

Termination

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No.

~~Ex. No.~~

585

of 1987.

DATE OF DECISION 22.11.1991

Shri Devisinh Prabhatsinh Jadeja Petitioner

Mr. B.B. Gogia

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. P.M. Raval

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt

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Member (A)

The Hon'ble Mr. S. Gurusankaran

..

..

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 ?

(9)

Shri Devsinh Prabhatsinh Jadeja,
'Shree Momai Krupa',
Near Punit Nagar,
Nr. Karmachari Society,
Gondal Road,
Rajkot.

.. Applicant

Versus

1. Union of India,
Through :
The Secretary,
Ministry of Communications,
(P&T Department),
Sanchar Bhavan,
New Delhi.
2. Post Master General,
Ahmedabad.
3. Sr. Supdt. of Post Offices,
Rajkot 'D',
Rajkot - 360 001.

.. Respondents

O.A. No. 585 of 1987

ORAL - JUDGMENT

Dated : 22.11.1991

Per : Hon'ble Mr. S. Gurusankaran .. Member (A)

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has stated that he was appointed as a Post man on daily wages w.e.f. 30.2.1982 under Post Master, Bedi Para Post Office, Rajkot. After working for more than two years as such, his services were terminated abruptly under oral order passed by the Post Master w.e.f. 30.6.1985. The applicant has claimed that he has completed more than two years period and, therefore, he is due and entitled to be regularised as a Mazdoor in accordance with Department of Personnel Memoranda No. 49014/7/83-Estt(c) dated 13.10.1983 and ~~xxxxxx~~ No. 7

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and No. 49014/18/84-Estt(c) dated 7.5.1985 and letter No. 7/2/83-Estt(P-I) dated 13.9.1985, since he fulfills all the conditions for regularisation. The applicant has stated that his services during the period were satisfactory and terminating his services was violative of articles 14 and 16 of the Constitution of India. He has also contended that the termination of his service is void since it was done by an authority not competent to do so and in violation of the provisions of section 25-F of the Industrial Disputes Act (I.D. Act for short), as he is covered under the definition of workman and the postal department is an industry. The applicant has also referred to the judgment of the Supreme Court in Inderpal Yadav's case in which the Supreme Court have directed the regularisation of casual labour working on the Indian Railways. He has, therefore prayed for declaring the termination of his service as void, treating his services as continuous with all monetary and other benefits including back wages and directing the respondents to regularise his services in any suitable post as per the rules.

2. The respondents have filed reply refuting the claims of the applicant. They have taken two preliminary objections stating that the applicant has approached the Tribunal without exhausting the departmental remedies and the application is barred by limitation in as much as the application has been filed only in July, 1987 whereas the cause of action arose according to the applicant in 1985. They have

stated that the applicant was appointed as outsider postman/Group 'D' at Rajkot Bedi Para Post Office from 1982 to 1985 purely in a casual capacity on daily rates in short spells against short term leave vacancies.

The respondents have also given at Annexure 'A' complete details of the actual days on which the applicant's services were utilised against short term leave vacancies.

They have pointed out that as per the rules of the department unapproved persons can be appointed in short term vacancies caused due to absentism and such persons will have no claim for regular absorption.

They have stated ^{the fact} that the applicant was not working against any regular vacancy and hence no right has accrued to him. The respondents have mentioned that the applicant was initially engaged only on 25.10.1982 and not 30.2.1982 as claimed by the applicant. From the details given by them, they have agreed that the applicant was never engaged continuously and did not complete 240 days of working in any year, viz. 1984-85, 1983-84 and 1982-83. The respondents have stated that the applicant is not entitled to be regularised as per departmental rules, as he has not fulfilled the conditions for the same. They have denied that the postal department is an industry and the applicant is a worker governed by the provisions of section 25-F of the I.D. Act.

3. Both sides have submitted Written Submissions. Hence at the stage of final hearing, the arguments were confined only to the points on which the bench sought clarification from both sides. Regarding preliminary

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objections taken by the respondents, it is true that the applicant has not exhausted other available remedies. ^{also} There is/delay in filing application. However, both these objections cannot now stand since by order dated 3.11.1987 the Tribunal has found merits in condoning the delay and admitted the application. Further in terms of Ministry of Personnel O.M. dated 7.5.1985 (supra), casual labour not recruited through the employment exchange upto that date are also eligible for regularisation.

4. The respondents have stated that the postal department is not an industry and the applicant a worker covered under the provisions of I.D. Act. We find that it is not necessary to go into this issue since from the details given by the respondents regarding number of days on which services of the applicant were utilised. The counsel for the applicant readily conceded that ~~xxxx~~ even after including the weekly off days and holidays, the applicant has not worked for 240 days either in 1984-85 or 1983-84 or 1982-83. We also referred to the counsel of both the parties the judgment of Full Bench of this Tribunal in the case of outsiders working on daily wages in postal department in G. Manjanath and others v. P.M.G. Bangalore, and others in O.A. Nos. 1255 to 1268 of 1989 decided on 19.4.1991 (page 456 of Full Bench Judgment of CAT- VOL. II 1989-1991 published by Bahri Bros.). The counsel for the applicant fairly agreed to give up the reliefs asked for, namely, reinstatement *in service with retrospective effect* and payment of back wages.. The counsel for the applicant stated that

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in the circumstances of the case, the respondents may be directed to engage the applicant on daily wages as and when there is necessity in preference to fresh faces, and consider his case for regularisation in accordance with the rules. We find that the case is x similar to the cases covered under the judgment of the Full Bench (supra) except that the applicant was not engaged against a clear and regular vacancy and he has not put in long years of continuous service. We are of the opinion that in the circumstances of the case, we are to be guided by the ratio laid down in the judgment of the Full Bench and the applicant has to succeed partly.

5. Accordingly, we allow this application partly and dispose of the same giving following directions to the respondents.

- i) The respondents shall keep record of the name of the applicant and with immediate effect, whenever regular or short term vacancy in group 'D' arose in Bedi Para Post Office or any other nearby post office of Rajkot his services shall be utilised on daily wages as a casual employee in preference fresh faces to be called through the employment exchange even though the applicant was not recruited through the employment exchange on his initial appointment.
- ii) The respondents will consider his case for regularisation in accordance with the rules following the principle laid down in the judgment

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of the Full Bench provided he has necessary qualification. He will be given three chances in qualifying examination prescribed by the recruitment rules, 1969 and only if he qualifies in the examination and as per merits position, his services will be regularised and not otherwise.

Sankaran
22/11/1991
(S Gurusankaran)
Member (A)

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

*Mogera