 and Rules 76-A & C and 77 of the Industrial Disputes (Central) Rules, 1957. The petitioners also contend that from time to time inspite of the permanent nature of the work, artificial breaks have been given for not granting benefits on par with other permanent employees and have cited AIR 1971 SC 2242, AIR 1978 SC 548 and 1986, G.L.H. (D.B.) 1024 in support of their contentions. The petitioners have also given the names of five persons with dates of apointments to show that the juniors have been retained and continued. The petitioners claim that AIR 1976 SC 1111 and AIR 1977 SC 31 show that their termination is illegal.

2. In reply the respondents have stated that the petition is misconceived

and that no legal rights are violated. The petitioners were appointed as Monsoon Khalasi for a specified period and their present appointment is for a fixed period upto 15-10-87 when it would automatically stand terminated and no separate termination orders will be issued. 96 Monsoon khalasis were appointed on 15-6-87 or there about whose services have been terminated on 15-10-87. No temporary or ad hoc person who had been appointed along with the petitioners has been retained. There is no work for the applicants to be utilised. By its nature the seasonal work ends with the season. No juniors to the petitioners have been retained in the service. All the persons named S/Shri Batra and Jadav have already been terminated and Chaudhari was appointed as Work Sarkar Grade III in December, 1986 and not as Monsoon Khalasi. Shrimali and Rana were appointed as Work Sarkar Grade II in December, 1986 through the Employment Exchange and not as Monsoon Khalasis. The preparation of seniority list ordered by the Tribunal in its judgment dated 1-7-87 is in progress and for future appointments the seniority list would be adhered to. No artificial break is being given and no labour unfair practice is involved.

3. In this case the judgment was delivered on 1-7-87 in which reinstatement of the petitioners was ordered and the Tribunal had directed that a seniority list should be prepared. The respondents have stated that the seniority list is being prepared. During the hearing there was no statement that the claims of the petitioners could be decided against such a seniority list. We are not entirely satisfied that the persons named by the petitioners who have been retained in service or given fresh appointments are junior to the petitioners or are appointed to the same post in the same terms and therefore we are unable to hold that the petitioners have established their case regarding violation of Articles 14 & 16. However, it must be said that in the absence of a seniority list the possibility that the petitioners' services are being terminated when their juniors are being retained cannot be ruled out. The respondents have made a definite averment that no junior to the petitioners has been continued in service after the termination of the service of the petitioners nor that any new recruit has been taken. The petitioners did not protest against their order of appointment of 28th July, 1987 in which the terms were laid down. They have filed their case only on the eve of the date of their termination. The

order dated 28-7-87 states that it is a new appointment. The petitioners have not produced their original appointment letter to show the break in service as alleged by them or that their services had been continuous for a period of one year. However, on a perusal of the judgment dated 1-7-87 in OA/416/86 and OA/417/87 it appears that they were originally appointed on 17-6-85 and their services would have expired on 15-10-85 but by an order dated 1-10-85 their services were extended upto 15-4-86 and again by an order dated 17-4-86 their appointment was further extended upto 14-7-86. It is thus clear that the requirement of continuous service is satisfied and the petitioners are entitled to the protection of Section 25 of Industrial Disputes Act. It is also clear that under Rule 77 of the Industrial Disputes (Central) Rules, 1957, no seniority list had been prepared and posted as required under it.

4. In the light of these facts we cannot uphold the order of termination at this stage at least. We direct that the respondents prepare a seniority list and after observing the procedure required under the Industrial Disputes Act for retrenchment pass proper orders for termination of the services of the petitioners. Until then the petitioners be taken back in services and be paid their back wages within one month of the date of this order.

5. The petition has merit and is allowed subject to our above observations and directions. The impugned order is quashed and set aside. No order as to costs.

*Phatak*  
( P.H. TRIVEDI )  
VICE CHAIRMAN

*Joshi*  
( P.M. JOSHI )  
JUDICIAL MEMBER