

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

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O.A. No.^s, 164, 181, 182, 198
 T.A. No. 263, 321, 431, 483
 and 489 all of 1988

DATE OF DECISION 22.3.90

~~Bhagwanji Narsinhbhai Nanania~~ Petitioner
 and others

~~Mr. K.G. Vakharia~~ ~~for Mr. DM. Thakkar~~ Advocate for the Petitioner(s)

Versus

~~Union of India & others~~ Respondent

~~Mr. J.D. Amara, Mr. Sandip Shah~~ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi, V.C.

The Hon'ble Mr. G.Sreedharan Nair, V.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

Date of order 22.3.1990

(1) Registration No. ~~DA~~164 of 1988

Bhagwanji Narsinhbhai Nanania & others.. Applicants
- versus-
Union of India and others .. Respondents

Counsel for the applicant : Mr. K.G. Vakharia for
Mr. D.M. Thakkar

Counsel for respondents 1 to 4 : Mr. J.D. Ajmera.
Counsel for respondent No. 5 : Mr. Sandip Shah for
Mr. A.R. Dave

(2) Registration No. O.A. 181 of 1988

Notamlal Devjibhai Kesaria and others .. Applicants
- versus-

State of Gujarat and others .. Respondents

Counsel for the applicants : Mr. K.G. Vakharia for
Mr. D.M. Thakkar.

Counsel for respondent no. 1 : Mr. J.D. Ajmera

Counsel for respondents

2 and 3 : Mr. Sandip Shah for
Mr. A.R. Dave.

(3) Registration No. ~~DA~~182 of 1988

Lavji Mohan Chauhan and others .. Applicants

- versus-

State of Gujarat and others .. Respondents

Counsel for the ~~app~~ applicants .. Mr. K.G. Vakharia for
Mr. D.M. Thakkar.

Counsel for respondent no. 1 : Mr. Sandip Shah for
Mr. A.R. Dave.

Counsel for respondents 1, 2 & 3 : Mr. J.D. Ajmera.

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(4) Registration No. ^{OA}263 of 1988

Mansukhlal J. Vyas and others .. Applicants

- versus-

Union of India and others .. Respondents

Counsel for the applicants : Mr. K.G. Vakharia for
Mr. D.M. Thakkar.

Counsel for respondents 1 to 3 : Mr. J.D. Ajmera

Counsel for respondent no. 4 : Mr. Sandip Shah for
Mr. Anil Dave.

(5) Registration No. ^{OA}321 of 1988

Dhansukhbhai D. Bhatt and others .. Applicants

- versus-

Union of India and others .. Respondents

Counsel for the applicants : Mr. K.G. Vakharia
for Mr. K.B. Puraja

Counsel for the respondents : Mr. J.D. Ajmera

(6) Registration No. ^{OA}431 of 1988

Mangubhai Karsanbhai Patel and others .. Applicants

- versus-

Union of India and others .. Respondents

Counsel for the applicants : Mr. K.G. Vakharia for
Mr. K.S. Jhaveri

Counsel for respondents 1 & 2 : Mr. J.D. Ajmera.

Counsel for respondent no. 3 : Mr. Sandip Shah for
Mr. A.R. Dave.

(7) Registration No. ^{OA}483 of 1988

Kanuprasad Maganlal Dave and others .. Applicants

- versus-

Union of India and others .. Respondents

Counsel for the applicants : Mr. K.G. Vakharia for
Mr. D.M.Thakkar.

Counsel for respondents
1 & 3. : Mr. J.D.Ajmera

Counsel for respondent no.2 : Mr. Sandip Shah for
Mr. A.R.Dave.

(8) Registration No.489 of 1988

Chunilal Gokaldas Pathak and others .. Applicants

- versus-

Union of India and others .. Respondents

Counsel for the applicants : Mr. K.G. Vakharia
for Mr. D.M.Thakkar

Counsel for respondent 1 & 3 : Mr. J.D.Ajmera

Counsel for respondent no.2 : Mr. Sandip Shah for
Mr. A.R.Dave.

