

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 620 of 1988
Tax No.

DATE OF DECISION 3.1.1992

Vikramsinh J. Gohil Petitioner

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

Versus

Union of India & Ors. Respondent

Mr. B.B. Naik Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.B. Gorthi Member (A)

The Hon'ble Mr. R.C. Bhatt Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *X*
3. Whether their Lordships wish to see the fair copy of the Judgement? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Vikramsinh J. Gohil

.. Applicant

Versus

Union of India & Ors.

.. Respondents

O.A. No. 620 of 1988

O R A L - J U D G M E N T

Dated : 3.1.1992

Per : Hon'ble Shri R.C. Bhatt .. Member (J)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 by the applicant seeking various reliefs enumerated in para 9(i) to 9(vii) which includes the payment of salary and allowances from 3rd March, 1970 to 15th August, 1973 with interest and all other consequential benefits. The case of the applicant as pleaded in application, is that he joined the Government of India service as Telephone Operator on 21st September, 1967 at Telephone Exchange, Veraval and then he was transferred to Bhavnagar on the same post. He was served with a memo on 7th February, 1970 requiring him to submit his explanation on account of rude behaviour while on duty at Bhavnagar on 29th January, 1970 and on 2nd March, 1970 he was informed by SDO(Phones) Bhavnagar in writing that the disciplinary proceedings initiated against him were dropped. On the very next day i.e. on 3rd March, 1970, his services were terminated vide Divisional Engineer, Telegraph, Bhavnagar's Memo dt. 3rd March, 1970 under Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 1965. The applicant, therefore, challenged this action

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of the respondents by filing a Special Civil Application No. 410/71 before the High Court of Gujarat but the same was summarily dismissed by the Single Judge of the High Court of Gujarat. Thereafter, he filed Letters Patent Appeal No. 72/1972 before the Divisional Bench of the High Court of Gujarat at Ahmedabad which was allowed on 1st May, 1973 and the following order was passed :

"The result is that this appeal is allowed and the Memo No. AQ-2704/38 dated 3rd March, 1970 as confirmed in Annexure F, terminating the services of the applicant is quashed. The respondents are hereby restrained from giving effect to the said impugned order. Appeal allowed with costs throughout."

The applicant has annexed a copy of the judgment of L.P.A./72/72 at Annexure A. It is not in dispute that thereafter, in view of this judgment, the Divisional Engineer, Telegraph vide his order dt. 10th August, 1973 in service ordered reinstatement of the applicant and posted him as Telephone Operator at Telephone Exchange, Palitana where he resumed his duty w.e.f. 16th August, 1973. However, in the meantime, the Telephone Department filed Special Leave Appeal No. 498/74 before the Hon'ble Supreme Court of India but the said appeal was dismissed by the Hon'ble Supreme Court of India on 3rd April, 1987 a copy of which is produced at Annexure B. Learned advocate for the applicant submitted that as the Hon'ble Supreme Court of India has dismissed the appeal of the respondents and confirmed the judgment of the Gujarat High Court, the applicant submitted a representation to the respondents on 26th July, 1987 vide Annexure C requesting for regularisation of his service and also

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for other benefits of pay and allowances admissible under the rules. He submitted that in response to this representation, the respondents gave reply that as the Court has not specified how the period of absence should be treated, as; in such cases the applicant should apply for leave due. It was also mentioned in the reply that if the official is not applying for leave due, it will be treated as absence from duty and case will be regularised accordingly. A copy of the reply is produced at Annexure D.

2. Learned advocate for the applicant submitted that though he was reinstated, he was not paid the back wages and he was not given all the consequential benefits. He submitted that inspite of the fact that the respondents lost ~~in~~ appeal before the Supreme Court of India, the respondents ~~had~~ ^{their} ~~concealed to~~ give reply to the applicant's representation that as the Court has not specified how the period of absence should be treated, the applicant should apply for leave due. The learned advocate for the applicant submitted that having regard to the decision of the High Court of Gujarat which was confirmed by the Hon'ble Supreme Court of India, the Memo No. AQ-2704/38 dated 3rd March, 1970 terminating the services of the applicant was quashed. Moreover, the Hon'ble High Court had already held that the respondents were restrained from giving effect to the said impugned order. He rightly submitted that therefore, this order of the respondents dated 3rd March, 1970 had become non-est and the respondents were bound to give all the benefits to the applicant according to the rules including the back wages.

