

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXXXX~~
~~NEW DELHI~~

O.A. No. 506

1987

~~XXXXXX~~
~~XXXXXX~~DATE OF DECISION 29-1-1990Laljibhai Popatbhai Panara PetitionerMr HJ Nanavati

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mr JD Ajmera

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member

&

The Hon'ble Mr. MM Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
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? *~*

Date: 29-1-1990

ORIGINAL APPLICATION NO.506/87

Laljibhai Popatbhai Panara - Applicant

Versus

1. Union of India,
Notice to be served through:
The General Manager,
Telecommunication,
Gujarat Circle, Ahmedabad.
 2. Telecommunication Dist. Engg.
Surendranagar District,
Surendranagar.
 3. The Sub Divisional Officer,
Phones, Sub Division Office,
Surendranagar. - Respondents
- Mr H.J.Nanavati - Counsel for the applicant
- Mr.J.D.Ajmera - Counsel for the respondents

JUDGEMENT

(Hon'ble Mr A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has sought for a declaration that the order dated 23.6.1987 by the Sub Divisional Officer, Phones, Surendranagar at Annexure-"A/5" is illegal, arbitrary and unconstitutional and for a direction to the respondents to reinstate the applicant with full back wages and continuity in service. The facts of the case can be stated in short as follows:

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2. The applicant was enlisted as a Casual Labour on 28.10.1980 under the Sub Divisional Officer, Phones, Surendranagar initially on a daily wages of Rs.8/-. He continued thus till 27.2.1987. During this period his wages was enhanced to Rs.28/- per day. By order dated 28.2.1987 at Annexure-"A/2", he was selected for the post of regular mazdoor in Telecommunication. Thereafter, by order dated 20.6.1987 of the Sub Divisional Officer, Phones, Surendranagar he was appointed as a Regular Mazdoor in the pay scale of Rs.750-940 with usual allowances. In that order it was stated that the appointment was purely temporary which could be terminated at any time by one month's notice and that the other conditions of service would be governed by relevant orders and rules from time to time. But by the impugned order at Annexure-"A/5" dated 23.6.1987, the services of the applicant was terminated with immediate effect without assigning any reason and without giving him an opportunity of being heard. It is averred in the application that the date of birth of the applicant was recorded in the service record on the basis of School Leaving Certificate at the time of appointment which was shown as 1.4.1955, and that in the record of the Birth-death Register, his date of birth was shown as 1.4.1959. The applicant has challenged the termination on the ground that it is arbitrary and

illegal since he has not been given an opportunity to show cause against. By an amendment to the original application, the applicant has further averred that the termination of his services is also illegal in view of the provisions contained in the Industrial Disputes Act which is the special law which applies to him, since he has been in service as a Casual Mazdoor from 1980 onwards. He has averred that the termination without following the mandatory provisions under Section-25-F of the Industrial Disputes Act is wholly unjustifiable and that therefore he is entitled to be deemed to have been continued in service or to be reinstated forthwith, as if the termination has not taken effect with full back wages.

3. The termination of the services of the applicant is sought to be justified by the respondents in the reply statement on the ground that his appointment being provisional is subject to termination, if the birth date verification and work done certificates and PVR Report were found to be adverse and since on verification of the birth date of the applicant with the School records and the date furnished by him in his application and also the date recorded in the Register of Birth and Death were found to be inconsistent, it was found that there has been manipulation in the birth date in the application submitted by the applicant, and that therefore the

respondents were competent to terminate his services.

It has also been contended that since the impugned order of termination was made in exercise of the powers conferred by Rule 5 of CCS(Temporary Service) Rules, it is not necessary to give the applicant an opportunity to show cause against termination, and that it is also not necessary to assign any reason. It is further contended that as the services of the applicant were governed by the CCS(Temporary Service) Rules, the provisions of the Industrial Disputes Act have no application. Therefore the respondent's contend the application which is devoid of any merit has to be dismissed.

4. We have gone through the records produced on either side very carefully and have also heard the arguments of the learned counsel appearing for both the parties.

