

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(10)

O.A. No. 514 OF 1989.

~~P.A. No.~~

DATE OF DECISION 9.6.1993.

Shri Mohmad Hussain Allubhai Zalori Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R.Kolhatkar, Admn. 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 ? ✓

Shri Mohmad Hussain Allubhai Zalori,
Navavas, Opposite Post Office,
Sidhhpur - 384 151.

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.... Applicant.

(Advocate: Mr. P.H. Pathak)

Versus.

1. Union of India
Notice to be served through
The Post Master General
(Gujarat Circle)
Ashram Road, Ahmedabad.
2. The Sr.Supdnt. of Post Office,
Mehsana Division,
Mehsana.
3. The Sub-Post Master,
Post Office,
Sidhhpur.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A.No. 514 OF 1989

Date: 9.6.1993.

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

Heard Mr. P.H. Pathak, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant, a daily wager Night Watchmen under the respondent No.3, ^{has} filed this application under section 19 of the Administrative Tribunals Act, 1985, for a declaration that the impugned order Annexure A-2 dated 31st January, 1989 passed by the respondent No.3 terminating the services of the applicant as illegal, invalid and the respondents be directed to reinstate the applicant on his original post with full backwages and continuity of service.

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3. The fact that the applicant was serving as night watchmen under the respondent No.3 from 26th November, 1984 to 31st January, 1989 is not in dispute as stated by both the learned advocates before us at the time of hearing of this application. The applicant has been terminated by the impugned order Annexure A-2 on the ground that as per the order of Senior Superintendent, Mehsana, the watchmen on the contingency post should not be engaged from 1st February, 1989 without the previous sanction of DPS and hence the applicant was directed not to resume duty till the approval was given by Sr. Superintendent. The applicant has averred in the application that the termination of his services by this order dated 31st January, 1989 was in clear violation of the mandatory provision of Section 25F of the I.D. Act, 1947 and hence the same deserves to be quashed and set aside. The applicant has averred in the application that he has produced the certificate dated 11th August, 1988 Annexure A regarding his satisfactory work. The applicant has averred in the application that the reason for termination of the services of the applicant can not be accepted. He had also made representation Annexure A-2.

4. The respondents in the reply have not disputed that the applicant had served upto 31st August, 1989 as a daily wager. The contention of the respondents

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as found in the reply is that the applicant's post was not on the approved authorised post and the post was created temporarily in view of continued communal riots in the ^{town} ~~town~~ during the year 1984. It is contended that the impugned order can not be termed as termination of services of the applicant. It is contended that on the release of the applicant the post of night guard stands discontinued/abolished as no further retention was considered necessary in view of the departmental policy.

5. The applicant has filed rejoinder controverting all the contentions taken by the respondents in their reply.

6. It is not in dispute that the applicant is 'a workman' and the respondents 'an industry' under the provisions of I.D. Act. It is not in dispute before us that the applicant had put more than ~~22~~ 240 days of work before he was terminated by the impugned order Annexure A-2 dated 31st January, 1989. The contention of the respondents that the impugned order was not a termination order can not be accepted because reading that order, it is clear that the applicant was asked not to resume the duty which is in substance ^{of a} ~~of a~~ termination order. The respondents were bound to follow the mandatory provision of Section 25F of the I.D. Act before terminating the services of the applicant which is admittedly followed in this case. We have perused

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the records and heard the learned advocates of the parties. The action of the respondents in terminating the services of the applicant ^{by telling him} ~~and~~ not to resume duty as per order Annexure A-2 dated 31st January, 1989 ^L ~~amounts~~ to retrenchment which is not legal as the mandatory provision of Section 25F of the I.D. Act is not followed. Hence in our opinion the said order is illegal and it is quashed and the respondents are directed to reinstate the applicant in his original post with full backwages. Hence we pass the following order:

ORDER

The application is allowed. The impugned order dated 31st January, 1989 vide Annexure A-2 passed by the respondent No.3 is quashed and set aside and the respondents are directed to reinstate the applicant in service with full backwages and continuity of service. The respondents are directed to reinstate the applicant within one month from the date of the receipt of the order of this Tribunal and to pay full backwages within three months from the receipt of the order of this Tribunal. The applicant to file an affidavit before the respondents, if he has made any gainful earning during this period. The application is disposed of accordingly with no order

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as to costs. The applicant at liberty to make representation to the concerned respondents for regularisation of his services and the concerned respondents then to dispose of the representation if made, according to rules.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.C. Bhatt

(R.C. Bhatt)
Member (J)

vtc.

S/C 6 54/8 (1)
S/C 7 (10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

ORIGINAL APPLICATION NO. 514 OF 1989.

Shri Mohamad Mussein Allubhai Zalari .. Applicant.

vs.

The Union of India & Ors. .. Respondents.

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Date :
Ahmedabad.

P . H. PATHAK
(A D V O C A T E)

Advance copy
Received by
27/11/88
For - J.D. Bismaya
A.H.
22/11/88
6/12

P.H.P.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

ORIGINAL APPLICATION NO. 514 OF 1989.

I Applicants :- Shri Mohmad Mussein Allubhai Zalori
Navavas, Opposite Post Office,
SIDHPUR - 384 151

Vs.

II Respondents :- 1. Union of India
Notice to be served through
The Post Master General (Gujrat -
Circle),
~~Ahmedabad Road~~
General Post Offices,
AHMEDABAD.
2. The Senior Superintendent of Post
Office, Mehsana Division,
MEHSANA.
3. The Sub-Post Master,
Post Office,
SIDHPUR - 384 151.

III Order under challenge :-

Order dt. 31/1/89, passed by the
respondent no.3 terminating the
services of the applicant.

IV & V Jurisdiction & Limitation :-

The applicants declare that the sub.
matter of this application is within
the jurisdiction of this Tribunal &
is within the limitation prescribed
under the provisions of Ad. Tribunal
Act 1985.

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VI FACTS OF THE CASE :-

1. That the petitioner here is a citizen of India was working as a daily wager night watchmen under the respondents no.3 since 1984. That in the year 1984, the post of the night watchman was available vacant with the respondent no.3 and looking to the requirement of night watchman, the post was sanctioned by the department and the application were invited by the respondent no.3 and 4. That the petitioner has made an application for the said post and was verbally appointed by the respondent no.2 with effect from 26/11/84. That at that time, the petitioner is continued in service without any break upto 1st of Feb. 1989. That at the time of the termination of the services of the petitioner, the petitioner was paid Rs.14-60 Ps. as a daily wage. That the respondent no.3 ~~has~~ has vide its letter dated 31st January, 1989, terminated the services of ~~the~~ the petitioner without following the mandatory provisions of the Industrial Disputes Act. 1947 and the impugned termination of the petitioner is ex-facie, illegal, invalid and inoperative in law and is liable to be quashed and set aside.

