

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

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NO  
Termination

O.A. No. 400 OF 1989  
~~TA No.~~

DATE OF DECISION 27-01-1993.

Shri Rajendra Sampatrao Khanvilkar Petitioner

Shri M.S.Gupta and Shri B.T.Rao Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. B.S.Hegde : Member (J)

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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Shri Rajendra Sampatrao Khanvilkar,  
Fafad Sheth's Chawl,  
Opp. Akota Village,  
Padra Road,  
VADODARA - 5.

...Applicant.

(Advocate : Mr.M.S.Gupta &  
Mr.B.T.Rao.)

Versus

1. Executive Engineer (Electrical),  
Ahmedabad Central Electric  
Division Central PWDP,  
1st floor, Shahpur Gate,  
Ahmedabad.

2. Asst. Electrical Engineer,  
Sub-Division, Fateh Gunj,  
Dak Bunglow,  
Baroda.

3. Union of India  
through Chief Secretary,  
Home Department,  
Central Sachivalaya,  
New Delhi.

...Respondents.

(Advocate : Mr. Akil Kureshi)

ORAL JUDGMENT

O.A.NO. 400 OF 1989.

Dated : 27-01-1993.

The applicant was serving as a liftman under the second respondent-Assistant Electrical Engineer, Sub division Fateh Gunj, Baroda - while he was charged with assaulting Shri Dayaldas, Junior Engineer with a knife and therefore, his service was terminated with effect from 08-04-1987, without any enquiry.

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2. Subsequently, the applicant was prosecuted for the same offence in the Court of the Chief Judicial Magistrate, Baroda, who acquitted him by his judgment dated June 30, 1989 (Annexure A-2). The applicant states that he gave a notice to the respondents through his lawyer with a copy of the judgment requesting them to take him back on duty but the respondents have not done so (Annex.A1). He has, therefore, prayed for a declaration that the termination of his services from 8-4-1987 is illegal and for a further direction to the respondents to reinstate him with continuity of services and the benefit of back-wages.

3. The respondents have filed a reply contending that the applicant was only a daily rated unskilled casual labourer. It is stated that the Assistant Engineer, the respondent no.2, had power to engage and discharge casual labourers as and when required. It is also stated that no appointment order was issued to the applicant to work as Liftman, though he was working as a casual labourer. It is stated that as the applicant was in the habit of coming late every day he was not allowed to resume duties on 8-4-1987 as a result of which there was an exchange of words and it is alleged that the applicant took out a knife and attacked the Junior Engineer. The applicant then ran away. It is admitted, that, accordingly, criminal case No.1427/87 was registered against him, which admittedly had ended in his acquittal. It is also stated that the applicant approached the respondent no.1 Executive Engineer with a copy of the judgment of the Court and requested for re-engagement. It is alleged that on that occasion, the respondent no.1 wanted the applicant to narrate what

happened on 8-4-1987 and the applicant then made the submission before the respondent no.1 that he had attached Shri Dayaldas Ahuja, Junior Engineer with a barber's knife. It is contended that the provision of the C.C.A. Rules will not apply to the applicant and therefore, this application has no merit.

4. We have heard the learned counsel for the respondents. Admittedly, the termination was made even before the applicant was prosecuted in the Chief Judicial Magistrate Court.

5. It is difficult to convince ourselves that the services were terminated for any reason other than the alleged assault on the Junior Engineer. Even though a casual labour does not hold a civil post and is therefore, not entitled to protection of Article 311 of the Constitution and the COA Rules 1965, yet his services~~is~~ is found to be terminated for the alleged misconduct. Therefore, he is entitled to be given an opportunity to give his explanation as to <sup>his</sup> ~~the~~ conduct. Admittedly, the principles of natural justice have been violated in this case. The matter would have been somewhat different if the applicant had been convicted by the Chief Judicial Magistrate. As he has been acquitted, fair play demands that he ought to have been given an opportunity before his engagement was stopped.

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6. We notice that the applicant has earlier filed O.A. 414 of 1987 seeking the same relief but by order dated 14-4-1987 (Annex.A ) that application was rejected due to default of the applicant as his Advocate failed in removing the objections noticed in that application. Subsequently, the present application has been filed on 21-9-1989 for condoning delay. The learned Counsel for the respondents therefore, submitted that this application is also time barred. The learned Counsel ~~for~~ also contends that the proper procedure ought to have been for the applicant to seek restoration of the original application No.414/87 by seeking review of the order dated 14-7-1987 that has not been done.

