CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH, DELHI~~
AHMEDABAD BENCH. AHMEDABAD.

Terminated (Jud)

O.A. No. 616 OF 1987
O.A. No. 618 OF 1987
O.A No. No. 619 OF 1987
~~T.A.No.~~

DATE OF DECISION 28-6-1991

Shri Ram Prataprai
Shri Dalsingar Yadav,
Shri Mohmed Ali. Petitioner

Shri B.B.Gogia Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

Shri ~~P.M.Raval~~ Jayant Patel Advocate for the Respondent(s)

CORAM .

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

The Hon'ble Mr. S.Santhana Krishnan : Judicial Member

JUDGMENT

MGIPRRND—13 CAT/86—17-9-86—15,000

O.A. No.616 OF 1987.

Shri Ram Prataprai,
Bhagwatipura Main Road,
Jaiprakashnagar,
Smita Pan House,
Rajkot. ...Applicant.

Versus

1. Secretary, (Telecommunications),
   Government of India,
   New Delhi.
2. District Engineer (Telecom),
   Near Girnar Cinema,
   Rajkot.
3. Asstt. Engineer (Cable),
   Jubilee Baug,
   Rajkot.

O.A. No.618 OF 1987.

Shri Dalsingar Yadav
Bhagwatipura Main Road,
Jaiprakashnagar,
Smita Pan House,
Rajkot. ... Applicant

Versus

1. Secretary (Telecommunications),
   Government of India,
   New Delhi.
2. District Engineer (Telecom),
   Near Girnar Cinema,
   Rajkot.
3. Asstt. Engineer (Cable),
   Jubilee Baug,
   Rajkot. ...Respondents.

O.A. No. 619 OF 1987.

Shri Mohmed Ali,
Bhagwatipura ,
Jaiprakashnagar,
Street No.6,
Rajkot. ...Applicant.

Versus

1. Secretary (Telecommunications),
   Government of India,
   New Delhi.
2. District Engineer (Telecom.),
   Near Girnar Cinema,
   Rajkot.
3. Asstt. Engineer (Cable),
   Jubilee Baug,
   Rajkot. ... Respondents.

JUDGMENT

Date : 28-6-1991.

Per : Hon'ble Mr.S.Santhana Krishnan : Judicial Member

In these three applications, the applicants challenge the verbal order of terminations.

2. In these three applications it is claimed that the applicants worked as casual labourers under the respondents for over 240 days, and the respondents without complying with the provisions of 25-F of the Industrial Disputes Act, terminated their services twice without giving any reason for the same. It is also claimed in this application that the order of termination without giving any reasons also violates Article 16 of the Constitution of India. As the applicants were not paid salary equal to a permanent employees it violates the principle "for the same work same pay tobe given". Hence these applications challenging the verbal termination orders and claiming back wages, seniority and all other benefits including regularisation of their services.

3. The respondents in their reply allege that the applicant never worked continuously for over 240 days as claimed. Their services were terminated in view of the communication of the Director of Post and Telegraph, New Delhi, dated 30th March, 1985. As the applicants never worked continuously for over 240 days, they cannot claim any benefit of the provisions of Industrial Disputes Act. The applicants as casual labourers are not doing the same work which the regular employees were doing and as such they cannot have any complaint on this aspect. The termination order is also not hit by article 16 of the Constitution of India.

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4. Though the counsel appearing for both sides agreed to file written arguments, only counsel for the applicant filed the same, but not the respondents.

5. As the question of law and fact in all the three applications are one and the same they are taken together and disposed off by this common Judgment.

6. In OA/616/87, the applicant in his application alleged that he worked under the respondents from 1.1.1987, to 1.6.1987, and thereafter from 10.8.1987 to 2.11.1987. According to him the respondents have chosen to pass two verbal orders of termination against him one on 1.1.1987, and another on 2.11.1987. The applicant has not chosen to produce any documents to prove that he was working continuously under the respondents for over 240 days, as claimed. In O.A./618/87, it is the contention of the applicant that he worked under the respondents from 1.1.1987 to 1.6.1987 and again from 10.8.1987 to 14.11.1987. His contention is that the respondents passed two verbal orders of termination namely on 1.6.1987 and 14.11.1987. Here also the applicant failed to produce any document in support of his contention. In O.A/619/87, it is the contention of the applicant that he worked under the respondents as casual labourer from 1.8.1986 to 1.6.1987, and again from 10.8.1987 to 1.11.1987. His grievance is also that the respondents verbally terminated his services originally on 1.6.1987 and again on 1.11.1987. In this case also the applicant failed to produce any document in support of his contention.