5. The impugned order of termination is purported to have been issued under sub rule-1 of Rule 5 of the CCS(Temporary Service) Rules, 1965. Under this rule, it is permissible to terminate the services of the temporary employee without assigning any reason. The order appears to be innocuous and does not cast any stigma on the applicant. But in the reply statement, the termination is sought to be justified on the ground that there has

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been manipulation in the birth date furnished by the applicant in the original application as was noticed on verification with the School record and the Register of Birth and Death. It is a common case that as per the School records, the date of birth of the applicant is 1.4.1955 whereas as per the Register of Birth & Death, the applicant's date of birth is 1.4.1959. As per the contentions raised by the respondents in the original reply statement, this discrepancy is the foundation^{for}/the termination. It appears that the respondents have concluded that the applicant has furnished incorrect date of birth in his application and that there has been manipulation regarding that in the records. If that is the reason for termination of the services of the applicant, then it cannot be considered as a termination simpliciter as provided for in sub rule-1 of Rule 5 of the CSS(Temporary Services) Rules. In such a case the applicant should have been given an opportunity to explain his stand and to prove that he has not been guilty of any manipulation or to show that his date of birth as shown in the Register of Birth and Death is the correct one. The termination of the services of the applicant without affording him such an opportunity is violative of principles of natural justice and it also offends the provisions of Article 311(2) of the Constitution of India. The learned counsel for the respondents invited our attention to the

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decision of the Supreme Court in Rasiklal Vaghajibhai Patel V. Ahmedabad Municipal Corporation and another reported in 1985 GLH Vol.5, 511 wherein their Lordships have observed that as the petitioner in that case was shown to have been guilty of suppression of a material fact, the termination of his services was justified and submitted that since the applicant has in his application shown a wrong date of birth and has misled the respondents for the purpose of securing employment, he is also guilty of suppression very and that therefore on the basis of the principles of the case under citation, the applicant in this case is not entitled to get any relief. We do not find any similarity between the facts of the case under citation and the case on hand. In this case though it has been averred in the reply statement that there has been manipulation in the date of birth, it is not clearly stated as to whether there has been any tampering of the date of birth in any of the records and also it has not been stated that the date of birth shown by the applicant has been proved to be false to the knowledge of the applicant. Annexure-R2 produced by the respondents alongwith the reply statement is a copy of the Mercy Application submitted by the applicant against the termination of the services. In this application at paragraph-3, the applicant had stated pursuant to the direction of the T.D.E., Surendranagar in

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1983 he had submitted an application for appointment to the cadre of Lineman, and that he had produced alongwith the application his School Leaving Certificate which showed his date of birth as 1.4.1955. In the reply statement, the respondents have no case that the applicant had not produced the School Leaving Certificate which showed the date of birth as 1.4.1955. It is an undisputed fact that as per the Register of Birth and Death, the date of birth of the applicant is 1.4.1959. It is open for the applicant to prove that the date of birth recorded in the School Leaving Certificate or that in the Register of Birth and Death is wrong. Without giving an opportunity to the applicant to do so nobody can come to a finding as to which is the correct date of birth. By stating in the application that his date of birth is 1.4.1955, the applicant did not stand to gain anything. So it cannot be said that the applicant had suppressed the material fact or submitted falsehood in the application. If it is the case of the respondents that the applicant had stated his date of birth in the application as 1.4.1959 in order to claim to be within the age limit and that it was later found out that his real date of birth is 1955, it can be said that the applicant has suppressed real facts and stated a falsehood. So in this case the facts of the case are entirely different and therefore