CORAM : Hon'ble Shri P.H. Trivedi, Vice-Chairman
Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

O R D E R

PER: Hon'ble Shri G.Sreedharan Nair, Vice-Chairman:-

These applications were heard together as the question involved is the same and are being disposed of by a common order.

2. The applicants, who are Primary School Teachers in Primary Schools in villages, were permitted by the State Government to work as Branch Postmasters and accordingly they were appointed as Extra-Departmental Branch Post Masters. On 7.2.1978, the State Government wrote to the Director of Postal Services to relieve all the Primary School Teachers of their duties under the

Postal Department. On 1.5.1978, the State Government decided that the Postal Department should complete the work of making alternate arrangements and relieve the Primary School Teachers on or before 31.3.1979 and that in the vacancies that arise, no Primary School Teachers should be engaged. A letter conveying this decision was addressed by the State Government on 12.5.1978 to the Post Master General, Ahmedabad, and copies of the same were transmitted by him to all the Superintendents of Post Offices.

3. The Gujarat Prathmik Sikshak Parishad along with four Primary School Teachers, who were employed as Extra-Departmental Branch Post Masters, filed Special Civil Application No.2025 of 1978 in the High Court of Gujarat at Ahmedabad against the State of Gujarat, Union of India and the Post Master General for a direction not to enforce the communication in the aforesaid letter and not to relieve the Primary School Teachers from working as Extra-Departmental Branch Post Masters. The application was filed in a representative capacity alleging that the first petitioner, the Parishad, is an organisation of Primary School Teachers of Gujarat State, of which the second petitioner is the General Secretary and that all the petitioners are interested in the welfare of their brother Primary School Teachers serving as Extra-Departmental Branch Post Masters. The prayer to file the ^{petition} ~~representation~~ and proceed with the same in a representative capacity ^{under} ~~capacity~~ Rule 8 of Order 1 of the Code of Civil Procedure was allowed by the High Court and accordingly publication was made in the newspapers.. On the

establishment of this Tribunal, the application was transferred to this Tribunal. By the decision of a Bench of this Tribunal dated 30.9.1987, the application was dismissed upholding the validity of the communication addressed by the State Government to the Postal authorities. Thereupon, on 10.12.1987, the Post Master General wrote to the Superintendents of Post Offices to terminate the services of the Extra-Departmental Branch Post Masters, following which the Superintendents of Post Offices issued orders terminating the services of the applicants.

4. The applicants pray for quashing the orders of termination and to permit them to continue as Extra-Departmental Branch Post Masters ^{with pay} to reach the age of superannuation.

^{urged}

5. The grounds ^{are} the following:-

- (i) The applicants are not bound by the order of the Tribunal dated 30.9.1987;
- (ii) the termination of service of the applicants is in violation of the provisions contained in the Extra Departmental Agents (Conduct and Service) Rules;
- (iii) the termination of service is in violation of the principles of natural justice; and
- (iv) the termination of service is violative of Section-25-F of the Industrial Disputes Act.

6. These applications are resisted by the respondents who have filed reply where all the aforesaid grounds are traversed.

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7. Mr. K.G. Vakharia, who addressed the ^{leading} ~~lengthy~~ arguments on behalf of the applicants, pressed before us the first three grounds mentioned above. Apparently, the fourth ground was not pursued by him as the provisions of ^{the} Industrial Disputes Act are not applicable to the Extra-Departmental Agents, ~~who~~ are governed by the special rules, viz., the Extra-Departmental Agents (Conduct and Service) Rules, hereinafter referred to as "the Rules".

8. Adverting to the first ground, it has to be determined whether the decision of this Tribunal delivered on 30.9.1987 in T.A.170 of ¹⁹⁸⁶ ~~1978~~ (Special Civil Application No.2025 of 1978 in the High Court of Gujarat) is binding on the applicants.