2. It is submitted that the service of the petitioner was satisfactory and has worked as a watchman and protected the interest of the respondent's administration putting himself into danger. That one, the petitioner was assaulted by the anti-social elements. The petitioner was injured but at the risk of ~~his~~ his life he has prevented ~~the~~ in the post office, at Sidhpur. That a certificate dated 11/8/88 is regarding the satisfactory work of the petitioner which is annexed and marked ~~satisfactory work of~~ ~~the~~ ~~petitioner~~ with ~~the~~ ~~which~~ ~~is~~ ~~annexed~~ ~~and~~ ~~marked~~

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at Annexure-A, to this petition. That the reason for termination of the services of the petitioner is looking to the length of services and the judgment of the Supreme Court of India in case of daily wage employees where the respondent's department is directed to regularise services of the daily wage employees who have put 360 days of services, and granting the time scale of pay on the principle of "Equal Pay for Equal Work". The petitioner has made an application dated 1/9/88, which has resulted into economic ~~debt~~ penalty by the respondents ~~is a copy of the representation of the petitioner~~ to the petitioner. Hereto annexed and marked as Annexure-A is a copy of the representation of the petitioner dated 1/9/88. That the respondents ~~rely~~ rely on the fact in light of the judgment of the Supreme Court, ~~the~~ the petitioner is required to be regularised and should be granted the benefits of regular Class-IV employees of the department and so with malafide intention, issued the order dated 1st of February, 1989 to terminate the services of the petitioner which is being arbitrary, illegal and malafide liable to be quashed and set aside.

3. It is submitted that the petitioner is roated as a daily wage employees and at the initial stage, he was paid Rs. 9/- only. That since the initial appointment, the petitioner is resuming his duty at 9 O'Clock and it is mentioned in the Muster Roll also but since about last 3 months, the ~~new~~ new Post Master one Shri Chaturbhai Prajapat~~i~~ has taken over the charge, he compelled to the petitioner to mention the reporting time 10 O'Clock. Thus, actually the petitioner is performing the duties for 9 hours a day but non overtime was granted to him. That non holidays i.e. weekly off or national holidays are granted to the petitioner. The petitioner has put ~~continuous~~ continuous services of about 4 years and the petitioner is entitled to get the time scale of pay of Rs. 750/- - 940/- with all allowances. The respondents adopted exploited tactics and under the guise of daily wage, the

petitioner is deprived of the benefits available to the regular watchman of the respondent department. That there is no difference in the nature of duties and responsibilities of the petitioner as well as of the regular watchman of the department. That for the similar nature of the duties, and responsibilities, the petitioner was paid the daily wage which is "Equal Pay for Equal Work. That the case of the petitioner is directly covered by the judgment of the Hon'ble Supreme Court in the case of daily wage of the P & T Department. After the ~~same~~ ~~same~~ judgment the Ministry has issued the circular to pay the arrears of wages, etc. to all the daily wage employees immediately. That large number of other employees are paid their differentials ~~of wages etc.~~ and dues as per the principle of "Equal Pay for Equal Work" but the petitioner is till date, not paid the difference in spite of his requests. The respondents are exercising the powers in total arbitrary manner which is in flagrant violation of article 14 and 16 of the Constitution of India.

4. It is respectfully submitted that the respondent department comes within the purview of industry under sec. 2 (j) of the Industrial Disputes Act 1947. The applicants are the daily wagers employees comes within the purview of sec. 2(S) of the Act. That by way of retating the employees like daily wagers the respondent have committed an offence of unfair labour practice under sec. 25(T) of the Industrial Disputes Act. The applicant has completed more than 4 years of continuous services and there is no actual break in the service. That the Hon'ble Supreme Court has casted an obligation upon the respondents to regularise the services of the applicant. On the contrary, respondents have started terminating the service of the employees. The verbal termination of the applicant from 1/2/1989 is in flagrant violation

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of Sec.25(F) r.w. sec.25(B)(G) & the Rule 77 Industrial Disputes Rules. That the reasons of termination of the services of the applicant is not given. That there is permoted work but some other employees are to be accommodated on the place of the applicant. That the said action is also in violation of Sec. 25 (H) of the Industrial Disputes Act. That the various benches of the Hon'ble Central Ad. Tribunal have taken the view that P & T department is an Industry & termination without following the provisions of I.D. Act make it void-ab-initio. (i) M.K.Bukhari Vs. Union of India. O.A. 570/88 Ahmedabad Bench. (ii) AshokKumar Shinha Vs. Union of India & Ors. 1989 Lab-I. cases, 670. (Calcutta Bench) (iii) Writ petition 1584/81 Bombay High Court up held by the Hon'ble Supreme Court.

5. It is respectfully submitted that the intention of the respondents keeping the employees as daily wagers for such a long time is to deprive the applicants of the benefits of regularisation and time-scale of pay. That at the intial stage the applicant was paid Rs. 9/- per day as a daily wage. That no incremental benefits of time-scale of pay is granted to the applicants. That similarly stated regular watchman are grnated the benefits of sick leave, L.T.C., time scale of pay and other consequential benefits. The respondents have adopted different yardsticks for the similary situated employee which is being discriminatory and arbitrarily and villative of Article 14 and 16 of the Constitution of India.

6. It is further submitted that the respondent are, under statutory duty to ~~also~~ follow the principle of 'Last come first go'. That rule of 77 of the I.D. Rules cast obligations on the respondent to publish seniority list of the employee. That no seniority list is prepared till date. That there are many juniors continued in services. That the case of the applicant is directly covered by the judgments of various courts., It is held

that the Rule 77 is mandatory and is protection granted by the legislature to the workers against the 'pick and choose policy' of the employer. It is submitted that the respondents department is under further obligation to obtain paid permission of appropriate authority for implementing the retrenchment. That section 25 N of the I.D. Act says that the prior permission is mandatory and any retrenchment in violation of the said Section lead the termination as void ab initio. Here while terminating the services of the petitioner no permission is obtain by the respondents. That the petitioner has completed about four years continuous services and as per the judgment of the Supreme Court whereby it is directed that the respondents department should frame scheme for a regularisation of services of daily wager who have completed 360 days of services. The respondents have affected the termination of the petitioner without complying with the judgment of the Hon'ble Supreme Court. The petitioner has requested the respondent department to grant him the benefits of time scale of pay etc. and immediately the decision of terminating the services of the petitioner was taken. The powers of exercise with malafide inteintion and is being arbitrary, illegal and in violation of Art. 14 and 16 of the Constitution of India.

