

2-2
Terminal's (SD)
6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW OODDEKK
AHMEDABAD BENCH

O.A. No. XXXXXX 9 of 1988

DATE OF DECISION 7-06-1991

Shri Ali Hussain Travadi Petitioner

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

Versus

Union of India & Ors. Respondent

Mr. P.M. Rawal Advocate for the Respondent(s)

CORAM :

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

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

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 ?

Shri Ali Hussain Masurali Travadi,
Aval Mian Naka,
Jail Road,
AMRELI

9
: Applicant

Versus

1. Union of India, Through
Secretary,
Posts & Telegraphs,
NEW DELHI.

2. Postmaster General,
Gujarat Circle,
AHMEDABAD.

3. Superintendent of Post Office,
Amreli Division,
AMRELI.

: Respondents.

JUDGEMENT

O.A./9/88

Date : 7.6.1991

Per : Hon'ble Mr. S.Santhana Krishnan

: Judicial Member

1. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant questions the oral termination order from 30.6.1987.

2. The applicant claims in his application that he was working as Driver under the respondents from 16.10.'84. He has been in service upto 30.6.1981 with some artificial breaks in every month. There has been a vacant post of Jeep Driver right from 1984. The Superintendent of Post Office, Amreli Division also issued a certificate regarding the period of his work. The applicant has completed 240 days in an year during his employment under the respondents. His termination without complying with the provision of Section 25 (B) and (F) of the Industrial Disputes Act is invalid. The applicant is a workman and the Post Office is a Industry.



Hence, the oral termination order from 30.6.1987 is invalid and hence he is entitled to claim reinstatement with backwages and other attended benefits.

3. In their reply the respondents claim that the applicant has not exhausted all the departmental remedies available and hence the application is premature. The post of Jeep Driver was approved and created in January, 1984, but the post was vacant on account of non-availability of Driver who fulfills the eligibility conditions required under the Rules. The Director of Postal Services, Rajkot, had therefore directed to make local arrangements on daily wages till regular approved candidate was available. The applicant was thus engaged as Jeep Driver on daily wages basis on 16.10.1984. The Jeep which the applicant was driving had gone out of order and not serviceable from 28.6.1987. The applicants services were not required and hence he was orally informed not to attend office. It is denied that the applicant has been working continuously under the respondents from 16.10.1984 to 30.6.1987. As the applicant wanted to apply for some other post, he was given a certificate regarding his experience. The said certificate does not indicate any continuity of service as Jeep Driver from 16.10.1984 to 30.6.1987. The applicant has not completed 240 days in a year during his employment under the respondents. The applicant was engaged as an unapproved candidate in the cadre of Jeep Driver as an outsider candidate on daily basis as per the instructions issued by the Director General in his letter dated 24.6.1971. The applicant being an unapproved candidate was engaged as substitute against the vacant post as an outsider and not as a casual labourer. The applicant cannot be treated as workman and the provisions of the Industrial Dispute Act do not apply in this case.



(11)

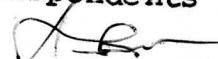
4. The applicant filed a rejoinder claiming that the Jeep is working even now and that under the Rules the respondents are entitled to fill up 50% post by direct recruitment, and as such he may be provided in this cadre as he was having necessary qualification.

5. Heard counsel for the applicant. Counsel of the respondents filed written arguments. Records perused.

6. The fact that the applicant was engaged as Driver under the respondents on 16.10.1984 is admitted. The applicant claims that he was working under the respondents continuously for over 240 days. The burden is on the applicant to establish the same. As the applicant claims benefit under Section 25(E) of the Industrial Disputes Act, as well as Section 25 (F) of the same act his remedy is only before the Labour Court and he cannot claim any benefit before this Tribunal. Even otherwise the applicant has produced Annexure A-1 in the certificate which does not establish that he was in continuous service for over 240 days in a year. In para 6(3) of the application the applicant has shown the days he had worked under the respondents from 16.10.1984 to June 1987. As rightly pointed out by the respondents that even if this is taken as true, the applicant had worked for only 227 days in a calendar year.

7. The applicant along with the application produces a copy of the S.S.L.C. Certificate and copy of driving licence. The Driving Licence produced by him only shows that he was having the driving licence from 1982 to 1990. He has also produced a certificate from M/s. Gafar Musabhai Nagani, Goods Transport Owner, Amreli, which only states that he worked under them for three years. From this it is evident that the applicant is now working in the above said transport.

8. The main contention of the respondents is that



(2)

the applicant was appointed only temporarily till regular approved candidate was available and the applicant was engaged only under this condition. They also contend that the applicant is not having the necessary qualification for the regular post of jeep driver. The applicant's services were not terminated, but, he was asked not to attend office from 30.6.1987 as they did not require the services of the applicant and hence, he was asked not to attend the office. The respondents have produced notification regarding qualification of the driver, Necessary qualifications as per this notification are as follows :-

1. Possession of a valid driving licence for light and heavy motor vehicles.
2. At least four years driving experience of light and heavy motor vehicles, provided that the candidates should have at least one year experience of driving heavy vehicles and they must be in possession of valid driving licence to that effect.
3. Ability to read and write local language to make simple arithmetical calculations.
9. The documents produced by the applicant do not establish that he was having the necessary qualification. The respondents also produce the letter of Director General dated 24.6.1971, which permits appointment of unapproved candidates in short term vacancies subject to the condition that they may be paid on daily rates on the basis of minimum of the scales. The respondents also produce one for us regarding the appointment of a substitute. In fact, even the certificate produced by the applicant shows that he had worked only as outsider Jeep Driver.
10. The contention of the applicant that he should be selected by direct recruitment is also not valid as the

applicant has not satisfied the essential conditions detailed above. As the applicant was engaged only as a stop gap arrangement, he cannot claim any benefit under the provisions of Industrial Disputes Act. Further the applicant failed to produce any record to establish that the jeep is now working as contended by him.

11. As the applicant failed to establish that he had worked continuously for over 240 days and that he was appointed on regular basis he cannot claim any benefit under the Industrial Disputes Act. Even otherwise if the applicant has got any grievance as per the provision of the Industrial Dispute Act, his remedy is elsewhere and not before this Tribunal. We are not satisfied that in this case the respondents have ignored statutory provisions of the Industrial Disputes Act or have acted in violation of Article 14 of the constitution. No material to enable us to exercise power under Article 226 has been placed before us so far as grievance as per the Industrial Disputes Act is concerned (See the judgement in the case of A. Padmavally & Ors. vs. C.P.W.S. & Ors. III (1990) CSJ (CAT) 304 (FB)).

12. In view of the above discussion the applicant is not entitled to claim any relief before this Tribunal, and as such the application is devoid of merits and accordingly it is dismissed. We make no orders as to costs.


(S. SANTHANA KRISHNAN)
Judicial Member


(M. M. SINGH)
Admn, Member