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the ratio of the decision cited above has absolutely no relevance at all. In *Kondu Reddy V. PMG Madras and others* reported in 1987 SLR Vol.45, 316, the Madras Bench of the Central Administrative Tribunal where the services of a temporary Clerk in the Posts & Telegraphs Department were terminated under Rule-5(1) of the Central Civil Services (Temporary Service) Rules and where he was subsequently prosecuted before the First Class Magistrate, Virudhunagar for alleged tampering with the Community Certificate, it was held that the order of termination though styled has issued under Rule 5 of the CCS(Temporary Service) Rules in fact in the circumstances of the case it amounted to a punitive termination and that as no opportunity was given to the petitioner to defend himself, the order of termination offended Article 311(2) of the Constitution of India. In this case also though the Annexure-"A/5" order of termination, in form appears as one issued under Rule-5(1) of the CCS(Temporary Service) Rules, 1965 from the contentions raised in the reply statement, it is seen that the termination^{was} on the ground that the applicant has tampered the records relating to his date of birth and that therefore it was in the nature of punishment. Without establishing that the applicant has really tampered with any document relating to his age or that he purposefully furnished incorrect information regarding his date of birth with a view to deceive the respondents, giving the applicant an opportunity to

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defend himself, we are of the view that the respondents have no authority under law to terminate his services.

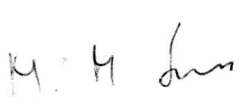
6. The applicant has challenged the order of termination on the ground that it amounts to illegal retrenchment, since, before doing so, the mandatory provisions of Section-25-F of the Industrial Disputes Act has not been complied with. The respondents have contended that as the applicant is governed by the CCS(Temporary Service) Rules, the provisions of I.D.Act has no application. This contention is also untenable. It is not disputed that the Department of Telecommunication is an industry. That the applicant is a 'workman' as defined in the Industrial Disputes Act also is not in dispute. Before terminating the services of the applicant, he was not given a reasonable opportunity to be heard. He has not been paid the notice pay and retrenchment compensation also. So, the termination without complying with these requirements of the provisions of I.D.Act is unsustainable.

7. In the circumstances of the case, we are not convinced that it is permissible for the respondents to terminate the services of the applicant invoking powers under Rule 5(1) of the CCS(Temporary Service) Rules, 1965. We therefore hold that the termination of the services of the applicant is unjustifiable and illegal. In the

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result, we allow the application, set aside the impugned order of termination at Annexure-"A/5" dated 23.6.1987 and direct the respondents to reinstate the applicant into service forthwith with continuity of service from the date of termination and to pay him full back wages within a period of two months from today. In case the respondents consider it essential to take any actions, they are free to do so, but only following the due process of law.

8. There will be no order as to costs.


(M.M.SINGH)
ADMINISTRATIVE MEMBER


(A.V.HARIDASAN)
JUDICIAL MEMBER

trs

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
A H M E D A B A D B E N C H
~~NEW DELHI~~

R.A.8/90 in

O.A. No.506/87

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DATE OF DECISION 10.4.90.

Union of India Petitioner

Mr JD Ajmera Advocate for the Petitioner(s)

Versus

Laljibhai Popatbhai Panara Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.A.V.Haridasan, Judicial Member

&

The Hon'ble Mr.M.M.Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
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25

Union of India and others - Review applicants/
Original opponents
(Advocate: Mr. JD Ajmera)

V.

Laljibhai Popatbhai Panara,
at village-Kotharia,
Ta-Wadhwan, - Respondents/
Dist-Surendranagar Original applicant

ORDER

R.A.No.8/90 in O.A.No.506/87

(Hon'ble Shri AV Haridasan, Judicial Member)

We have gone through the review application, the order sought to be reviewed and the entire records in O.A.506/87 in which the order was passed. On a careful scrutiny of all these records, we find that there is absolutely no error apparent on the face of records or any other circumstances warranting a review of the order. The grounds on which the review application is filed are challenging the merits of the decision. No reason is brought out in the review application to show that there is any error apparent on the face of records or any new facts or question of law which if brought to the notice of the Tribunal, the order would have been different. In such circumstances if the applicant is aggrieved by the order, the proper remedy is to file an S.L.P. before the Hon'ble Supreme Court and not by filing a review application.

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2. For the above said reasons^{as} we are convinced that there is no merit in the review application, the same is dismissed.

M. M. L.

(M.M.SINGH)
ADMINISTRATIVE MEMBER

A.V. Haridasan
15/4/90

(A.V.HARIDASAN)
JUDICIAL MEMBER