7. It is submitted that the respondents are under the obligation to follow the mandatory provisions of the Industrial Disputes Act, ~~1946~~ 1947. That at the time of termination of the services of the petitioner, no retrenchment compensation or notice pay is given to the petitioner, the order at Annexure-A speaks about termination with immediate effect and with malafide intention the petitioner is thrown out of employment without considering his faithful services.

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That while terminating the services of the petitioner, the respondents have not published the seniority list. That the petitioner is rotated as daily wagger for years ~~last~~ the action on the part of the respondent is clearly amounts to unfair labour practice under the provisions of sec. 25(T) r.w. Schedule 5th Item 10 of the Industrial Disputes Act, 1947. That while dealing with the ~~xxxx~~ Supreme Court has observed. We will not be far from truth if we say that the bank has deliberately indulge in unhealthy labour practice by rotating employees like the applicant to deny benefits under the Industrial Law."

The Hon'ble Supreme Court has directed the reserve bank of India to regularise the services of the Badli employees and directed to reinstate the employee and pay him Rs. 3,000/- as costs (1986(1) LLJ Page - 127). Here the petitioner is rotated since last for years.

8. It is submitted that the respondents action of terminating the services of the petitioner is ex-facie, bad-in-law. That as per the Police Officer' report, there is a requirement of the permanent watchman, at sidhpur post Office. That the other watchman who are similarly situated in the State of Gujarat are continued That the respondents are likely to fill up ~~to~~ the said post by other daily wage employees ignoring the ~~right~~ right of the petitioner. The respondents have no right to adopt such unfair labour practice. That the petitioner is having the first preference for the post of watchman as per Sec. 25 (H) of the Industrial Disputes Act. That the Hon'ble ~~Supre~~ Supreme Court will as this Hon'ble High Court has decided that the employees is under obligation to give first preference to the retrenchment employee and as per rule 78, employer should give a registered post notice to the employee. That the respondents wants to ignore the right of the petitioner which in contravention of the rules of the Industrial Disputes Rules (Central) and is liable to be quashed and set aside and the petitioner is required to reinstate in services with full back wage and continuity of services.

9. That the applicant ~~is~~ a citizen of India and is challenging the action of his termination of services by the respondent. That earlier, after termination, immediately the applicant has approached to the Hon'ble High Court as this Hon'ble Tribunal was not taking up the cases of Casual Labourers as the question of jurisdiction was pending before the full bench. That now the point is concluded & therefore the applicant has withdrawn the petition from the High Court to file the application before this Hon'ble Tribunal.

VII RELIEF SOUGHT FOR:-

In light of the above mentioned facts and circumstances, the ~~app~~ petitioner prays that :

- (A) Your Lordship be pleased to issue an order, writ or direction in the nature of mandamus and/or certiorari or any other and or direction declaring the impugned action of the respondent terminating the services of the petitioner as ex-facie ~~had~~ illegal, invalid and inoperative in law

And

be pleased to ~~quashed~~ and set aside it and direct the respondents to reinstate the petitioner on his original post with full back wages and continuity of services.

- (B) Be pleased to hold that the impugned ^{action of} termination of services of the petitioner with effect from 1/2/39 as violative of the mandatory provisions of the Industrial Disputes Act, 1947 and is void, ab-initio.

- (C) Be pleased to direct the respondents to grant the benefits of the Supreme Court judgement reported in Air 1987 SC 2343 and to regularise the services of the petitioner from initial date of appointment.

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(D) Be pleased to direct the respondents to pay the arrears and other dues of weekly off and national holidays etc. ~~(E)~~ with 12 % interest.

(E) Any other relief to which this Hon'ble Court deems fit & proper

VIII INTERIM RELIEF SOUGHT FOR :

- (A) Pending admission and final disposal of this petition, pleased to direct the respondents to pay the difference of ~~salaries~~ salaries etc. to the petitioner as per the Supreme Court judgment reported in 1974 JT (C) S.C. Page 164 and further direct the respondents to give first preference to the petitioner for reemployment as per Sec. 25(H) of the Industrial Disputes Act 1947.
- (B) Any other relief to which this Hon'ble Court deems fit and proper in the interest of justice.

IX Details of remedies :-

The applicant declare that there is no other alternative remedy available except to approach this Hon. Tribunal by way of this application.

X The applicants further declare that there is no application pending in any other court regarding the subject matter of this application.

XI Details of Postal Order :-

Postal Order No.

22 / 6 194268

Date :

27/11/89

Issued by

High Court Ahmedabad

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XIII The Index in duplicate stating of details of document is enclosed.

XIII List of enclosure, As per index.

Ahmedabad
Date. 27/11/89.

[Signature]
P. H. Pathak
Advocate.

VERIFICATION :

I, *Shri M. H. Zaidi* the applicant *સરવજીત સિદ્ધી*
do hereby solemnly verify and states that what is stated
above is true to best of my knowledge and information and
I believe the same as to be true. My advocate has explained
the condition in vernacular to me. I have not suppressed any
material facts from the Hon'ble Tribunal.

Ahmedabad.

Date : 27/11/89.

[Signature]

[Signature]

(applicant)

Filed by Mr. *P. H. Pathak*
Learned Advocate for Petitioners
with second set & *2* copies copy served/not served to
other side

[Signature]
Dt. 27/11/89 Dy. Registrar C.A.T (I)
A'bad Bench

ANNEX A

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શ્રી મહમદહસૈન અલુભાઈ જાલોરી,
રાત્રિ રોડી દાર,
સિદ્ધપુર મુખ્ય પોસ્ટ ઓફિસ,
સિદ્ધપુર ૩૮૪૧૫૧.

નં. પી.એફ.એમ.એ.૬/૮૮ સિદ્ધપુર તા. ૧૧/૮/૮૮.

