

C.L.
Retrenchment
(No)
(Jud.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 500
~~KA No~~

1988

(G)

DATE OF DECISION 17-7-91

Shri Vallabh Narbheram Petitioner

Mr. C.D. Parmar Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. M.R. Raval proxy counsel for Advocate for the Respondent(s)
Mr. P.M. Raval

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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal. No

: 2 :

Shri Vallabh Narbheram
Near Tar Banglow
Harijanvas Vanthli Gate,
Junagadh
(Advocate: Mr.C.D.Parmar)

9
: Applicant

Versus

1. Union of India
Through:
Superintending Archaeologist,
Survey of India, Madhav Baug,
Makarpura Road, Vadodara.
2. The Conservation Assistant
Archaeological Survey of India
Near Uperkot Gate, Junagadh.
(Advocate: Mr.M.R.Raval for
Mr.P.M.Raval)

: Respondents

J U D G M E N T

O.A./500/88

Date: 17-7-91

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

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for a declaration that the Act of termination and/or the oral termination of the applicant by the respondents with effect from 11.1.88 be held as illegal, inoperative and the applicant be declared to be in ^{continuous} service with the respondent No.2 and he be reinstated with full backwages. The applicant has further prayed that the respondents be directed that the applicant be treated as working from 6th May, 1986 to 21st August, 1987 and the pay of the said period be given to him on the basis of working days and that the applicant be declared as a permanent employee from 1st February, 1984.

ms
2. It is alleged in the application by the applicant that he was working as a daily chowkidar in Archaeological Survey of India with the Conservation Assistant at Junagadh since 1.2.1984 and that he was retrenched by respondents on 6.5.1986, that he approached this Tribunal by way of O.A./410/86 and this Tribunal by its judgment dated 23.6.1987 directed the respondents to take the applicant on duty, that the respondents after taking the applicant on duty complying the judgment of Tribunal



again terminated the services of the applicant on 19th October, 1987 without any reason, that after correspondence of notice by applicant's advocate, with the respondents dated 13th November, 1987 he was again put in service. It is alleged by the applicant, that thereafter also, respondent No.1 held interview for filling new six posts for the permanent job, that the applicant by notice to respondent No.1 dated 24.11.87 requested to take him first and fill the post afterwards as per the Central Government policy, that the respondents ^{have} given reply to the said notice on 1.1.1988 saying that the case of the applicant would be considered as per the rules at the proper time. It is alleged that the applicant, thereafter, approached the respondents that he should be regularised in the service but the respondents retrenched the applicant on 11.1.1988. The applicant has alleged that before the termination of his service, he was neither served with notice nor was ^{he} paid any wages in lieu of retrenchment notice nor the retrenchment compensation was paid to him as per the conditions laid down under Section 25F of I.D.Act and hence the act on the part of the respondents in terminating the services of the applicant on 11.1.1988 was illegal and void.

3. It is pertinent to note ^{at} this stage ^{that} the applicant in para-3 has referred ~~two~~ to two oral orders dated 11.1.1988 and 30.5.1988 but no where thereafter in the application he has referred to the oral order dated 30.5.1988 ^{even} examining his relief clause 7(a), it is clear that according to him the oral termination was on 11.1.1988. Thus it is a mistake on the part of the applicant to refer to the oral order dated 30.5.1988 also. The applicant has in para-3 alleged that he was serving in the department of Respondent No.2 since 1.2.1984. The respondents have also in the reply contended that the applicant was engaged as daily wager on 1.2.1984 and he had been engaged as and when there was work.

ms

The respondents in the reply have contended that the applicant has not given true and correct facts in the application and has suppressed material facts. The applicant had filed O.A./410/86 before this Tribunal, ^{on} which was decided/23.6.1987. ~~Reading~~ the judgment of OA/410/86, it appears that the applicant had mentioned in that case that he was serving from March, 1983 on daily wages. The Tribunal has observed that from the documents filed before the Tribunal in that case, it was noticed that the applicant was only 21 years of age when the matter was decided by the Tribunal. Thus, the applicant had not given the correct date of his service in O.A./410/86 also. The applicant's case is that he was retrenched on 6th May, 1986 by the respondents previously and he was taken back in the service as per the judgment of the Tribunal in O.A.410/86. The Tribunal has in its judgment observed "After hearing counsel on both sides, the factual position that merges is, somewhat like this. There seems to have been some misunderstanding between the respondents and the applicant, the net result of which was that the applicant found himself out of service. The respondents have very clearly asserted that they did not remove the applicant from service. This shows that the respondents have really nothing against the applicant. Therefore, the respondents had not retrenched the applicant on 6.5.1986 as alleged by the applicant." Moreover, the operative part of the judgment in O.A./410/86 reads as under:-

"In view of all this we would direct the respondents to take the applicant back as daily Chowkidar in the next available vacancy in their department, preferably at Junagadh, as expeditiously as possible but, in any case not beyond two months from today. The applicant will however not be entitled to any backwages till the date of his reinstatement".

