

(4)

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 344 OF 1989

~~EX-ANNUAL~~

DATE OF DECISION 3-11-1992.

Maganbhai Talshibhai Dulera, Petitioner

Mr. K.K. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. 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? ✗

Maganbhai Talshibhai Dulera,
Chanpur, Via: Kholadyad
Ta. Wadhwan,
Dist: Surendranagar.

..... Applicant.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India,
Notice to be served through
The Chairman
Postal Department,
Indian Postal Services
Dak Tar Bhavan,
New Delhi.

2. Supdt. of Post Office
Surendranagar.

3. Post Master General
General Post Offices
Salapas Road, Ahmedabad.

4. Sub Divisional Inspector,
Sub Division Department of Post,
Surendranagar.

Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A. 344 OF 1989

Date: 3-11-1992.

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

1. Heard Mr. K.K. Shah for the applicant and
Mr. Akil Kureshi for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
Extra Departmental Agent against the Postal Department
seeking the relief that the order of termination of
his services vide Annexure A-4 dated 1st August, 1989
be held as illegal, null and void, violative of
Article 311 of the Constitution of India and also

violative of Articles 14 & 16 of the Constitution of India.

3. The undisputed facts in this case are that the applicant was appointed in Surendranagar District in village Khatadi as Extra Departmental Agent on ad hoc basis by Superintendent of Post Office Surendranagar vide letter dated 31st October, 1988 produced at Annexure A and the applicant was working since then continuously with the Postal Department in Khatadi. The reason for appointing the applicant on temporary basis was due to the vacancy created by the removal of one Mr. G.T. Gohil, who was having a provisional appointment and on terminating his services by the respondents, a clear vacancy arose at village Khatadi. The regular appointment order is Annexure A-1 dated 13th February, 1989. It is not in dispute that the applicant was appointed to the said post in pursuance to the notice placed on Notice Board of Employment Exchange Surendranagar vide Annexure A-2.

4. The grievance of the applicant is that subsequently vide order Annexure A-4 dated 1st August, 1989, Mr. Gohil who was terminated earlier due to his ad hoc appointment, is now again appointed on ad hoc basis, while the applicant ^{who} was appointed on regular basis was terminated without assigning any reasons. The learned advocate for the

applicant submitted that this action on the part of the respondents amounts to violation of Article 311 of the Constitution of India inasmuch as it was an arbitrary action.

5. The respondents have filed reply controverting the averments made by the applicant in his application. The respondents have contended in their reply that the appointment of the applicant was provisional. It may be noted at this stage, that the respondents have also in the reply contended that on 20th September, 1988 a advertisement was issued and the applications were invited and the applicant was one of the persons who had applied and was selected. The contention of the respondents in taking Mr. Gohil again on ad hoc basis is that he had made representation and ultimately the S.P.O. Surendranagar issued the order terminating the services of the applicant and giving provisional appointment to Mr. Gohil. The learned advocate for the applicant rightly submitted that when the applicant was appointed temporarily on a clear vacancy, there was no question of appointing Mr. Gohil on ad hoc basis in his place and the applicant could not have been terminated without giving proper notice or assigning proper reasons. The other ^{is} salient feature in this matter that at the time of admission, this Tribunal had passed an order dated

25th August, 1989 as under:

"When the matter came up for admission, we have heard Mr. K.K. Shah, learned counsel for the petitioner. Having regard to the points raised in the application, we find that they deserve consideration. Accordingly, application is admitted. While admitting this application, we find that the petitioner deserves to be protected atleast for 15 days against the impugned order by way of ad interim relief. Issue notices to the respondents to show cause why ad interim relief should not be confirmed. The respondents are required to file their objection within 15 days from the date of this order. The respondents are directed to stay the operation of the order dated 1.8.1989 for 15 days and permit the petitioner to work on the post held by him. Direct service for respondents No. 2, 3 and 4 permitted. Registry to put the matter thereafter for further directions."

It is not in dispute that the applicant by way of interim relief ^{is} still working with the respondents.

The learned advocate for the respondents was asked us as by to how the respondents can take the stand that the applicant's termination was legal and how the respondents could justify the appointment of Mr. Gohil.

It was difficult for the respondents' learned advocate to satisfy this Tribunal on this point.

6. Having heard the learned advocate and having perused the documents on record, we are satisfied that the impugned order of termination of the applicant and the appointment on ad hoc basis of Mr. Gohil vide Annexure A-4 was clearly arbitrary and in violation of Article 311 of the Constitution of India. It is

(A)

also important to note that Mr. Gohil has not come before us for being joined / a party and admittedly the applicant is working of the same post in view of the interim relief passed by this Tribunal and hence there is no reason why we should not make the rule absolute, quashing the impugned order Annexure A-4.

Hence we pass the following order:

O R D E R

Application is allowed. The impugned order Annexure A-4 dated 1st August, 1989 is quashed and set aside and the respondents are directed to continue the applicant in service. The rule is made absolute.

No orders as to costs. Application is disposed of.

Renu

(R.C.Bhatt)
Member (J)

N.V.Krishnan

(N.V.Krishnan)
Vice Chairman

vtc.