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3. The applicant has relied on the decision in support of his submission in G. Chokkan and others v. The Assistant Engineer Coaxial Maintenance, Erode and others reported in A.I.S.L.J. Vo. 5 1991(2) (CAT) page 61. It was held in this decision by the Madras Bench of C.A.T. that though the Tribunal had held that the termination order was illegal and reinstatement was made but no back wages were paid by the authorities on the plea that no such direction was given by the ~~re such plea requires to be~~ Tribunal, ~~This plea was rejected by the~~ Tribunal and it was ultimately held that when the very basis of the termination is held illegal, the payment of wages for removal period was an implicit order. In our opinion, this decision helps the applicant. The respondents were bound to pay all the back wages with all consequential benefits to the applicant because the High Court of Gujarat had clearly held that the Memo dated 3rd March, 1970 was quashed and further the respondents were restrained from giving effect to the impugned order. Therefore, though there was no direction given to pay back wages, the applicant was entitled to the same as the impugned Memo had become non est. The applicant has also relied on other decisions on the question of back wages viz. D.C. Limbachia v. Union of India & others A.I.S.L.J. Vol. XI 1991(3) CAT page 296 - This is the decision of the C.A.T. Bench at Ahmedabad. The next decision is Ibrahim Shahabuddin Shaikh v. Sangli Distt. Central Co-operative Bank Ltd. and others 1991(2) ATJ page 499. The next decision is Om Prakash Goel v. Himachal Pradesh Tourism Development Limited, Simla 1991(2) page 137. He has also cited the extract of the decision in Smt. Smitaben P. Kachhia v. Union of India and another - 1989(1)ATC 406 Ahmedabad from Swamy's Digest page 287.

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4. The respondents in their reply have contended that the applicant has asked for various reliefs from August, 1973 and hence this application is time barred and is not maintainable at law and this Tribunal has no jurisdiction to entertain this application. We find no substance in this contention because the applicant had immediately after the order of termination, filed S.C.A./410/71 before the High Court of Gujarat for redressal of his grievance which was summarily dismissed by the Single Judge of the High Court but the L.P.A. 72/72 was allowed on 1st May, 1973. Thereafter, he could not make the application for all his claims of back wages and consequential benefits because the respondents had filed an appeal before the Hon'ble Supreme Court of India being Special Leave Appeal No. 498/74 which was decided on 3rd April, 1987. Immediately thereafter, he made representation to the respondents (Annexure C) on 26th July, 1987 claiming all the benefits which was turned down by the respondents. In our opinion, therefore, the O.A. which has been filed before us in 1988 is quite within time and this Tribunal has jurisdiction to entertain this application being a service matter. We therefore, reject the contention which has been taken by the respondents in the reply.

5. It is also contended by the respondents in their reply that as the Court has not specified how the period of absence should be treated, the applicant was asked to apply for leave due failing which the same was to be treated as absence from duty. In our opinion, this is an unusual contention which has been taken by the respondents. Once the Hon'ble High

Court took the view that the Memo dt. 3rd March, 1970 terminating the services of the applicant, was illegal and it was quashed and when the respondents were further restrained from giving effect to the said impugned order, it does not lie in the mouth of the respondents that the applicant, thereafter, should have applied for leave because the Court had not specified how the period of absence should be treated. In our opinion, the impugned Memo had become non est and hence the respondents were bound to give all the back wages from the date of termination till he was reinstated. It is not in dispute that the applicant was reinstated on 15th August, 1973. Therefore, the applicant's claim for back wages from 3rd March, 1970 to 15th August, 1973 is proper and legal and the respondents are bound to give back wages with all the consequential benefits.

6. Learned advocate for the applicant has also contended that the reply which has been filed by the respondents is no reply in the eye of law. He rightly submitted that the reply which has been filed by the respondents begins with the wording "I, Telecom District Engineer, Bhavnagar District, Bhavnagar". He rightly submitted that the respondent who is giving reply should give his name in the reply and should be properly verified. Accordingly, technically, the applicant's contention is correct that the respondent ~~is having not~~ who filed the reply ~~himself should disclose who is he~~ ^{but} ~~by name and his~~ only designation cannot be considered as legal and proper. However, going through the reply ^{above} as observed, we find no substance in any of the contentions of the respondents.