9. ~~Firstly,~~ ^{It} was submitted by counsel of the applicants ~~that~~ the subject-matter of that application was different from the one that is involved in these applications. From the narration of the facts made earlier, it will follow that this submission cannot be accepted. When the State Government wanted the Postal Authorities to relieve all the Primary School Teachers of the work of the Extra-Departmental Branch Post Master, challenging the same ^{later} ~~an~~ application was filed before the High Court. In the application it was specifically alleged that ~~it was being filed~~ pursuant to the unanimous decision arrived at in the conference of such Primary School Teachers held at Gonal on 30.9.1978. ~~That~~ application is being filed by the Organisation of such Primary School Teachers of Gujarat State. It is on record that leave of the Court was prayed for to file the application in a representative capacity under Rule 8 of Order 1 of the Code of Civil Procedure

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which was sanctioned by the Court and publications were made in two newspapers with respect to the filing of the application in a representative capacity.

10. It is not in dispute that the postal authorities decided to terminate the services of these Extra-Departmental Branch Post Masters in view of the decision of the State Government communicated to them. Indeed, it was to avert such termination of services that the representative action was filed challenging the decision of the State Government and the steps taken by the postal authorities pursuant to the same. The relief claimed in the present applications is to quash the termination orders issued on the basis of the communication of the decision of the State Government. The specific prayer in the earlier application was to quash the communication addressed by the Post Master General to the Superintendents of Post Offices to terminate the services of such Extra-Departmental Branch Post Masters.

11. In view of the above, it cannot be said that the subject-matter of the earlier application was different and hence the decision therein cannot be pressed into service by the respondents.

12. ^e ~~Secondly~~, ^{further} Counsel of the applicants submitted that the decision rendered by this Tribunal is not binding on these applicants, ^{as} they were not parties to the earlier application. In support of this argument, it was stated that though the proceedings before the High Court of Gujarat was in a representative capacity,

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after transfer of the proceedings to the Tribunal, it cannot be considered as a representative action since in view of sub-section (1) of section 22 of the Administrative Tribunals Act, the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure. It was pointed out that the powers vested in a civil court under the Code of Civil Procedure while trying a suit, have been conferred on the Tribunal only in respect of the matters specified in sub-section (3) of section 22 of the Administrative Tribunals Act, which does not refer to sanction of leave to initiate proceedings in a representative capacity. We are unable to agree with these submissions.

13. By virtue of sub-section (1) of section 29 of the Administrative Tribunals Act, the proceedings before the High Court stood transferred to the Tribunal, on ~~with~~ its establishment. As such, in view of clause (b) of sub-section (4) of section 29, the Tribunal had to deal with the proceedings, so far as may be, in the same manner as in the case of an application under section 19, from the stage which was reached before such transfer or from an earlier stage or de novo as the Tribunal deemed fit. Evidently, the Tribunal deemed fit to proceed with the matter from the stage which was reached before such transfer.

14. No doubt, it is provided under sub-section (1) of section 22 of the Act that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, and the power to sanction leave ~~to~~ under rule 8 of Order 1 of the Code of Civil Procedure has not been specifically conferred on the Tribunal,

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as it is not enumerated under sub-section(3) of section 22 of the Act. That does not mean that an application filed in a representative capacity before the High Court with proper sanction and after compliance with the formalities, on transfer to the Tribunal ceases to be a representative action. So long as the Tribunal did not deem it fit to proceed with the application de novo, but it was dealt with only from the stage which was reached while it was pending in the High Court, the proceedings before the Tribunal continued to be in a representative capacity.

15. Another attack ~~made~~ by counsel of the applicants was that in the absence of fresh sanction by the Tribunal and ^{publication} ~~obligation~~ in that respect, after the transfer, the proceedings before the Tribunal cannot be considered as ⁱⁿ a representative capacity. Since the proceedings before this Tribunal were only a continuation of the proceedings before the High Court, as discussed above, this attack has only to be repelled.