શ્રી એમ.એ.જાલોરી સિદ્ધપુર મુખ્ય પોસ્ટ ઓફિસમાં રાત્રિ
ચેડી દાર તરીકે ડામ કરે છે. છેલ્લા વ્રજ વર્ષથી તેઓ એ વફા દારી પ્રમુખXXXXXX
પૂર્વક ડામી રી બજા વેલ છે. તા. ૨૧/૧/૮૬ ના દિવસે તેમની ફરજ દરમ્યાન ડેરૂલા ડ
તે ડાની હુકમલા ખેરલભે પોસ્ટ ઓફિસમાં ચેરી કરવા રાત્રે એક વાગે હુમલો કરેલો
તે વખતે શ્રી જાલોરીએ તેમને પ્રમુખ સામનો કરેલો ત્યારે તેમને થોડી ગભી ઈજા ઓ
શરીરે પહોંચેલી પ્રેમો X પ્રેમો હતી. તે પોસ્ટ ઓફિસમાં થતી ચેરી અટકાવેલી તેઓ એ પા રી
નોંડરી દરમ્યાન વફા દારી પૂર્વક ફરજ બજા વેલી તેનું આ પ્રમાણપત્ર આપવા માં આવે છે.

સિદ્ધપુર

તા રીખ ૧૧/૮/૮૮.

TRUE COPY.

Handwritten signature
(Advocate)

Exh.

ક્રમ નંબર ૬૬

21.1.16

પોસ્ટ કચેરી સુટવા પ્રયાસ

સિદ્ધપુરમાં મુ. લેસપોસ્ટલની યાજ્ઞ નવીન આલીશાન મકાનમાં કાલેલી પોસ્ટ ઓફીસ ઉપર તાલિતરમાં ચાત્રીનાં ૧-૦૦ વાગ્યાના સુમરે કેટલાક તોફાની હુ મલાખોલો-જુટકરવા માટે આવેલા અને પોસ્ટ ઓફીસના મકાનમાં ચોકીયાત તરીકે ફરબ બજાવતા મહમદહુ સેન અજાભાઈ આંદોલી ઉપરહુ મરો કરી પોસ્ટને જુટવાના પ્રયાસ કરેલો. પરંતુ મહમદહુ સેન જેતી ગયા હતાંજાને તેમણે આવેલા હુ મલાખોલો ઉપર સામો પટકાર ફેંદા તેરી હુ મલાખોલોનો ઈરાદો નિષ્ફળ બન્યા હતા. હુ મલાખોલોનો નાસતા નાસતા પથ્થરમારો કર્યા હતાં આથી મહમદહુ સેનનાં મોઝા ઉપર અને માથામાં ઈજાઓ થાઓ છ. આ બનાવની પોલીસમાં ફરીયાદ નોંધાવતાં પા. ઈ. શ્રી વાઘલા સાહેબજાને ચોલામ સાહેબ આ હુ મલાખોલોની તપાસ કરી રહ્યા છ.

True copy
Rohit
Dell

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મનો ડરી સિદ્ધપુર પોષ્ટ ઓફીસમાં થતી સરકારી માલ ખીલકતની ચેરી જાનના જોખમો અટકાવેલ છે.

જે હડી કત આ પની ડચેરી નાં તેમજ સિદ્ધપુર પોલીસ સ્ટેશનના રેકૉર્ડ ઉપર છે. મારા પર હુકલો થયેલો અને હું પાગલ થતાં જ અહીંની મ્યુનીસીપલ સીવીલમાં સારવાર પણ શ્રી લીધી હતી.

ઉપરોક્ત સત્ય હડી કતમાં પ્રશ્ન ધ્યાનમાં લઈ મને ગરીબ માણસને સરકાર શ્રી તરફથી ખર્ચા પુરો લાભ આપવા રૂપાંતર થયાં. મારી ખાસે પોષ્ટની આ નોંડરી સીવાય બીજું કોઈ આવડતું સાધન નથી. અને હુકલના છ માણસોનું ભરણપોષણ રૂાં. ૪૫૦/૦૦ ના ખાસમાં પુરુ થતુ નથી.

બીજા પોષ્ટલ ડિવીઝનમાં નવા નીયમ પ્રમાણે મારા જેવા ડન્ટીજનસ પેઈડ રાત્રી ડર્મચરીઓને નવા નીયમ પ્રમાણે ખાસ મેજલ મોંઘવારી પ્રશ્ન ભટથુ ખળે છે. તે પ્રમાણે મને પણ આપવા પ્રશ્ન આપ સાહેબ હુકમ કરવા મેં. કરશો. તો હું અર્થને ડાયામને પ્રશ્ન આપને ડાયામને માટે રુસી રહીશ.

લી. આપને વિશ્વાસુ.

મહમદહુસેન અલુભાઈ જાલોરી.

મ.શ.રા. - પોષ્ટમાં સતર

સાહેબ, સિદ્ધપુર મારકેટરવા નોંડરી

TRUE COPY

(Attorney)

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પત્ર-વ્યવહાર :-

ભારતીય ડાક વિભાગ :-

કાર્યાલય :-

શ્રી એમ.એ.ઝાજોરી,

નાઈટગાર્ડ,

સિદ્ધપુર.

ન. /-૦૭૫

સિદ્ધપુર

તા. ૩૧/૧/૯૯.

વિષય :- ચોકીદારની ગોઠવણી.

રેક :- મ. સીનીયર સુપ્રીમ-ટે-ડે-ટ મોક પોસ્ટ મોફિસર, મહસાણા
ડીવીઝન, મહસાણા ન. -

મે. સીનીયર સુપ્રી-ટે-ડે-ટ સાહેબ મહસાણા ના ઉપરોક્ત હુકમાનુસારી ડી.પી. એસ. સાહેબ રાજકોટ પૂર્વ સમતી નગર ચોકીદાર તો ૧/૨/૯૯ થી કટીંગ-સી પોસ્ટ ઉપર રોકવા નહીં આવી તમને જાણ કરવામા આવે છે કે, મે. સીનીયર સુપ્રીમ-ટે-ડે-ટ સાહેબના તરફથી એપુનલ ન આવ ત્યાં સુધી તમારે ફરજ ઉપર માનવું નહીં. અને જરૂરી ~~મોકીસની~~ મોકીસની વસ્તુઓ તમારે પોસ્ટ માસ્ટર સાહેબને પરત કરવી.

સબ પોસ્ટ માસ્ટર.

સિદ્ધપુર ૩૮૪૧૫૧.

True copy
Am
Sol

Amm/A/3

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1303 OF 1989



CORAM: S.B. MAJMDAR & V.H. BHAIRAVIA JJ.
18/10/1989.

COURT'S ORDER

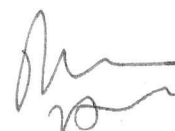
"Mr. Pathak, Learned Counsel for the petitioners seeks leave to withdraw the petition with a view to approach the Central Administrative Tribunal Ahmedabad. Leave granted. Petition stands dismissed as withdrawn. Notice discharged.

