CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 621/87 199

~~T.A. No.~~

DATE OF DECISION 8.4.1991

Shri Manojkumar Visramrai Petitioner

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

Versus

Union of India & Ors (Telecom) 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? ~~Yes~~ No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

Shri Manojkumar Visramrai,
Bhagwatipura Main Road,
Jaiprakashnagar,
Smita Pan House,
Rajkot. : Applicant

(Advocate: Mr.B.B.Gogia)

Versus

1. Secretary (Telecommunications),
   Government of India,
   New Delhi.

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

3. Assistant Engineer(Cable)
   Jibilee Baug,
   Rajkot. : Respondents

(Advocate: Mr.P.M.Raval)

JUDGMENT

O.A./621/1987

Date: 8/4/91

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

In this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant has challenged the validity of the oral order of termination by Assistant Engineer (Cable), Telecommunication Department, Rajkot. dated 14th November, 1987. It is alleged in the application that the applicant was employed as a casual labour by Assistant Engineer, Telecommunication, Rajkot to do the manual job, that he was employed on 1.1.1986 and continued upto 1.6.1987 when without any written order and without serving any notice he was ordered to be discharged abruptly that again he was reemployed thereafter and continued upto 14th November, 1987 when again his services were terminated orally without following the procedures under the I.D.Act. It is alleged by the applicant that he was in continuous employee of the respondents and the oral termination order dated 14.11.1987 by the respondents was in violation of Section 25(F) of the I.D.Act and the said order is thus ab initio void and bad in law. It is alleged that the Telecommunication Department is an Industry. The applicant has,

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therefore, prayed that the oral termination of the services of the applicant dated 14th November, 1987 be declared as illegal, ineffective, null and void and he be treated in continuous service with backwages and the respondents be directed to regularise the services of the applicant in the service. The respondents have filed written statement contending that the applicant was engaged purely on casual basis for the period for which he was essential to engage and that the applicant had worked for 208 days between November, 1986 to May, 1987 and therefore it was not obligatory on the part of the department to comply with the provision of the I.D.Act. The respondents in para-6 of the written statement have not disputed that the applicant was appointed as casual labourer by the respondents but they have denied that the applicant has worked for 240 days as alleged in the application and denied that after the reemployment the services of the applicant were terminated orally without following the procedure of the I.D.Act. It is denied that the respondents that the termination order was ab initio void as alleged by the applicant and prayed that the application be dismissed.

2. It is not disputed before us by the respondents that the telecommunication department is an industry. as defined in Section 2(J) of the Industrial Disputes Act. Therefore, we proceed on the footing that the respondents' department is an industry as defined in Section 2(J) of the I.D.Act.

3. Now coming to the main question as to whether the oral termination dated 14.7.1987 by the respondents No.3 is in violation of Section 25(F) of the I.D.Act we have to examine the language of Section 25(F) of the Act. According to Section 25(F) of the I.D.Act, 1947, no workman employed in any industry who has been in

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continuous service for not less than one year under an employer shall be retrenched by that employer until the requirements of Clause (A),(B) and (C) of Section 25 (F) of the I.D. Act are fulfilled. The applicant is workman as defined in Section 25(F) of the I.D.Act. Section 2(00) defines retrenchment. It is not in dispute that no notice or pay in lieu of notice was given to the applicant before his termination. Therefore, the termination of the services of the applicant is nothing but a retrenchment as defined in Section 2(00) of the ID Act and before the retrenchment could be made it was mandatory on the part of the respondents to comply with the Section 25(F) of the I.D.Act, in order to consider whether the applicant was in continuous service for not less than one year under an employer as mentioned in Section 25 of the Act, It is necessary to examine Section 25 (B) Clauses (1) and (2) of the Act. Clause (1) provides for uninterrupted services and Clause (2) provides where a workman is not in continuous service. In the instance case the applicant has worked with respondents at intervals. The applicant has produced at page-18 the muster roll certificate dated 7.8.1987 which shows that the applicant had worked for 208 days from November, 1986 to May, 1987 and the same copies produced also by the respondents at page 16. The contention of the respondents in the written statement is that as the applicant had worked for 208 days from November, 1986 to May, 1987, he cannot be considered as a workman in continuous service for not less than a year as defined in Section 25(B) of the Act and hence Section 25(F) of the I.D.Act will not be attracted. However there is one clerical mistake and omission on the part of the respondents on the point that the applicant has also produced at page 17 the number of days for which he worked in August, 1987

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and September, 1987 and the muster roll certificate produced atpage-17 dated 9th November, 1987 shows that the applicant has worked for 46 days in all in August, 1987 and September, 1987. The applicant has also produced at page 20 another muster roll certificate dated 22nd December, 1987 which shows that the applicant has worked for 26 days in October, 1987 and November, 1987. Considering Sub-Section 2 of Section 25(B) of the I.D.Act, where a workman is not in continuous service within the meaning of Sub-Section-1for a period of 12 calendar months just preceding the date with reference to which the calculation is to be made has actually worked under that employer for not less than 240 days. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the condition of Sub-clause II of Clause 2(A) of Section 25(B). The conditions are that commencing the date with reference to which the calculation is to be made in case of retrenchment if in a period of 12 calendar months just preceding such date of retrenchment, the workman has rendered service for a period of 240 days he shall deem to be in continuous service for a period of one year for the purpose of Section 25(B) in chapter 5-A. In the instant case, the applicant has produced satisfactory evidence by producing the muster roll certificates at pages 17, 18 and 20 that he had worked for 280 days in a period of 12 months preceding the date of his oral termination dated 14th November, 1987. In view of this evidence, it will have to be concluded that the workman is in continuous service for a period of one year and he had satisfied the eligibility qualification enacted in Section 25(F) of the Act. In this view of the matter, before the retrenchment of the applicant could be made, it was mandatory on the part of the respondents to comply with the

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provision of Section 25(F) of the Act but the respondents have not complied with the provision by giving a requisite notice or notice pay in lieu of notice etc. As mandatory condition for a valid retrenchment has not been satisfied, the termination of service of the applicant is ab initio void, invalid and inoperative and in violation of the provision of 25(F) of I.D.Act and therefore the respondents are bound to reinstate the applicant.

4. The next question would be whether the applicant is entitled to full backwages in view of the roral termination being held as void and invalid. It is held in Mohan Lal vs. Bharat Electronics Ltd. (1981) 3 SCC 255 that in case of illegal termination of service worker is deemed to be continuing in service and is entitled to reinstatement with full backwages. No case is made out for departure for this normally accepted approach of the Court and Tribunals in the field of social justice and we do not propose to depart in this case. On the applicant being reinstated in service, the respondents are directed to consider his case for regularisation provided the applicant satisfies the rules applicable to him regarding regularisation.

5. The result is that the application having merits is allowed, the oral order of termination dated 14th November, 1987 by the respondent No.3 is declared ab initio void and is set aside and the respondents are directed to reinstate the applicant at once and are directed to pay all the backwages within three months and are also directed to consider the case of the applicant for regularisation of his service provided he satisfies the rules applicable to him regarding regularisation. The application is allowed accordingly.

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