NO. C.L. Termination

CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 617/87
~~T.A. No.~~

DATE OF DECISION 13.8.1991

Shri Tribhuvan Rajmad. 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. M.M.Singh : Administrative Member

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?
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?

MGIPRRND –12 CAT/86—3-12-86—15,000

(G)

Shri Tribhuvan Rajmad,
Smita Pan House, Jaiprakashnagar,
Bhagwatipura Main Road,
Rajkot. : Applicant
(Advocate Mr. B.B.Gogia)

Versus

Union of India
Through:

1. The Secretary (Telecommunications)
   Govt. of India, New Delhi.

2. Dist. Engineer(Telecom.)
   Near Girnar Cinema,
   Rajkot.

3. Asstt. Engineer(Cable)
   Telecom. Deptt., Jubilee Baug,
   Rajkot. : Respondents

(Advocate: Mr.B.M.Raval)

Mr.B.B.Gogia learned advocate for the applicant, present Mr.P.M.Raval, learned advocate for the respondents not present.

ORAL JUDGMENT

O.A./617/87

Date: 13.8.1991

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

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant casual labourer working with the respondents praying that the oral termination of his services from 1.11.1987 be declared as illegal, ineffective, null and void and the applicant be reinstated in service with all consequential benefits and backwages and the respondents be directed to regularise the services of the applicant.

2. The case of the applicant as pleaded in the application is that he was employed as casual labourer by the respondents at Rajkot under the Assistant Egnineer (Telecom) Rajkot to do the manual job from 2.11.1986 to 1.6.1987. It is alleged that the applicant was discharged from the service without any notice or any compensation in lieu of notice. It is alleged that thereafter, he was again reemployed on 10.8.87 and was continued upto 1.11.1987 when again his

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services were terminated without following the provisions of the I.D.Act. It is alleged by the applicant that the oral order of retrenchment dated 1.11.1987 by the respondents is in flagrant violation of Section 25 F of the I.D.Act and hence, it is void. It is alleged that the respondents cannot ignore the statutory provisions of I.D.Act. It is alleged by the applicant that the applicant is a workman and the respondent is an industry as defined in the I.D.Act.

3. The respondents have filed reply contending that the applicant was engaged purely on casual basis for the period for which it was essential to engage him. It is the contention of the respondents that the applicant has worked for 182 days between December, 1986 to May, 1987 and therefore it was not necessary for the respondents to comply with the provisions of the I.D.Act. The respondents have denied that the applicant has completed 240 days and have also denied that the applicant is a workman within the definition of I.D.Act. The respondents denied that the applicant was employed on 1.1.1987 and continued upto 1.6.1987. The respondents have denied that there is violation of statutory provision as alleged in the application, and prayed that the application be dismissed.

4. The first contention of the respondents is that the applicant is not a workman and the respondents is not an industry as defined in the I.D.Act. It has been held in number of decisions by this Tribunal that the Telecom department is an 'Industry' and the casual worker employed in that department is a 'Workman'. Therefore, we see no substance in the contention of the respondents that the respondents' department is not an 'Industry' and that the applicant is not a 'Workman'. We hold that the provisions of I.D.Act are applicable to the facts of this case.

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5. It is contended by the respondents that the applicant was employed on casual basis for the period for which it was essential to engage him, that the approval of person to the employee is labourer in the department and the applicant was utilised exclusively and directly by the mustering official without following any procedure or regular engagement like being as sponsored by the Employment Exchange, and the next contention is that the services of the casual labourers not sponsored by the Employment Exchange were terminated in view of the communication dated 30.3.1985 issued by the Director of Post and Telegraph, New Delhi. Apart from the fact that the respondents have not produced any such communication dated 30.3.1985 referred to in para 3 of the reply, this contention will not assume any importance because the facts of this case clearly show that the respondents have not followed the statutory provision of Section 25 F of I.D.Act, no matter whether there was any such communication as contended by the respondents. It is also important to note that there is no substance in the contention about the communication dated 30.3.1985 having been received by the respondents from Director, Post and Telegraph, New Delhi and even assuming that this was the communication received by the respondents, they have appointed the applicant thereafter on 2nd November, 1986. Thus having their eyes open to this communication they have employed the applicant. Now it is not open to the respondents to rely on such communication even if in fact such communication was received by them. So far the contention of the respondents in the reply that the appointment of the applicant as casual labourer was not sponsored by the Employment Exchange is concerned it will have no bear if the applicant proves that he has completed 240 days of working in one year prior to the date of retrenchment. We have, therefore, to examine whether having regard to the apparent facts of this case, the applicant is able to prove

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that he had worked for 240 days in a year prior to the date of his oral retrenchment on 1.11.1987.

6. In the instant case, the applicant has produced the documentary evidence namely the Muster Roll Certificates issued by the Assistant Engineer, Cable, Rajkot to show that the applicant had worked for 182 days between December, 1986 to May, 1987, for 46 days from August, 1987 to September, 1987 and 15 days in October, 1987. The respondents have not disputed the fact that the applicant had worked for 182 days from December, 1986 to May, 1987. The respondents have also produced the copy of the same Muster Roll Certificates of that period which is produced by the applicant.