7. We notice that on 15-3-1990 this issue of limitation was raised before the Tribunal and it was held that, prima facie, it cannot be held that the application is barred by limitation and, therefore, the application has been admitted. Therefore, the question of limitation cannot stand in the way of the applicant in the present case.

8. The other matter is the matter of procedure. Apparently such objection was not taken on the earlier occasion and, therefore, in the interest of justice we condone the irregularities in procedure that has been followed.

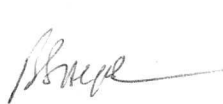
9. In these circumstances, we are satisfied that while this application is entitled to succeed in part, the applicant cannot be given the relief sought.


(16)

*note of* In view of the laches ~~of~~ on his part which we find <sup>it necessary</sup> to take at this stage. In these circumstances, we declare that the termination of the applicant in the above circumstance is illegal. Accordingly, the order of termination is quashed and we also direct the second respondent to take back the applicant in service as a casual labourer. In case the applicant reports for duty within two weeks of his receiving a copy of this order, he should be taken back. He will ~~be~~ not be entitled to any back-wages. He will be entitled to continuity of service such that the services rendered by him prior to 8-4-1987 will now ~~be counted on~~ be counted on his reinstatement for all other purposes.

10. Copy of the order should be sent to the applicant at his address given in this application.

11. The application is disposed of with no order as to costs and with the above directions.

  
( B.S. Hegde )  
Member (J)

  
27/1/83  
(N.V. Krishnan )  
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD

(11)

R.A.No.38/93 in  
OA 400/89.

Dated: 3rd December, 1993.

Shri R.S.Khanvilkar,  
Fafad Sheth's Chawl,  
Opp. Akota village,  
Padra Road, Baroda-5.

..Applicant.

V.

1. Executive Engineer (Elect.)  
Ahmedabad Central Electric  
Divn., Central PWD,  
1st Floor, Shahpur Gate,  
Ahmedabad.

2. Asstt. Electrical Engineer,  
Sub Division, Fateh Gunj,  
Dak Bunglow,  
Baroda.

3. Union of India,  
through Chief Secretary,  
Home Department,  
Central Sachivalaya,  
New Delhi.

..Respondents.

ORDER (By circulation)

O.A.400/89 was disposed of by our oral judgment dated 27-1-93. An application for review of that judgment has been filed by the applicant. We have perused the review application and are satisfied that it can be disposed of by circulation and we proceed to do so. The applicant has also filed M.A.546/93 in the review application for condoning the delay in filing this review application.

2. In the view that we have taken in this matter, we condone the delay and allow the M.P.

3. It is stated by the review applicant that the direction given by us to reinstate the applicant as a casual labourer is an error apparent on the face of the record as the applicant was appointed as a lift-man as stated in the O.A. It is contended that the reply of the respondents that the applicant was engaged as a daily wage casual labourer is false and a copy of an order dated 20-9-85 annexed with the review application as An.A1 is produced in proof. The applicant, therefore, prays that the original judgment be reviewed by directing the 2nd respondent to reinstate the applicant as a lift operator

4. The review applicant also seeks back wages for the entire period, he remained out of job.

5. We have carefully considered the matter. In so far as the back wages are concerned, we have already held that the applicant was guilty of laches and hence backwage<sup>2</sup> was not allowed.

6. In so far as reinstating the applicant as a lift-man is concerned, we notice that the applicant had averred that he was appointed on 2-1-85 as a lift-man. He did not produce any evidence at that stage. The respondents filed a reply stating that the applicant was engaged as a <sup>2</sup>daily wage casual labourer as a lift-khalasi i.e. khalasi to the lift-operator without any appointment order. The respondents also filed the recruitment rules for the post of lift-operator and khalasi. The applicant did not file any rejoinder to rebut the contention in the reply. He also did not produce the An.A1 order now sought to be produced alongwith the R.A. That document cannot be entertained. In the circumstances, we are of the view that no error apparent on the record is evident in our judgment which treated the applicant only as a casual labourer for the purpose of reinstatement.

7. R.A. is dismissed.

*B.S. Hegde*

(B.S. Hegde )  
Member (J).

*N.V. Krishnan*

(N.V. KRISHNAN)  
Vice Chairman(A)

The Judgment  
promulgated  
Hon. Member (A)  
Mr. V. Radhakrishnan  
on 21-1-84 in Court II  
*Handwritten signature*  
21-1-84  
S.O. II