No costs."

Dt. 18/10/1989

Sd/- (S.B. Majmudar J)

Sd/- (V.H. Bhairavia J)

True copy


BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT
AHMEDABAD.

O.A. No. 514 of 1989

Mohmad Hussain Allubhai Zalori .. Applicant

Versus

Union of India & Ors. .. Respondents

REPLY ON BEHALF OF

RESPONDENTS;

I, Shri J.H. Mehta

working

as Sr. Supdt

in the office of Sr. Supdt

of Post offices

do state as under:

I have read the copy of the application and am conversant with the facts and circumstances of the case and am authorised to file reply on behalf of the respondents. I further say that I am filing this reply for the purpose of opposing admission of the matter and do reserve my right/s of filing further reply/s if any need there be.

1. At the outset, I say that I deny all averments made by the applicant except which are specifically admitted by me hereinafter. I further say that the contents of this application are misconceived and not maintainable and the application deserves to be dismissed.

2. With regard to para 3, 4 and 5, I say that

Copy sent to
MR. P.H. Pathak
Acty.

28-6-90

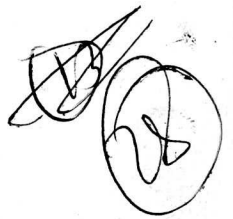
DBT

the applicant has not approached this Hon'ble Tribunal within the prescribed time limit under section 21 of the Administrative Tribunals Act, 1985 and therefore the application is not maintainable and deserves to be dismissed. I further say that the applicant was working as daily wager and he was not holding any civil post under the provision of regulating service condition of the employees of the Central Govt. and therefore the application is not maintainable and the applicant is not entitled for any protection under rules.

Before I deal with the categorical averments of the application, it is necessary to point out a brief history of the case which is as under:

The applicant was engaged as daily wager night guard at Sidhpur Post Office from 26.11.84. Since then he was being paid at flate rate from contingent grant available the disposal of the Sr. Supdt. of Post Offices Mehsana Division as notified by the Post Master General, Ahmedabad from time to time. The engagement of the applicant on the said post was on account of continued roits and disturbances in the town during the year 1984. His duty hours were prescribed by Sub Postmaster Sidhpur from ~~10.00 to 6.00~~ 10.00 O'clock night to 6_00 O'clock morning (8 hrs.).

As a matter of policy framed by the department,



Director Postal Services, Rajkot Region vide memo dt. 17.6.88 directed that no contingent post of chowkidar/watchman should be created/engaged without approval of their office. Therefore, a review of the existing posts was undertaken with a view to examine whether such posts would be necessary. There were two such posts of chowkidar in Mehsana Division, one at Sidhpur and other at Kadi. In light of the latest instructions on the subject, it was found that no retention of these two posts was justified and therefore the concerned offices were instructed not to continue engagement of chowkidar w.e.f. 1.2.89. Accordingly, the applicant was relieved from the post by Sub Postmaster Sidhpur. Recently the ~~under~~ officer had visited Sidhpur PO ~~for~~ for detailed inspection and observed that there is no need of chowkidar.

Now, the applicant has filed this application before this Tribunal for protection of his service and regular appointment in the department. However, the department is not in a position to accommodate the applicant as there is no such post vacant at present. Further the category of regular staff of chowkidar/night guard comes under non-test category group 'D' ^{four} cadre. There are/such posts on regular establishment in Mehsana division and their recruitment units are the Postmasters and Sub Divisional heads under the control of this division. No post is vacant at present

with any of the sub division. However recruitment in the cadre of extra departmental employees is being made by this office and by sub divisions from time to time. The case for employment of the applicant can be considered on such posts on priority basis provided the applicant is willing and fulfilling the condition for recruitment on such posts. For this purpose sub divisional Inspector Sidhpur is directed to consider the petitioner on the first available vacancy in his sub division.

3. With regard to para VI(1), I say that the applicant has merely enumerated the facts of the case and therefore I don't comment upon it. However I adhere to what has been stated by me above. I further say that the applicant was working as daily wager night guard since 26.11.84 at Sidhpur Post Office. However, I deny that (1) the post of watchman was vacant, (2) sanctioned by the department (3) applications were invited. It is submitted that the post was not regularly sanctioned one and did not belong to regular establishment, therefore no recruitment formalities were either to be followed and therefore no regular recruitment is made by respondents No. 2 and 3. It is true that the applicant is continued on the said post upto 31.1.89 and was paid Rs.14.60 as daily wage. The said post is not on the approved authorised and regular establishment of Sidhpur Post Office but is a post created temporarily

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in view of continued communal riots in the town during the year 1984 and wages were paid at daily fixed rates from contingency grant/fund. In fact the act of respondent No.2 and 3 cannot be termed as termination of services of applicant. Consequently, on the ~~xxxxx~~ release of the applicant, the post of night guard stands discontinued/abolished as no further retention is considered necessary in view of the departmental policy.

4. With regard to para VI(2), I deny the contents thereof. However, I respectfully submit that it is true that the applicants services were satisfactory. Everyone who is paid is bound to work sincerely and the best of the satisfaction of the employer. The respondent No. 2 is not aware of any such incident of assault on him. If it would have been so, he must have been taken leave for medical treatment. But the applicant has pleaded that he worked continuously without break and availing any off. It leads to believe that no such incident of serious nature took place. Also there is no such official report on the subject. The department is not aware of notification of the incident published in newspaper. A certificate dt. 11.8.88 obtained from the Sub Postmaster Sidhpur is issued recently i.e. after about more than two years of the incident and only when the case for further retention of the said post was under examination by the department. The authority who issued the certifi-

cate is of a non-gazated status and not competent to give such certificate without obtaining specific approval from the controlling authority i.e. respondent No.2. It appears that the applicant has obtained the certificate dt. 11.8.88 to enable him to secure employment elsewhere knowing well that the said post would be discontinued as it is not justified. It is not at all true that services of the applicant were terminated on account of length of his service and the judgment of the Supreme Court of India in case of casual labours. The applicant would not be entitled for regularisation of service and time scale of pay only on the ground that he has completed 360 days of service on the said post but it may be subject to other terms and conditions for recruitment like age, qualification and vacancy in the cadre of non-test Group 'D'. The orders for releave of the applicant from the said post is after examining the justification for the retention of the said post or otherwise from all angles in the light of the departmental instructions and policy, and therefore it is valid and legal.

