

C.L. Termination
NO.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 524 OF 1988.

~~TAX No.~~

DATE OF DECISION 18.2.1992.

Karsanbhai Kalubhai Galial, Petitioner

Mr. D.M. Thakkar, Advocate for the Petitioner(x)

Versus

Union of India & Ors. Respondents

Mr.R.R.Tripathi for Mr.B.B.Naik, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Priolkar, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, 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 ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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Karsanbhai Kalubhai Galial,
Shanker Bhuvan, Shahpur,
Ahmedabad.

.... Applicant.

(Advocate: Mr. D.M.Thakkar)

Versus.

1. The Union of India
(Notice to be served
through the Collector
of Central Excise and
Customs, 'Customs House',
Near High Court,
Navrangpura, Ahmedabad).

2. The Asstt. Collector of
Customs and Central Excise,
Division VI, Stadium House,
Opp. Sardar Patel Municipal
Bath, Navrangpura,
Ahmedabad.

..... Respondents.

(Advocate: Mr. R.R. Tripathi for
Mr. B.B. Naik)

ORAL ORDER

O.A.No.524/1988

Date: 18.2.1992.

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

Heard Mr. D.M. Thakkar, learned advocate for the
applicant and Mr. R.R. Tripathi for Mr. B.B. Naik,
learned advocate for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by a
Sweeper, Casual Labour serving with the respondents
Customs & Central Excise department, seeking the
relief to quash and set aside the action of the
respondents in orally terminating the services of
the applicant without following any due procedure

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under the law and to direct the respondents to reinstate the applicant with full backwages and all other consequential benefits and to permit the applicant to discharge his duties and ^{to} draw his salary _^ as Sweeper under the Respondent No.2 and also for a declaration that the applicant is entitled to be absorbed on permanent basis. The main grievance of the applicant as pleaded in the application is that the applicant was appointed as Sweeper casual labour under the establishment of the respondents on 1st October, 1986 without any written order of appointment and that he is paid daily wages Rs. 18.75. It is alleged that though there were sanctioned permanent post available with the respondents, the respondents instead of regularising the services of daily wagers have orally terminated their services. It is further alleged that the Government of India has now decided ^{to} to absorb the casual labourers on regular basis who have completed 206 days continuous work in proceeding two years. The applicant has annexed at Annexure A-1 collectively the copy of this policy circulars dated 10th October, 1983 and 13th October, 1983 issued by the Ministry of Home Affairs and also copy of O.M. No. 49014/18/84-Estt(C). The applicant has produced at Annexure A-2, the copy of the decision of the Department of Personnel and Administrative Reforms dated 26th October, 1984.

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3. It is alleged by the applicant that inspite of this policy decision of the Government of India, the Respondent No.2 has orally terminated the services of the applicant on 24th April, 1988. It is alleged that such an action on the part of the Respondent No.2 is illegal and unconstitutional. The applicant has produced an order dated 23rd March 1988 issued by the Deputy Collector (P&E) Central Excise, Customs, Ahmedabad, the copy of the appointment order of fresh casual worker. It is alleged that the oral order of termination of the respondents is in violation of principles of last come first go and against principles of natural justice.

4. The respondents have filed reply contending that the applicant was deployed as casual worker in Central Excise, Div.VI, Ahmedabad on 1st June 1986 on daily rated basis and no order in writing was given by the respondents office for such deployment. It is contended that the applicant was deployed by way of stop-gap arrangement. It is contended by the respondents that the applicant worked ~~ed~~ was 64 days (on different dates) in 1986, 240 days (on different dates) in 1987 and 69½ days (on different dates upto 24th April, 1988) in 1988.

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5. It is further contended by the respondents that

it is the policy of the Government that those who have been recruited after 7th May, 1985 be discontinued and as the applicant was engaged in 1986 he has no right to get his service regularised more so when his name was ^{not} sponsored by the employment exchange. It is contended by the respondents that no procedure is required to be followed as alleged in the application. It is denied that the alleged action of the respondents was either illegal or arbitrary as alleged. It is also contended that the respondents is not an industry and the applicant is not a workman.

6. The learned advocate for the applicant drew our attention to the decision in the case of the Customs & Central Excise Group 'D' Officers' Union, Ahmedabad Collectorate V/s. Union of India & Ors., decided by the C.A.T., Ahmedabad Division Bench on 18th April, 1990 in which the applicants of that case had a grievance that the Collector of Central Excise and Customs had orally terminated the services of the applicants without issuing any notice or complying with statutory formalities for a legal termination. Reading this decision it is clear that all the applicants in that case were also appointed as casual labourers after 7th May, 1985. The contention of the applicants in that case was that they were in employment for more than a year

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and the oral termination was against the provision of Article 39 of the Constitution of India and that they were entitled to continue in service. The contentions taken by the respondents in that case were almost identical to the contentions taken in reply of this case namely that the applicants had no legal right to continue in service because of the policy decision of the Government of India dated 7th May, 1985 that they were not sponsored by the employment exchange that their appointment of the post was irregular and not binding to the Government of India etc. The Division Bench, after considering all the contentions taken by both the side and after referring to the decision of the Hon'ble Supreme Court of India in The Dharwad Distt. PWD Literate Daily Wage Employees Association & Ors. case and other cases, held that the services of the applicants should not have been terminated without issuing a notice and telling them ~~for~~ the reasons of the termination. In this case, admittedly, no notice has been issued to the applicant before the termination. On the contrary, the contention of the respondents in the reply is that no procedure is required to be followed for the termination. It is also not in dispute that no written order was passed by the authority concerned for termination. The Division Bench, in the said above case held

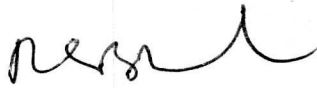
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that the termination was violative of the principles of natural justice and the applicants were entitled to be heard atleast before the impugned action of termination was taken by the respondents. In the result, the Division Bench of C.A.T. Ahmedabad held that the termination was illegal and the applicants in the case before them were entitled to be reinstated in service but without any backwages. It was held that for the backwages the applicants may make an application before the respondents and satisfy them that they have not been gainfully engaged elsewhere during the period while they were out of service and if such an application is filed the respondents might consider the same and dispose of it according to law. No decision contrary to this Division Bench has been pointed out to us. Hence we follow the above ratio of the above decision and pass the following order.

ORDER

The application is partly allowed. The action taken by the respondents is violative of principles of natural justice and hence the oral termination of the applicant is held illegal. The applicant is entitled to be reinstated in service but without any backwages. For the backwages the applicant may make an application before the

respondents and satisfy them that the applicant has not been gainfully engaged elsewhere during the period while he was out of service. Such an application ^{is} if filed, the respondents may consider the same and dispose of it according to law. The respondent No.2 to reinstate the applicant within one month from the date of the receipt of this order of this Tribunal. The application is disposed of accordingly with no order as to costs.



(R.C.Bhatt)
Member (J)



(M.Y.Priolkar)
Member (A)