

(4)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

NO  
Oral  
Termination

O.A. No. /319/89  
T.A. No.

DATE OF DECISION 4-3-1993

Shri Parmar Laxmanbhai N. Petitioner

Shri P.H.Pathak Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan : Vice Chairman

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 ? ✓

5

Shri Parmar Laxmanbhai N.

At Post - Sardar Pur  
Taluka Vijaypur Dist. Mehsana

Applicant

Advocate Shri P.H. Pathak

**Versus**

1. Union of India  
Notice to be served through  
The Chief Post Master General  
Navrangpura, Ahmedabad.

2. Sub-Divisional Inspector (Postal)  
Visnagar Division, Vishnagar.

Respondents.

Advocate Shri Akil Kureshi

J U D G E M E N T

In

O.A. 319 of 89

Date : <sup>4/5</sup>~~3/3~~ March '93

Per Hon'ble Shri N.V. Krishnan

Vice Chairman.

The applicant was working as an Extra Departmental Packer under the second respondent from 2-9-1987. He is aggrieved by the verbal order of termination of his service by respondent no.2 from 1st October 1988 by appointing a fresh employee in his place. Hence, he has filed this application under section 19 of the Administrative Tribunals Act, 1985.

2. The brief facts leading to the termination of his service in the above manner are as follows:

12

2.1 The applicant states that he was appointed as Extra Departmental Packer, Dantral by the second respondent from 2nd September 1987 and he was not given any appointment order. The charge of the office was got handed over to him.

2.2 He worked continuously on this post till 30th September 1988 as is evident from the Annexure A document.

2.3 He states that he was orally terminated by the respondent no.2 by appointing a fresh employee in his place. A copy of the order appointing the fresh employee and simultaneously terminating the service of the applicant is at Annexure A -1. His services were terminated from 1st October 1988.

2.4 The applicant's complaint is that the Department is bound to regularise his service as he had put in more than 360 days of continuous service and the appointment of Shri K.D. Desai in his place is arbitrary and illegal.

2.5 The applicant has also contended that in the circumstances, the termination is violative of the provisions of the Industrial Disputes Act, 1947 as the Postal Department is an industry and the applicant is a workman, and his termination has been effected without compliance of the provisions of section 25 F of the Act.

2.6 Under these circumstances, he has prayed for a declaration that the impugned order terminating his service is illegal and inoperative and that he continues to be in service and a direction to the respondents to reinstate him with full back wages.

a reply in which the claims made by the applicant have been resisted. The case of the Department is briefly as follows:-

3.1 In the ED Sub-office of Jantral, one Ashok Parmar was working as ED Packer on temporary and adhoc basis. As he remained absent from 2nd September 1987, an immediate arrangement was made by entrusting the working to the applicant from 2nd September 1987 on a purely temporary basis. The formal order in this connection was issued by the Memo dated 5th October 1987, a copy of which is also given to the applicant. The copy of that order has been produced in court on 17th September 1992 and kept on record. As this order is important, the English translation thereof is reproduced below :-

" The Services of Shri Ashokkumar Mafatlal Parmar is hereby terminated w.e.f ~~2nd~~ 2nd September 1987, who was working as ED Packer Jantral on adhoc basis and remained absent from duty w.e.f 2nd September 1987.

Shri Parmar Laxmanbhai N. is hereby appointed provisionally as ED Packer, purely on temporary and adhoc basis w.e.f. 2nd September 1987 with clear understanding that he will be discharged at any time. He will have no claim of the said post when permanent regular ~~appointment~~ appointment will be made and he will abide by the EDA (Service and conduct) Rules, 1964."

3.2. It is stated that this was a temporary appointment and in order to make a regular appointment the Sub-Divisional Post Visnagar, the respondent no.2 initiated proceedings in

u

accordance with the standing instructions. He, therefore, obtained names of the candidates from the Employment Exchange Office, Mehsana which sponsored the ~~xxx~~ names of four persons. The applicant was not sponsored by the Employment Exchange. The second respondent thereafter selected Bhikabhai Rabari as ED Packer Jantrol from the list of these four persons and he was given the order of appointment. The applicant was also informed of the same and was directed to hand over the charge to the new appointee.

3.3. It is stated that the appointment of Bhikabhai Rabari is regular and in accordance with law. The applicant was taken on duty purely provision-al basis, as a stop gap arrangement and therefore he has no right to claim that he should be regularised.

3.4 The respondents also denied the claims made on the basis of the Industrial Disputes Act by claiming that the Department of Post is not an industry.

4. In the rejoinder filed by the applicant he has stated that the nomination from the employment exchange can be considered only for considering the claims of persons like the applicant already serving in the department. It is also contended that the appointment of B.A. Rabari is totally irrelevant for considering the question of his termination.