16. The last submission under this ground was that in any event the decision in the earlier application is not binding on the applicants in view of sub-rules(4) and (5) of Rule 8 of Order 1 of the Code of Civil Procedure. It was stated that ^{there} ~~it~~ has been an abandonment of the claim since the objection to the jurisdiction of this Tribunal in proceeding with the application, which could have been validly raised, was not pursued. It was also stated that two of the applicants passed away during the pendency of the proceedings and one of them had retired on superannuation. This submission too is devoid of merit. There is nothing on record to indicate

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that any part of the claim in the proceedings was abandoned by the applicants. Submitting to the jurisdiction of this Tribunal, to which ^{the} proceedings were duly transferred by the High Court, does not amount to abandonment of the claim in the proceedings. The death or retirement of some of the applicants does not make the decision honest, for the Organisation representing the Primary School Teachers en block was the first applicant. Besides, this is not a case where the application was not proceeded with due diligence before the Tribunal, for the Advocate of the applicants appeared and argued the matter on their behalf, challenging the impugned communication by the Post Master General to the Superintendents of Post Offices, though on merits the challenge was negatived.

17. In respect of the second ground urged in these applications, viz., the non-compliance with the provisions of the Rules, the thrust of the attack was that under the Rules in the case of Extra-Departmental Branch Postmasters, who have rendered more than three years' service, the termination of service can only be by way of disciplinary proceedings. In support of this submission, reliance was placed on rule 6 of the Rules which provides that service of an employee who has not already rendered more than three years' continuous service from the date of his appointment, shall be liable to termination by the appointing authority at any time without notice. In view of this provision, it was argued that the service of an employee who has rendered more than

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three years' continuous service, can be terminated only after notice. We are afraid, the rule does not lead to the inference that counsel wants us to draw. Evidently, what is intended by rule 6 is only in respect of the termination of service of those employees who have not rendered more than three years' continuous service. It is evident from the instruction contained in the letter of the Director-General, Posts and Telegraphs dated 13.4.1983 that the termination of service contemplated under the rule governs cases of unsatisfactory service or for administrative reasons unconnected with the conduct. Even in the case of those who have not completed more than three years' continuous service, if the termination is to be had on account of misconduct, the procedure prescribed under the Rules has to be followed. There is nothing in the Rules that ordains the authorities to issue a notice to the Extra-Departmental Branch Post Masters, as the applicants in these cases, when their services are terminated in the peculiar circumstances of these cases.

18. The third ground raised with respect to violation of principles of natural justice can also be considered at this juncture, for it is based on the absence of show-cause notice before the order of termination was issued. Counsel of the applicants placed reliance on the decision of the Supreme Court in Superintendent of Post Offices v. P.K. Rajamma (AIR 1977 SC 1677). In that decision it was held that Extra-Departmental Agents are holders of civil posts and on that account the dismissal or removal from service of such Agents in violation of clause (2) of Article

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311 of the Constitution of India was struck down. Our attention was also invited to the decision of a Bench of this Tribunal in *Amritlal Chaganlal v. Senior Superintendent of Post Offices* [1988(7) ATC 830] where the termination of service of an Extra-Departmental Agent was struck down on the ground of denial of reasonable opportunity of being heard. Neither of these decisions is of avail in these cases. The decision in *Amritlal Chaganlal* turned upon termination of service on the ground of misconduct. The decision of the Supreme Court in *Rajamma's* case was in respect of dismissal or removal from service in violation of clause (2) of Article 311 of the Constitution of India.