7. In all the above three cases, the burden is primafacie is on the applicants to establish that they worked continuously under the respondents in a year for over 240 days. Unless the applicants in all the three applications establish this fact, they cannot claim any

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benefit of Section-25-B, of the Industrial Disputes Act.

8. The main contention of the respondents is that as the applicants in all the three cases are claiming the benefit of Section-25-F, of the Industrial Disputes Act, they ought to have raised this question before the Labour Court and not before this Tribunal. A perusal of allegations made in the three petitions show that the applicants in all the three cases mainly rely only on the provisions of the Industrial Disputes Act. Hence the applicants in all the three cases ought to have raised their objection only before the Labour Court as per the provisions of the Industrial Disputes Act. Hence all the three applications are not maintainable before this Tribunal. In The case referred A.Padmavalley And Another Vs. C.P.W.D. - III (1990)C.S.J. (C.A.T)P.384,(F.B.).

9. Even taking for granted that the applicants in all the three applications are entitled to raise the same before this Tribunal, the initial burden is on the applicants to establish that they had worked continuously under the respondents for over 240 days. The applicants in all the three cases have not produced even a scrap of paper to substantiate their claim. The applicants have not produced their job cards or salary slip, or the copy of the Muster Roll to prove their employment under the respondents. The applicants in all the three cases failed to give any reason for not producing any document. Further the applicants in all the three cases did not call upon the respondents to produce the necessary documents by filing necessary applications. Hence the question of drawing adverse inference against them do not at all arise for consideration. There is no basis in the arguments of the learned advocate appearing for the applicant in all the three cases, that it is the duty of the respondents to produce documents to disprove the claim of the applicants in all the three cases.

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10. On the other hand the respondents in O.A./616/87, produced along with their reply the copy of the Muster Roll to prove that the applicant worked under them only for 148 days between March, 1987 to November, 1987. Though the burden is not upon them to establish the actual number of days the applicant worked, they have produced the above documents to substantiate their claim. In O.A./618/87, also the respondents to substantiate their contention in their reply that the applicant only worked for 120 days between March, 1987 to Sept.1987, produced the Muster Roll certificate to prove the same. In O.A./619/87, also the respondents contend in their reply that the applicant worked under them only for 130 days between Jan.1987 to Nov.1987. They have also produced the Muster Roll. In all the three cases the applicants have not chosen to file any rejoinder to deny the allegations made in the reply. Hence the applicants in all the three applications miserably failed to substantiate that they worked under the respondents for over 240 days continuously to attract the provisions of Section 25-B of the Industrial Disputes Act. It follows that the applicant cannot claim the benefit of Section 25-F of the Industrial Disputes Act.

11. Regarding the objections of the applicants in all the three cases that their termination violates Article-16 of the Constitution, we find no basis as the applicants failed to establish that they are entitled to claim any benefit under Section 25-F of the Industrial Disputes Act or any other Rules. There is also no basis in the contention of the applicants in all the three applications that the pay of the temporary worker as well as the regular worker should be one and the same.

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12. Regarding the objections raised at the time of the arguments that the respondents have not produced any seniority list, it is pointed out that the applicants are only casual labourers not even worked continuously for 240 days and as such they cannot call upon the respondents to produce any seniority list. Even otherwise no such objection is taken in the application by the applicants in all the three applications. Further the contention of the applicants at the time of arguments that they worked more than 240 days continuously is not supported by any documentary evidence.

13. In view of the above discussion the applicants in all the three applications cannot challenge the verbal order of termination. Further as the applicants in all the three applications have not chosen to challenge the communication of the Director of Post and Telegraphs, dated 30.3.1985, they cannot claim that the respondents ought to have produced this order.

14. In view of the above discussion the applicants in all the three applications failed to establish that order of termination are either illegal or void.

15. Further in all these cases evidence regarding the question of fact will have to be recorded and we feel that the Labour Court ~~alone~~ is more competent to deal with the evidence if required to dispose of this matter. Hence we feel that the applicant will have to approach only labour court not this Tribunal.

16. It follows that all the three applications are devoid of merits and they are liable to be dismissed and accordingly they are hereby dismissed. No order as to costs

Prepared by : PSPSW
Compared by : 02/07/91

TRUE COPY
2/9/91
(K. B. KANE)
Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench

Sd/-
(S.Santhana Krishnan)
Judicial Member

Sd/-
(M.M.Singh)
Administrative Member