CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
AHMEDABAD BENCH. AHMEDABAD.

Retrenchment (J49)

O.A No. 465 OF 1988
~~XXXXXX~~

DATE OF DECISION 28-6-1991

Shri Pravin Devayath Chavda Petitioner

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

Versus

Union of India & Others. Respondent

Shri P.M.Raval. 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—27-9-86—15,000

Shri Pravin Devayath Chavda,
Near Laxmi Pan House,
Bhagwatipura Main Road,
RAJKOT. .. Applicant

versus

1. Union of India, through
Secretary,
Telecom Department,
Government of India,
NEW DELHI.

2. District Telecom Manager,
Jassani Building,
Near Girnar Cinema,
RAJKOT.

3. Asst. Divisional Engineer (D TAX),
Kasturba Road Telephone Exchange,
RAJKOT. .. Respondents

J U D G E M E N T

Date : 28-6-1991

O.A./465/88

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

The applicant has come forward with this application under Section 19 of the Administrative TribunalsAct, 1985.

2. The applicant claims in his application that he was working under the respondent from 15.11.1986 onwards and that without issuing any notice to him and without complying the provision of Section 25 (F) of the Industrial Disputes Act, his services were terminated by an oral order and he was not allowed to work from 1.2.1988 onwards. The applicant contends that from 15.11.1986 to 31.1.1988, he worked in all 428 days. As per Section 25 (B) of the Indus-

(6)

trial Disputes Act, also he had 240 days of continuous service in one year as defined in the Section. The applicant is a workman and the Telephone Department is andIndustry, and as such, he is entitled to claim the benefit of the Industrial Disputes Act. Hence this application for a declaration that the oral termination of the service of the applicant from 31.1.1988 is illegal and void and claiming further benefits like backwages, seniority, regularisation etc.

3. In reply the respondents contend that the applicant was engaged casually for a period of one month and his services were extended from time to time till regular staff could be added. The applicant was engaged as casual labourer only for installation of Telephone Exchange. The Telephone Exchange was ready for commission, which required services of regular and trained employees and therefore services of the casual labourer were no more required. The applicant was discontinued from 31.7.'87. A letter was also issued on this behalf and the applicant has received the same. On 31.8.1987 no regular employees were available and therefore the applicant was asked to work only for one month from 1.9.1987 as per the order dated 31.8.1987. The applicant has been given one months notice on 1.1.1988 and has also signed the notice in token of its having received by him. The applicant was engaged from time to time for a specific period and therefore the said discontinuance cannot be said to be retrenchment. The applicant had put in only 153 days. The

applicant was well aware that his engagement was for a specific period, for one month only and he had accepted the same. The Telephone Department is not an Idustry and as such the applicant cannot claim any benefit under the Act.

4. The applicant also filed a rejoinder denying the allegations made in the reply.

5. Heard counsel for both the parties. Records perused.

6. The applicant in this application impugned the oral termination of his services from 31.1.1988 on the ground that the respondents failed to comply with the provisions of Section 25(F) on Idustrial Disputes Act. In his application the applicant claims that he had worked under the respondents from 15.11.1986 to 31.8.1988 continuously for 428 days. He also claims he had satisfied the provision of Section 25 (B) of Industrial Disputes Act and as such his services cannot be terminated without issuing a notice, as contemplated under Section 25(F) of the Act. Learned advocate appearing for the respondents contend, that, if applicant has got any grievance, he ought to have approached the Labour Court, as his main grievance is only violation of Industrial Disputes Act, It is seen that the applicant has not questioned the order of termination either on the ground of principles of natural justice not being followed or offending any provision of the constitution. On this aspect our attention was also drawn to a decision reported in 1990(C.S.J) pg. 384 (Larger

Bench) A.Padmavally case. In view of the above said decision the applicant cannot claim any relief before this Tribunal. Further

7. Even otherwise there is dispute between the parties regarding the actual number of working days the applicant worked under the respondents. The applicant along with the application produced Annexure A1-A2, but from this it is not clear who gave the certificate to him and whether the person who gave the certificate is authorised to do so. The applicant has also not chosen to file the affidavit of the person who issued the certificate, as such no reliance can be placed on the same. On the other hand the respondents contend in their reply that the applicant was engaged only for a specific period and when that period was over he was given the necessary notice under the provision of law applicable to Telephone Department.

8. They also contend that the applicant worked under them only for 153 days. As there is dispute between the period regarding the actual number of days the applicant worked under the respondents and also regarding the issue of notice by the respondents to the applicant, in view of the Padmavally's case judgment, supra, we are of the view that the applicant can agitate over this matter before the Labour Court in view of the dispute on facts between the parties which can be visualised by recording of evidence before the Labour Court. The applicant in his application specifically claims the benefit of the provision of the Industrial Disputes Act. The present application before this forum is therefore, not entertained.

9. 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.

10. In view of the above discussion we find that the application has to be dismissed. Accordingly the application is dismissed, but in the circumstances without costs.

(S.Santhana Krishnan)
Judicial Member
28/6/91

(M.M. Singh)
Admn. Member