7. Learned advocate for the applicant had also

made comment on the manner in which the reply is given by the respondents that the matter was taken before the Hon'ble Supreme Court of India and the same came to be rejected. Learned advocate for the applicant submitted that this averment in the reply apparently would suggest as if the applicant had gone in appeal before the Hon'ble Supreme Court of India, while ^{as a} ~~the~~ matter of fact, it was the respondents who had filed appeal before the Hon'ble Supreme Court of India. He submitted that the criminal action should be taken against the respondents for making such careless statement. We do not find any substance in the submission of the learned advocate for the applicant and even if this careless or vague statement is made, we do not think it raises any criminal liability on the respondents.

8. Learned advocate for the applicant submitted that the back wages should be paid with interest at the bank rate to the applicant. In support of his submission, he has relied on the decision in State of Kerala v. M. Padmanabhan Nair AIR S.C. 1985 356. It was a case of Pension and Gratuity and the Government servant had claimed interest against the Government which paid him pension and gratuity more than 2 years and 3 months after his retirement, due to non production of Last Pay Certificate by the retiree. The Hon'ble Supreme Court was inclined to grant 12% interest but did not do so as the employee has acquiesced in his claim being decreed at 6 per cent. He also relied on the decision in M. Mahapatro v. Union of India & Anr. (Cuttack) AIR 1988(2) CAT 260 in which the Tribunal awarded 12 per cent interest on the arrears of salary because the Hon'ble High Court had passed order for payment of arrears of salary. The next decision relied

on is Mrs. Renu Bala v. Union of India & Anr. ATR 1988(2) CAT 331 that is the decision of the Principal Bench of C.A.T. We do not find in that decision any order for payment of interest though the order for payment of costs was passed. In the instant case, reading ~~of~~ the judgment of the High Court, according to the respondents, did not show the order of payment of back wages. Reading of the final order, we are of the opinion that as the impugned Memo dated 3rd March, 1970 was quashed and as the respondents were restrained from giving effect to the said impugned order, the applicant is entitled to back wages. Therefore, it is in this O.A. that we hold that the applicant is entitled to back wages and all the consequential benefits inspite of the fact that there is no such clear direction in the judgment of the High Court of Gujarat. We have in clean language construed the ratio laid down in that decision. Therefore, the question of payment of interest will not arise and the decisions which have been cited by the learned advocate for the applicant would not apply in such case, therefore, the claim of the applicant about the payment of interest is rejected.

9. Learned advocate for the applicant has also pressed for the costs. He submitted that the applicant had to incur cost for filing Special Civil Application before the High Court of Gujarat and also to incur cost for contesting the appeal filed by the respondents before the Hon'ble Supreme Court of India and therefore, he should be given cost of those litigations. The learned advocate for the applicant referred to the decisions in ATR 1953 S.C. 250 and also page 253 but he has not given us said ~~citation~~ and the judgments

and therefore, we have no advantage of knowing the facts of those two cases. However, in the instant case, the applicant could not claim the cost of litigation which he had to contest before other forum. We can understand his claim of cost in this O.A. but any cost which he has incurred in other litigation cannot form the subject matter in this litigation. Under these circumstances, we do not give cost of litigation which the applicant had incurred while filing writ petition in the High Court or while contesting the appeal before the Hon'ble Supreme Court of India. However, so far this petition is concerned, in our opinion, the applicant would be entitled to the cost of Rs. 500/-.

10. In the result, we pass the following order:

O R D E R

The application is partly allowed. The respondents are directed to pay back wages to the applicant from 3rd March, 1970 to 15th August, 1973 with all the consequential benefits arising to the applicant subsequently as per the rules. The respondents to make this payment of back wages within 3 months from the receipt of the judgment of this Tribunal. The respondents to bear their own cost and to pay Rs. 500/- as cost of the application to the applicant within 3 months. The application is disposed of accordingly.

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(R C Bhatt)
Member (J)

transcr

(A B Gorthi)
Member (A)