7. So far the period of 46 days and 15 days for the period from August, 1987 to October, 1987 is concerned, the respondents have denied that the applicant was employed for that period. The applicant has filed rejoinder affidavit controverting this contention of the respondents and has categorically stated that he has worked for this period. He has also mentioned in his rejoinder affidavit that the respondents are called upon to produce xerox copies of the muster roll showing the name of the applicant for the period from 1/8/1986 till his services were brought to an end. It is stated by the applicant in rejoinder that the said muster rolls are in possession of the respondents and it is their duty to produce the same before the Tribunal if they want the Tribunal to believe their say.

8. In order to know the position regarding ~~as to whether~~ the respondents' denial about the non-employment of the applicant from 1.1.1987, this Tribunal passed an order dated 22.7.1991 directing the respondents to produce the xerox copy of the muster roll, from 1.8.1986 to 1.11.1987 as prayed by the applicant in his application No.MA/411/91 in this O.A. to show the presence of the applicant. Till today, the

respondents have not produced the muster rolls for the period which they were called upon to produce. The bare denial of the respondents about the period of presence shown by the applicant would not be sufficient in view of Rule 12(2) of the Central Administrative Tribunal (Procedure) Rule, 1987 according to which the respondents not only has to specifically admit, deny or explain the facts stated by the applicant in his application but has also to state such additional facts as may be found necessary for the just decision of the case. Therefore, the mere denial of the respondents cannot be taken as the proof of their definition. Moreover, when the applicant has produced the documents in the nature of muster roll certificates in support of his claim, the respondents were bound to produce the muster rolls which were in their possession in order to controvert the facts mentioned in the certificates produced by the applicant if the respondents did not admit the contentions of the said certificates. The additional factor which goes against the respondents is that inspite of our order directing the respondents to produce the said xerox copies of muster rolls, they have chosen not to produce the same till today and no reasons are assigned by the respondents as to why they have not produced the same. Under these circumstances, we draw adverse inference against the respondents to the effect that had they produced the xerox copies of the muster rolls directed to them to produce before us, they would have gone against the respondents and therefore they have not produced the same. In this view of the matter, we have no hesitation in relying on the muster roll certificates produced by the applicant to accept the period for which the applicant has worked for a year prior to the oral termination dated 1.11.1987. Taking into consideration the three certificates produced by the applicant, it is apparently clear that he has worked for 243 days within a period from 1.11.1986 to 1.11.1987 and therefore his case fully falls within the Section 25B of the I.D.Act namely that

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he was in continuous service for not less than one year with the respondents prior to the date of his oral termination. Thus, provisions of Section 25F of the I.D.Act clearly apply to the facts of this case. The applicant has stated in his application that the respondents have not given notice of retrenchment nor the respondents have paid retrenchment compensation to the applicant nor any notice in the prescribed manner is served on appropriate Government. The contention of the respondents in the reply is that it was not necessary to follow the provisions of I.D.Act because it did not apply to the applicant.

9. In the instant case, having regard to the facts and the documentary evidence produced by the applicant and in absence of the documents to the contrary produced by the respondents, we are satisfied that the respondents have retrenched the applicant without following the provisions of Section 25F of the I?D. Act. In the latest decision in A.Padmavalley and Anr. vs. CPWD and Ors. III (1990) CSJ (CAT) 384 (FB) the larger Bench of five Members of the Central Administrative Tribunal has held that an applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act, subject to the guideline mentioned in para 38 and 39 of the said judgment in which it is held that where the competent authority ignores statutory provisions or acts in violation of Article 14 of the Constitution or where either due to admissions made or from facts apparent on the face of the record, it is clear that there is statutory violation, 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 and to that extent alternative remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226. Having regard to the facts apparent on

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the face of the record, we are satisfied that the respondents have not complied with the provisions of Section 25F of the I.D.Act and we are satisfied that as the applicant had worked for 240 days in a year prior to the date of his oral retrenchment, it was incumbent on the respondents to act according to Section 25F of the Act but they have followed to act according to that Section and hence there is statutory violation. In this view of the matter, we are duty bound to act as per the guideline mentioned in para 38 of the said judgment. We therefore hold that the oral order of retrenchment passed by the respondents being illegal and void, the same deserves to be quashed and set aside and the applicant is entitled to be reinstated in service with full backwages. The learned advocate for the applicant has not pressed the relief prayed in para 7(b) of the application, hence it is not discussed.

10. In view of the aforesaid facts, the application is allowed to the extent that the oral termination of services of the applicant dated 1.11.1987 is declared illegal and void and the respondents are directed to reinstate the applicant in his service within thirty days from the receipt of this judgment and to pay full backwages to the applicant within three months from the date of the receipt of this judgment. We pass no order as to costs.

(R.C.Bhatt)
Judicial Member

(M.M.Singh)
Administrative Member