CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

~~AHMEDABAD~~ BENCH, ~~Ahmedabad~~ Ahmedabad

O.A No. 72 1987
~~T.A No.~~

DATE OF DECISION 4-5-1990

Ashok Bhagwanji Gamot ~~Petitioner~~ Applicant

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

Versus

Union of India & others Respondent

Mr. J.D.Ajmera Advocate for the Respondent(s)

CORAM .

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

The Hon'ble Mr. N.R. Chandran, Judicial Member

JUDGMENT

MGIPRRND—13 CAT/86—27-9-86—15,000

O.A. 72 of1987

JUDGMENT

(Delivered by the Hon'ble Shri N.R.Chandran, Judicial Member)

The applicant in this case was appointed as a Peon in the 3rd respondent's office by an order dated 11-6-1984 with effect from 28-5-1984. The applicant's name was sponsored by the Employment Exchange and he was called for an interview and thereafter he was selected. The applicant was initially appointed on purely temporary and adhoc basis for a period not exceeding 90 days. The applicant has produced various orders in which he was reappointed after the expiry of 90 days, the last such order being passed on 10-11-1986. The applicant's services were terminated by an order dated 12-1-1987 with effect from 30-1-1987. Subsequently, the applicant was not reappointed and therefore he is challenging the said order of termination in this application.

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Shri B.B. Gogia, the learned counsel for the applicant has mainly confined his argument to the following aspects:

The applicant was appointed against a regular vacancy after proper selection, his name having been sponsored by the Employment Exchange. Therefore, even though it is stated in the appointment order that the appointment is on purely temporary and adhoc basis, it must be deemed to be a regular appointment. In any event, the reason given for not appointing the applicant again is erroneous. It is stated in the Reply Statement that the applicant's name had not been sponsored by the Employment Exchange. Since the applicant's name had, in fact, been sponsored by the Employment Exchange originally, the non-appointment of the applicant on the ground that his name was not sponsored by the Employment Exchange in April, 1987 is

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patently erroneous. He has accordingly prayed that the order of termination dated 12-1-1987, terminating the services of the applicant with effect from 30-1-1987 be set aside and the respondents directed to regularise the services of the applicant, as a Peon. He has also pointed out that the termination order had been passed in violation of Section 25F of the I.D.Act.

The learned counsel for the respondents, on the other hand, putforth the contentions urged in the Reply Statement. He argued that it was clearly stated in the appointment order itself that his services would be terminated before the expiry of 90 days and therefore the termination of the applicant is in order. He also submitted that the respondents' organisation and the applicant would not come under the purview of the definition of 'Industry' and 'Workman' respectively as per the provisions of the Industrial Disputes Act, 1947.

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He further argued that the right of the applicant came to an end with the expiry of the term of his appointment. According to him, the respondents were right in not selecting the applicant for further appointment inasmuch as his name was not sponsored by the Employment Exchange in April, 1987.

We have heard the rival contentions. In Bangalore Water Supply v. A. Rajappa (AIR 1978 SC 548), the Supreme Court has given a wider definition to the term 'Industry'. Therefore, the stand of the respondents that their organisation would not come under the definition of 'Industry' cannot be accepted. It is true that steps were taken to amend the definition of the term 'Industry' by excluding Government organisations, but till to-day the said amendment has not been brought into force. Once the respondents come under

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the definition of 'Industry', the next question which arises is whether the order of termination ~~should be~~ WAS in accordance with Section 25-F of the Industrial Disputes Act, OR NOT It is very clear from the facts that the applicant had been working as a peon from 28-5-1984 to 30-1-1987 with artificial breaks. Thus the applicant would have put in more than 240 days in a calendar year which entitles him to the protection under Section 25-~~F~~ of the I.D.Act. Admittedly the conditions precedent laid down under Section 25-F had not been followed in this case. In S.K.Sisodia vs. Union of India and others (T.A.994 of 1986), the Full Bench of the Central Administrative Tribunal has held that the Railways should comply with the safe-guards laid down under Section 25F of the Industrial Disputes Act. This decision will squarely apply to the facts of this case.

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Hence the order of termination dated 12-1-1987 terminating the services of the applicant with effect from 30-1-1987 is invalid. It is necessary to consider the other limb of the argument of the learned counsel of the applicant. He has prayed for the regularisation of the services of the applicant. It is not disputed by the respondents that the vacancy against which the applicant was appointed after interview and selection, is a regular one. The respondents however have chosen to appoint the applicant only for a period of 90 days. Once there is a permanent vacancy and the applicant has gone through the process of selection, his name having been sponsored by the Employment Exchange, the fact that he was appointed only for a period of 90 days would not deprive him of his right for regularisation of his services.

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The legal inference that can be drawn from the fact that the applicant had worked from 28-5-1984 to 30-1-1987 is that his appointment is regular. The reason given in the Reply Statement for the non-selection of the applicant in April, 1987, after the last order of termination is that his name was not sponsored by the Employment Exchange. This reason is not correct because the respondents have failed to notice that the applicant's case was sponsored even on the initial occasion and he was being continued in service from time to time as a candidate having been sponsored by the employment exchange. The respondents had therefore illegally failed to consider the case of the applicant for fresh appointment.

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For the reasons stated above, we hold that the order dated 12-1-1987 terminating the services of the applicant with effect from 30-1-1987 is invalid and the applicant, having been appointed against a regular vacancy after a due process of selection, is entitled for regularisation of his services. Therefore, the application is allowed with all attendant benefits and the order of termination dated 12-1-1987 is set aside. The respondents are further directed to regularise the services of the applicant.

(N.R. CHANDRAN)
JUDL. MEMBER

(M.M. SINGH)
ADMV. MEMBER

4-5-1990

Index: Yes/No