5. We have heard the learned Counsel for both the sides. In the course of arguments the learned Counsel for the respondents did not press the plea that the ~~xxxxx~~ department is not an industry or that the benefit of the Industrial Disputes Act cannot be claimed by the applicant. It is now well settled that the Department of Posts is an industry and ED agents are workmen who can claim the protection of the Industrial Disputes Act.

6. The learned Counsel for the respondents contended

9

that the order dated 5-10-1987 issued to the applicant and reproduced above in para 3.1 clearly states that apart from the fact that the appointment is temporary and on adhoc basis, it was liable to be discharged at any time. The stipulation was clearly made that "He will have no claim of the said post when permanent regular appointment will be made". The Department went ahead with the selection process and selected the candidate who was thereafter inducted and the services of the applicant was terminated, which is strictly in accordance with this condition. He therefore, contended that this termination is covered by clause (bb) of sub section (00) of section 2 of the Industrial Dispute Act and is therefore not a retrenchment and hence section 25 F is not attracted.

7. The learned counsel for the applicant contended that if the termination of service is not to be treated as retrenchment, it should strictly conform to the requirements of clause (bb) of section 2 (00). In other words, it should specifically indicate the date on which the employment would be terminated in the order of appointment itself. In that case alone, the person is put on notice, even at the beginning of his career, that his service will be terminated on a particular date. He contends that the order dated 5th October 1987 cannot be of any help to the respondents in taking the stand under the provisions of the Industrial Disputes Act, because his appointment on 2-9-1987 was unconditional.

12

8. We have carefully considered the matter, The full Bench of the Tribunal has rendered the decision in the G.S. Parvati Vs. Sub-Divisional Inspector 1992 (1) ATR CAT 361 in which this question has been examined. A reference was made in para 8 of the judgement to the Annexure A and B appended to Rule 11 under " Mode of Recruitment" in Swamy's Compilation of Service Rules for ED Staff in the Postal Telegraph Department. The Bench made the following observation.

" Clause (bb) is quite relevant in respect of provisional E.D. Agents. The orders of appointment are usually to be issued in the form indicated in Annexure A or (B) appended to Clause 11 of the Rules. In Annexure (A) there is stipulation that the provisional appointment will be terminated when regular appointment is made. In Annexure (B) there is stipulation that the provisional appointment is tenable till the disciplinary proceedings against 'X' are finally disposed of. When any one of these stipulations or any other valid stipulation regarding the termination of the contract is incorporated in the order of appointment the termination of service will not amount to retrenchment on account of the exception clause (bb) and Section 25 (H) of the I.D. Act will not come into play at all. "

No doubt, the proforma prescribed by the Department as Annexures A and B are <sup>e more</sup> ~~made~~ specific in regard to the condition under which the termination of the candidate's employment can be made on the happening of the event mentioned therein.

u

11

9. The question is whether the order dated 5th October 1987 can be construed in the same manner. We are satisfied that the appointment order dated 5th October 1987 reproduced in para 3.1 supra has clearly informed the applicant that he will not have any claim on the post when permanent regular recruitment is made. The applicant was thus told that his appointment was not a regular appointment, it was only a stop gap arrangement and steps will be taken to make a regular appointment and that his claim to hold th post will end when a regular appointment is made. Therefore, in our view, this is a sufficient provision in the contract on the basis of which the respondents can claim that this condition takes the termination outside the purview of retrenchment in terms of clause (bb) of section 2 (oo) of the Industrial Disputes Act, which reads as follows:

" (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or "


10. The learned Counsel for the applicant stated that this had to be issued to him along with his appointment order on 2-9-1987. The appointment order is dated only 5th October 1987 and therefore, the appointment made on 2nd September 1987 is not covered by this condition. We are unable to agree. The appointment on 2nd September 1987 was an oral appointment due to urgency in making such appointment. It has been formalised by the order dated 5th October 1987 which is not too late a date.


u



Further, if the applicant felt that conditions not envisaged when he was orally appointed have ~~xxx~~ been incorporated therein, he could have protested. He did not do so. Therefore, we hold that the order dated 5th October 1987 governs his appointment.

11. For the detailed reasons given above, we hold that the termination of the service of the applicant is in accordance with the conditions stipulated in the orders of his appointment dated 5th October 1987 and therefore, it does not amount to x 'retrenchment' for purpose of the Industrial Disputes Act. The application has, therefore, no merit and it is dismissed without any orders asx to costs.

  
(R.C. Bhatt)  
Member (J)

  
(N.V. Krishnan)  
Vice Chairman.

\*AS.