5. With regard to para VI(3), I deny the contents thereof. I deny that the applicant was resuming duties at 9.00 O'clock night every day. It is submitted that the schedule time of attendance was from 10.00 O'clock night to 6.00 O'clock morning. If the attendance is marked at 9 O'clock, it just be at his wish and will.



I deny that the New Postmaster compelled the applicant to mention reporting time as 10 O'clock. The prescribed time of duty was from 10 O'clock night to 6 O'clock morning (8 Hrs), therefore the question of granting over time does not arise.

It is true that ~~the~~ neither weekly off nor wages in lieu are paid. The same will be calculated and paid now, if admissible. It is submitted that the petitioner is not entitled for a regular service or time scale of pay in view of arguments made earlier.

6. With regard to para VI(4), I deny the contents thereof. It is submitted that the engagement of the applicant as a daily wager night guard was on a purely temporary post subject to review from time to time. It is denied that some other employees are to be accommodated in the place of the applicant. In fact the engagement on the said post is found to be not justified and therefore it is ordered to be discontinued w.e.f. 1.2.1989.

7. With regard to para VI(5), I deny the contents thereof. I deny that the intention of the department to deprive the applicant of benefit of regularisation in the time scale of pay to daily wager of such a long service. That the daily wages to be paid to persons employed on such post were being revised and refixed from time to time by Postmaster General, Ahmedabad and accordingly are paid. No increment

benefits are admissible to the employees paid from contingencies. It is further submitted that the regular watchmen are the employees of different category born on the regularly approved departmental establishment and the applicant cannot be equated with them as such question of application of different yardsticks for the applicant does not arise.

8. With regard to para VI(6), it is submitted that the applicant is a daily wager night guard paid from contingencies at flat rates. There were two such posts in the whole Mehsana Division, one at Sidhpur and other at Kadi. Both these posts stand discontinued as a result of review undertaken by the department to examine their retention or otherwise. The question of maintaining seniority list and violation of 'Last come first go' does not arise as there was only one post of daily wager night guard at Sidhpur P.O. and the same is discontinued.

It is denied that no prior permission of competent authority is obtained in this case. In view of Director Postal Services, Rajkot Revision memo dt. 17.6.88, a review was undertaken. I say that the respondent No.2 is competent to make such arrangement/engagements on such posts or to discontinue such arrangement in light of the local situations. Director Postal services Rajkot Region is the controlling authority of respondent No. 2 who was directed that



no such posts should be retained and thus on the strength of this direction respondent No.2 issued direction to respondent No. 3 who is the authority to implement the orders/instructions/directions from resp. No.2

It is denied that the applicant had requested for the benefit of time scale of pay vide his application dt. 1.9.88. It is submitted that no such application appears to have been received by this office so far. Further it is also denied that the order of termination followed immediately but it is a result of review as per departmental policy.

It is true that no compensation or notice pay is given as no such procedure is prescribed to be observed for daily rated employees who are paid from contingencies.

9. With regard to para VI(7) it is submitted that the Police Officer's report about necessity of permanent watchman or employment of watchmen in the other offices of the state Govt. are not the sole criteria to create a regular post of watchman. The other matters like retention of cash and valuables overnight, arrangements of cash safes and treasury chest, residential quarters provided in the premises, cost of establishment involved with reference to benefit to be ~~derived~~ derived etc. are to be given due weightage. It is submitted that respondent No.2 recently visited the said post office for the inspection and had observed that there is no necessity of night

watchman. It is therefore denied that there is proposal to fill up the said post by other waily wayer employee. However, it is submitted that if in future any such proposal may come up, the right of the applicant for this post shall be protected. Even otherwise the other posts like extra departmental employees with nature of duty of packer or runner if found vacant in the Sidhpur Sub-Division, the applicant may approach respondent No. 2 and his request for such post would be considered on priority basis provided he is willing and fulfills the conditions for employment of such post.

In view of the foregoing paragraphs, it is clear that the action of the respondents is in accordance with the rules, instructions and circulars of the department and the application being devoid of any merits deserves to be dismissed.

Place : MAHESANA

Date : 27/6/90

Jhamesa
 प्रवर ज्योतिषक दफतार
 महेशाना मंडल महेशाना ३८४००१
 SR. SUPDT. OF POST OFFICES
 MAHESANA DN. MAHESANA 384001

Verification

I, *Jashwanthlal Hiralal Mehta* aged *56 years*

about working as *महेशाना मंडल पोस्टाफिस ३८४००१*
 in the office of *SR. SUPDT. OF POST OFFICES*
 state and verify that what has been stated by me is true
 to my knowledge and belief and I believe the same to be true.

Place : Mahesana

Date : 27/6/90

Jhamesa
 (J. H. Mehta)
 Sr. Supdt. of Post Offices,
 Mahesana Da. Mahesana 384001

Reply/Response/objection submission
 filed by Mr. J. H. Mehta on 27/6/90
 learned advocate for petitioner /
 respondent with second set.
 copy served/not served by either side
 28/6/90 31/9/82
 Dy. Registrar C.A.T. D
 Law Branch

20/1/89

[Handwritten signature]
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. NO. 514 OF 1989

Mohmad Hussain Allubhai Zalori .. Applicant

Versus

Union of India & Ors. .. Respondents

REJOINDER

1. I, Shri Mohmad Hussain Allubhai Zalori, applicant have gone through the reply filed by the respondents and am conversant with the facts of the case and I say that the contentions and submissions of the reply are far from truth and are denied by me. I deny all the contentions and submissions of the reply except those, which are specifically admitted by me in this rejoinder.

2. With reference to para 1 & 2 of the reply, I say that it is not true that the application is misconceived and not maintainable and deserved to be dismissed. The respondents have without reading the application filed this reply because the question of limitation etc. does not arise in this application. The respondent has made the formal denial for the sake of denial only. I reiterate and rely what I have stated in my application and it is not true that the application is not maintainable. So far the contentions of service details of the application are concerned, I have stated in my application and I reiterate the same. But it is not true that there is any policy ^{not} to continue Chowkidar/ watchman etc. . The question of appointment without approval etc. is irrelevant. The respondent has not produced any instruction on which he rely and therefore, I am unable to deal with the same. It is not true that there is ~~no~~ post available vacant to accomodate the applicant. I say that whatever the reason may be for the termination, the respondents

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17/1/91
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are under obligation to follow the procedure of law.

It is not true that no post is vacant with Sub Division.