It is not in dispute that the applicant was thereafter taken on duty when the next available vacancy was from 21st August, 1987. It may also be noted at this stage that

inspite of clear judgment in OA/410/86 that the applicant would not be entitled to backwages till the date of his reinstatement, the applicant has in this case in para 7(b) prayed that he should be treated as working from 6.5.1986 to 21.8.1987 and the backwages should be paid to him for that period. This shows that the applicant has not come with clean hands and not revealed true facts.

4. The applicant in his application has further alleged that after he was taken in service by the respondents after the judgment in OA/410/86, his service was terminated on 19th October, 1987 without any reason and after correspondence of notice marked A/5 13.11.1987, he was put back in service. The respondents in the reply have contended that the said statement of the applicant that his services were terminated on 19th October, 1987 was false. It is contended by the respondents that the applicant sought leave from 18th October, 1987 to 31st October, 1987 as per his letter dated 16th October, 1987 which is produced by the respondents at page 45. This letter also bears the signature of the applicant. The respondents have further contended in their reply that the applicant then reported to work on 9th November, 1987, The applicant was instructed to attend the work at Khapra-Kodia Caves on 1st November, 1987 as per the instruction issued on 30th October, 1987 which was followed by registered letter dated 3.11.1987 to the applicant intimating him for duty from 10th November, 1987 and ultimately the applicant joined duty on 9th November, 1987. The letter dated 31st October, 1987 to the applicant to report on 1st November, 1987 is produced at page 46 and the copy of the registered letter dated 3rd November, 1987 is produced at page 47. It was made clear to the applicant by registered letter dated 3rd November, 1987 that in case the applicant failed to report by 10th November, 1987, another person would be taken in his place. This correspondence supports the case of the respondents that the applicant has concealed the material facts in

his application and has suppressed the correct facts. The averments made in para 3 therefore cannot be believed.

5. The respondents had received the notice Annexure A/5 dated 13th November, 1987 given by the applicant's learned advocate on 16th November, 1987. According to the respondents, there was no eligible casual worker who could be regularised and six vacancies were notified to the employment exchange, Junagadh, that the interview was then held on 5.1.1988, and six candidates were selected. It is contended that the notice of the applicant, thereafter, dated 24.12.1987 Annexure A/4 and not 24.11.1987 as alleged in the application requesting for regularisation of the applicant was received but as the applicant was not fulfilling conditions for regularisation, he was informed by the letter dated 1.1.1988 produced by the applicant at Annexure A/3, that his case for regularisation would be considered as per rules at the proper time. It is further contended by the respondents that even the name of the applicant was not nominated by the employment exchange and he was not called for interview. It is also the case of the respondents that the services of all the daily wagers in whole circle were discontinued from 11.1.1988 including the applicant, that later on all the daily wagers were recalled and the applicant was also asked by the Sub-Circle Incharge to attend his work but the applicant refused to come by saying that he was not interested to work on daily wage. The respondents has produced the undated letter of the applicant at page 38. It is contended by the respondents that the said letter, in clear terms shows that though the applicant received the message from respondents on 2.2.1988 for reporting for duty he would not be prepared to report for duty till he was given an order as permanent employee. This letter also shows that the applicant was not prepared to work as a daily wager, that the respondents

14

should only intimate him for duty if the respondents wanted to give him in writing the order as a permanent employee. The applicant has filed an affidavit that the said letter was not written by him and he did not know the contents of the letter and this letter is sham and bogus. Therefore, the question arises, whether in fact the applicant had written letter which is produced by the respondents at page 38. The respondents have filed reply that the said letter page 38 was of the applicant and it was signed by the applicant also. The respondents have produced number of documents to show that the signatures of the applicant on those documents tally with the signature of the applicant on the letter page 38. These documents produced by the respondents are (i) notice dated 10.6.1986 given by applicant to Conservation Assistant at Junagadh produced at page 43, (ii) signature of the applicant in the Peon Book produced at page 44. (iii) signature of the applicant on his leave application dated 16th October, 1987 from 18th October to 31st October, 1987 produced at page 44. It is mentioned in the further reply that not only that the applicant has put his signature on the leave application dated 16th October 1987, but his residential address is also in the hand writing of the applicant. We have also ~~ru~~ perused and compared ^{the signature} on the letter page 38 along with the admitted signatures of applicant on the documents produced by the respondents and we find that the signature on page 38 does tally with the signatures on the other documents produced by respondents. Therefore, we do not believe the applicant's version that he had not sent the letter at page 38. We accept the contentions of the respondents that the said letter at page 38 was sent by the applicant and it was signed by the applicant. We also accept the contentions of the respondents that there was no reason for the respondent authorities to create the bogus or concocted document. We further accept the

ms

contentions of the respondents that the applicant had second thought for employment after having left of his own accord as per letter page 38, when the applicant himself did not want to resume the duty when a messenger was sent to him on 2.2.1986 to attend his duties, he cannot find fault with the respondents and there would not be any cause of action to agitate this case saying that he was discontinued from service with effect from 11.1.1988.