19. Equally unsustainable is the reliance placed on the decision of the Patna Bench of this Tribunal in *Awadh Singh v. Union of India* [1987(2) ^{SLJ} (CAT) 225] That was a case where the order of the Superintendent of Post Offices allowing the petitioner therein to re-join the post of Extra-Departmental Agent was directed by the Post Master General not to be implemented, and the said direction was under challenge and was quashed. The Superintendent of Post Offices ordered to take back the petitioner on duty since the termination of service was made by the Inspector of Post Offices when the petitioner applied for leave on medical grounds, on the assumption that the petitioner is medically unfit, without subjecting him to medical examination. This was held to be in gross violation of Rules since the termination of service on medical grounds or unfitness to discharge the responsibilities "cannot be done in a huff and without providing

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an opportunity to an employee to ~~address~~ show-cause". No doubt, there is a reference to rule 6 of the Rules and an observation to the effect that "by implication it means that in other cases, that is, in respect of employees who have rendered more than three years' continuous service, termination can be affected only by following the prescribed procedure", which is clearly obiter.

20. Dismissal or removal from service will involve termination of service. But all cases of termination ^{of} ~~from~~ service may not amount to dismissal or removal. If it amounts to dismissal or removal, it will be punitive, ^{and} ~~certainly~~ in view of the mandate contained in clause (2) of Article 311 of the Constitution of India, it can be done only after inquiry against the Extra-Departmental Agent and giving him a reasonable opportunity of being heard, since the Extra-Departmental Agents have been recognised as holders of civil posts. The failure to do so will, of course, be violative of the canon of natural justice that no one shall be condemned ^{and} unheard. These propositions are not applicable in the instant case as there is no case for the applicants that the termination is punitive or that it is founded on alleged misconduct. The applicants being permanent Government servants under the State Government were engaged as Extra-Departmental Branch Post Masters only with the consent of the State Government. It was on account of the withdrawal of such consent and the request of the State Government to terminate their engagement that the

Post Master General directed the Superintendents of Post Offices to terminate the services of the applicants, pursuant to which the termination has been affected. The challenge against the direction given by the Post Master General to the Superintendents of Post Offices, based on the request of the State Government was duly considered and negatived by this Tribunal in the representative action on behalf of ^{all} such Extra-Departmental Branch Post Masters. It was thereafter that in December, 1987, the Post Master General again addressed the Superintendents of Posts Offices to terminate the services of these applicants, and based on the same, the impugned orders of termination have been issued. In these circumstances, it cannot be said that the termination is bad on account of the non-issue of individual notices to these Extra-Departmental Branch Post Masters. They were well aware of the decision of the postal authorities to put an end to their services in view of the policy-decision conveyed by the State Government to the authorities. They had occasion to challenge the decision. They did so, but failed. The orders of termination specifically refer to these aspects as the grounds in ~~respect~~ support thereof.

21. It may be that the ^{applicants are deprived of the} allowance which they ~~applicants~~ were receiving for the discharge of the duties of Extra-Departmental Branch Post Masters, ~~are~~ ~~denied to them~~ on account of the termination of their services. That by itself cannot be a reason for challenging the orders of termination made under the

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aforesaid circumstances, on the ground of want of individual notices.

22. Counsel of the respondents brought to our attention a ^{recent} ~~reasoned~~ decision of the High Court of Gujarat at Ahmedabad delivered on 16.1.1990 in Letters Patent Appeal No.222 of 1978. The identical issue came up for decision therein at the instance of some Extra-Departmental Branch Post Masters, similarly situate as these applicants. The Division Bench of the High Court was dealing with the appeal from the rejection of the petition by a Single Judge. The appeal was dismissed. We are in agreement with the reasonings and the conclusion arrived at therein, which ^{reinforce} ~~are enforce~~ the view that we have taken above.

23. It follows that there is no merit in these applications. They are accordingly dismissed.

Sd/-

(G.S. Nair)
Vice Chairman

Sd/-

(P.H. Trivedi)
Vice Chairman

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1/ *P.S. Sawe*
27-03-80

Section Officer
Central Administrative Tribunal,
Ahmedabad Bench.