I say that I was and am willing to serve anywhere in the state where the respondents give me the employment and regularise my services. So far the contention of fulfilling the condition for recruitment etc. are concerned, is misconceived. I reiterate and rely what I have stated in my application.

3. With reference to para 3 of the reply, I say that it is not true that the post of Watchman was not vacant and reiterate that it was vacant sanctioned post and the applications were invited and on application of the applicant he was given the job. I do not admit the contention of respondent that it is not a regular post and not belonging to regular establishment. Following regular recruitment procedure etc. are irrelevant to decide the present case.

I say that it is settled law and the Hon'ble Supreme Court ^{The Hon'ble Court has} ~~has also~~ directed the respondent department to absorb the daily rated employees who have completed 360 days of services. The respondents cannot be permitted to deprive the applicant of the scale of pay with all allowances payable to Class-IV employees of the respondent department. It is not true that it is not a termination of services of applicant. Even on the ground of discontinuing or abolition of the post, the respondents are under obligation to follow the mandatory provisions of I.D. Act, which is admittedly not followed by the respondents. I reiterate ~~***~~ and rely what I have stated in my application.

4. With reference to para 4 of the reply, I say that the respondent has tried to make misleading statement because so far the assault is concerned, it was not only published in the newspaper but a complaint was also filed by the department before the police authority.



The certificate produced by the applicant is issued by the immediate officer of the applicant, who is in charge of the Post Office. It is not true that such certificate cannot be issued by the Sub Postmaster. I called upon the respondents produce such details or instruction, if any, before this Hon'ble Tribunal. It is not true that the applicant has obtained the certificate to take employment elsewhere. It is not true that the judgement of the Hon'ble Supreme Court is not applicable in the case of the applicant. That the Hon'ble Supreme Court has categorically issued the direction that once the employee has completed requisite number of days, he cannot be terminated but should be absorbed. That my advocate will point out the judgement to support my case at the time of hearing of the matter. So far the departmental instructions etc. are concerned, I have stated that it is not produced before this Hon'ble Tribunal and if the instructions are contrary to law, it does not empower the respondents to terminate services of the applicant.

5. With reference to para 5 to 7 of the reply, I say that it is not true that the applicant was not resuming duties at 9.00 O'clock. ~~It is not true that the I was reporting at 9.00 O'clock as per my wish and will.~~ It is not true that the I was reporting at 9.00 O'clock as per my wish and will. On the contrary, I was specifically instructed to remain present at 9.00 O'clock and I reiterate what I have stated in my application about my working hours and duties. It is not true that the applicant is not entitled to get over time. I say that till date I am not paid the wages of weekly off though the respondent has stated that it will be paid now. It is not true that the applicant is not entitled to get scale of pay. It is not true that the appointment of the applicant was purely temporary and the applicant is not terminated to accomodate other persons. There is no material placed before the Hon'ble Tribunal to justify the case

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of the respondents. It is not true that the respondent department's intention was ^{not} to deprive the applicant of the regularisation etc. It can be seen from the conduct itself. The Hon'ble Supreme Court has stated that casual labourers also cannot be deprived of Class-IV employees salary. It is not true that the contingencies paid employees are not entitled to get any incremental benefits. It is not true that the applicant's case cannot be equated with the regular watchman, performing the duties under the respondent department. I reiterate and rely what I have stated in my application para 6.5.

6. With reference to para 8 of the reply, I state that the reason whatsoever may be, the services of applicant cannot be terminated by the respondents without following mandatory provisions of I.D. Act, 1947. I reiterate my contentions about seniority and principle of 'last come first go' etc. I say that Director of Postal Service, Rajkot is not the competent authority to grant permission. The contentions of respondents about continuing the employees and to terminate their services as per the will and wish of the officers of respondent department are misconceived and not maintainable. I reiterate that the services of the applicant cannot be terminated by the respondents. It is not true that the respondents have not received the application dt. 1.9.88 made by the applicant and the termination order is ^{not} followed immediately by the respondent department. I reiterate that the order of termination is with a view to victimise the applicant because of his demand for the better wages.

7. With reference para 9 of the reply, I say that there was no justification for the respondents to abolish or

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discontinue the post and to terminate the services of the applicant. The respondents are not a private employer and particularly when the situation and the circumstances and in past the result is experienced by the respondent department, it is necessary to continue the Night Watchman. It is not true that the respondents have right to terminate the applicant and the application is having no merit and required to be dismissed. I say that the question of fulfilling the condition for employment as a Watchman etc. are not maintainable because the applicant is working for such a long period under the respondents. I say that the respondents should be directed to regularise the services of the applicant and the application is required to be allowed with cost as the order of termination is void-ab-initio and without following the provisions of I.D. Act. That due to termination of services, the family of the applicant has faced and is facing great hardship and therefore, special cost is also required to be granted in favour of the applicant. I say that in the judgement of the respondent department, the Hon'ble Supreme Court has categorically stated that to terminate a workman and to force him to remain idle is not even in the interest of the country. Looking to overall circumstances, the application is required to be allowed with cost.

Prakash

VERIFICATION

I, Shri M. H. Zakeri, applicant, and

do hereby state and verify that what is stated hereinabove is true to the best of my knowledge and information and I believe the same to be true.

Date : 12/11/91
Ahmedabad

Prakash

X *Prakash*
(240) (240)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

MISC. APPLICATION No. 23 /1990

IN

ORIGINAL APPLICATION No. 518/1989

Shri Mohamad Husseing Allubhai Zalari .. Applicant.

V/s.

The Union of India & Ors. .. Respondents

Copy served
Mr. J. D. Amora
Bell.

APPLICATION FOR AMENDMENT

MAY IT PLEASE THE HON'BLE TRIBUNAL

1. That after paragraph 1 of the application following paragraph may be allowed to ~~maintain~~ amend.

2 It is submitted that the services of the applicant is terminated vide order dated 31.1.89. A copy of the termination letter is ~~also~~ annexed and marked as Annexure A2 to this application. That the said termination order is prima facie bad in law as it is without compliance with the mandatory provisions of Industrial Disputes Act 1947. That when the applicant came to know about his termination immediately he has approached the Hon'ble High Court ~~and~~ as during that period this Hon'ble Tribunal was not entertaining the application of the Casual Labourers of Central Govt. Employees. That thereafter the full bench of this Hon'ble Tribunal and the High Court has also come to the conclusion that the Central Ad. Tribunal is the appropriate forum for

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PYP

redressal of the grievances of casual labourers and daily wagers of the central government. Therefore the applicant has sought permission from the Hon'ble High Court to withdraw the petition. A copy of the order of the Hon'ble High Court dated 18/10/89 is annexed and marked as Annexure A3 to this application and therefore immediately the applicant has moved the present application before this Hon'ble Tribunal

Date: 5/2/90
Ahmedabad

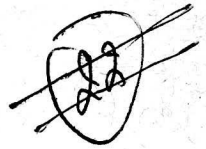
[Signature]
.....