6. Now regarding the grievance of the applicant that the respondents had filled in six posts for the permanent job ignoring the applicant, which according to him is violative of article 14 of the Constitution, it is necessary to refer to the statutory notice which was given by the applicant at Annexure A/4 dated 24.12.1987. It was his case that as per the G.R. of the Govt. of India dated 24.5.1985, he should have been taken on regular basis by the respondents to which a reply was given by the respondents Annexure A/3 dated 1.1.1988 that the applicant would be considered as per rules at the proper time. The applicant also gave another notice dated 30.3.1988 Ann. A-2 regarding regularisation of his service to which the respondents gave reply Annexure A/1 dated 30.5.1988 that as the position of the sanctioned budget under the maintenance was tight, the daily wages workers were discontinued and the applicant was paid his daily wages on 21.1.1988. The second explanation given in the reply by the respondents was that six persons were appointed as they fulfilled the condition for recruitment and their names were also sponsored by the employment exchange, Junagadh, whereas, the name of the applicant was not sponsored by the employment exchange and the third explanation was that no one is appointed as Monument Attendant who were the junior to the applicant working like him in Junagadh Sub-Circle. It is also mentioned in this reply that the candidates who were sponsored

10

by the employment exchange, Junagadh were interviewed on 5.1.1988 and persons were selected by the interviewing committee for Group "D" establishment, where as the applicant had not right as he had not fulfilled the conditions for the recruitment and further no one was made regular in Junagadh Sub-Circle Junior working like the applicant.

7. The applicant has produced the details of the period during which he worked which covers the period from 11.4.1984 to 2.5.1986 intermittently but thereafter there is no documentary evidence about the number of days for which he worked with the respondents. The applicant has produced at Annexure A/9 the judgment in Ratnotar Champaben Lavji and Ors. V. the State of Gujarat and Ors. reported in G.L.T. 1988, at page 157 in which it is mentioned that when the petitioners who were temporarily employed and who had applied for appointment on regular basis were selected for the post after they were interviewed by the Selection Committee and when their names were included in the select list prepared by the Selection Committee they were not given any employment and no explanation was given by the Govt. in that case as to why the petitioners were not appointed and when six persons were given promotion or appointment which was not proper and the petition was allowed. This decision will not help the applicant at all because the applicant was not fulfilling the conditions for recruitment and nobody was made regular junior to the applicant nor any one was appointed as monument Attendant who was junior to the applicant. Apart from the fact that the applicant's name was not sponsored by the employment exchange. The learned advocate for the applicant has relied on the decision in Hem Chandra Naskar v. Union of India & Ors. reported in (1990) 14 Administrative Tribunals Cases 456 in which it was held that casual labourer not sponsored by Employment Exchange but recruited prior to May, 7, 1985 could not be denied regularisation merely for not being so sponsored. In the instant case, the

applicant in addition to the fact that he was not sponsored by the employment exchange, he was not regularised also on the ground that he did not fulfil the conditions for the recruitment and no person junior to him was made regular etc. as mentioned in Annexure A/1, dated 30th May, 1988 which was replied by the respondents. The applicant has also produced the copy of the letter dated 24th May, 1985 received from Director (E), Ministry of Personnel, and Training, Administrative Reforms and Public Grievance and Pension, New Delhi addressed to all the concerned authorities. It was an office Memorandum regarding regularisation of service of casual workers in Group "D" posts- relaxation of employment exchange procedure, but as observed above- this was not only the ground on which he was not taken. The learned advocate for the applicant has also relied on the decision in M.M. Unnikrishnan vs. Superintendent of post Office and others (1990) 13 Administrative Tribunals Cases 250. It was held in this decision that casual driver appointed otherwise than through employment exchange without any warning that such recruitment was irregular estopped the Superintendent of Post Office from terminating services merely for not having been sponsored by employment exchange. This was a case of a promissory estoppel. This decision also does not help the applicant on the same ground as discussed above. The learned advocate for the applicant has also relied on the decision in Abdul Aziz vs. Union of India and Ors. (1991) 15 Administrative Tribunals Cases 326 where Section 2 (00) of and Section 25 F of the Industrial Disputes Act were considered which does not help the applicant.

8. The respondents have contended in the reply that there was no eligible casual workers who could be regularised and the persons who were selected on six vacancies where the persons whose names were sponsored from employment exchange but the applicant was not fulfilling the conditions for regularisation and therefore he was

18

not taken moreover as observed earlier, when he was intimated to report for work after his oral termination from 11.1.1988, the applicant by his letter page 38 refused to resume. In the instant case, there is no question of applicability of Section 25 F of Industrial Disputes Act because the applicant has failed even to prove that he had worked and he was in continuous service for not less than one year before he was discontinued from 11.1.1988 and there is no question of violation of article 14 and 16 of the Constitution. None of the judgments cited by the learned advocate for the applicant can be pressed into service. On the contrary, it is established in this case that it was the applicant who did not want to resume work when he was recalled after 2.2.1988 till he was employed as permanent employee which is very clear from the letter addressed by the applicant to respondents vide page 38.

9. The result is that the applicant is not entitled to any relief and the application deserves to be dismissed.

10. The application is dismissed. No orders as to costs.

Resul
(R.C. Bhatt)
Judicial Member

M. M. Singh
17/7/91
(M.M. Singh)
Administrative Member