Filed by Mr P. H. Jalota
Learned Advocate for Petitioners
with second set &
copies copy served/not to
other side

[Signature]
Dt. 5/2/90 Dy. Registrar C.A.T.(I)
A'bad Bench

-: VERIFICATION :-





I, Shri M.H. Zareedi *dk.m* Post ~~officer~~,
adult, resident

of has gone through the application and do hereby
verify that the contents of para 1 to 12 are true
to my personal knowledge and paras 1 to 12 believed
to be true on legal advice and that I have not
suppressed any material facts.

Date :- 13/2/91

Ahmedabad.

મહાત્મા ગાંધી યાત્રા સંસ્થા

Diarised under
MA St. No. 598/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMED BAD

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OA/TA/MA/PA/C.A. No. STG/93 in 04/514/89

U.O.I. & OES. MR. Akri Karapshi
APPLICANT(S) COUNSEL

VERSUS

MR. Mehmed Hussain A. Zolai
RESPONDENT(S) COUNSEL

DATE	Officer Report	Orders
	Extension of Time	<p style="text-align: center;">D/O 01-11-83</p>

Received written submissions
filed by Mr. Akil Kureshi
learned advocate for petitioner/
Respondent with second set.
Copy served/ not served & other side



Malst/1598/93

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By Registrar C.A.T. (J)
Ahmad Bench

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH AT AHMEDABAD

MISC. APPLICATION NO. 576 OF 1993

D10
1-11-93

IN

ORIGINAL APPLICATION NO. 514 OF 1989

1. Union of India
Notice to be served through
The Post Master General
(Gujarat Circle)
Ahmedabad.
2. The Sr. supdt. of Post Offices,
Mehsana Division,
Mehsana.
3. The Sub-Post Master
Post Office,
Siddhpur.

.. Applicants
(Org. Respondents)

Vs.

Shri Mohmad Hussain Allubhai Zalori,
Navavas, Opposite Post Office,
Siddhpur - 384 151.

.. Respondent
(Org. Applicant)

Application for extension of time
for compliance of the order passed
in O.A.No.514 of 1989.

.....

The applicants (Org. respondents) abovenamed
most respectfully begs to submit as under:

1. That the aforesaid Original Application No.514 of
1989 came up to be disposed of by this Hon'ble Tribunal
vide its judgment and order dated 9.6.1993 by quashing
and setting aside the order Annexure-A2 dated 31st

pc
Nabin
Clerk to Mr. H. B. Kulkarni
21/10/93

January, 1989. Consequently the present applicants (Org. respondents) were directed to reinstate the ~~an~~ applicant-present respondent including backwages, The direction regarding reinstatement was to be carried out within one month from the date of receipt of the order and direction regarding backwages was required to be carried out within a period of 3 months from the date of receipt of the order.

2. The applicants submit that copy of the said judgment and order dated 9.6.1993 was ready on 12.7.1993 and the same was forwarded to the respondent-Department by the Counsel on 16.7.1993 and it was thereafter forwarded to the concerned authority, for taking appropriate decision ~~in the aforesaid~~ regarding compliance of the directions contained in the aforesaid judgment and to give necessary sanction for complying with the said decision.

3. It is submitted that the decision of the said higher authority is not yet received and that the same is likely to take some more time. The applicants submit that they are likely to take some more time for inter-departmental consultation for taking a decision. Under the circumstances it is therefore, appropriate that the time granted by this Honourable Tribunal for compliance of the directions contained in the aforesaid order dated 9.6.1993 is required to be extended. It is further submitted that the applicant has already been reinstated and

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only the question of backwages remains and ~~that the~~ time granted by this Honourable Tribunal is very short and that the same is required to be extended in the interest of justice.

4. The applicants therefore, pray that this Honourable Tribunal be pleased:

- (A) to extend the time limit for complying with the directions contained in the order dated 9.6.1993 passed by this Honourable Tribunal in Original Application No.514 of 1989 by the period of three months;
- (B) to grant such other and further relief as may be deemed just and proper.

Ahmedabad,
Dt. 19-10-1993.

M. Solanki

~~SR. SUPDT. OF POST OFFICES~~
MAHESANA DN. MAHESANA-384001

Verification

I, *T. H. Solanki*

~~am~~ working as SR. Supdt. of Post Offices with applicant Mahesana Dn. Mahesana No. 2 herein, do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Ahmedabad,
Dt. 19-10-1993.

M. Solanki

~~SR. SUPDT. OF POST OFFICES~~
MAHESANA DN. MAHESANA-384001

Submitted.

Application has been scrutinized and found to be in order. May be placed before Hon'ble Bench for necessary orders.

~~25/10/93~~

~~SO(S)~~

DR(S)

May be placed on board for orders on 01-11-93.

~~26-10-93~~

~~Seen
Kase
25/10/93
SSP
26/10/93~~

~~DR(S)
26-10-93~~

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 514 OF 1989.
~~2/10/89~~

DATE OF DECISION 9.6.1993.

Shri Mohmad Hussain Allubhai Zalori Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R.Kolhatkar, Admn. Member.

Shri Mohmad Hussain Allubhai Zalori,
Navavas, Opposite Post Office,
Sidhhpur - 384 151.

.... Applicant.

(Advocate: Mr. P.H. Pathak)

Versus.

1. Union of India
Notice to be served through
The Post Master General
(Gujarat Circle)
Ashram Road, Ahmedabad.
 2. The Sr.Supdnt. of Post Office,
Mehsana Division,
Mehsana.
 3. The Sub-Post Master,
Post Office,
Sidhhpur.
- Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A.No. 514 OF 1989

Date: 9.6.1993.

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

Heard Mr. P.H. Pathak, learned advocate for
the applicant and Mr. Akil Kureshi, learned advocate
for the respondents.

2. The applicant, a daily wager Night Watchmen
under the respondent No.3, ^{has} filed this application
under section 19 of the Administrative Tribunals Act,
1985, for a declaration that the impugned order
Annexure A-2 dated 31st January, 1989 passed by the
respondent No.3 terminating the services of the
applicant as illegal, invalid and the respondents be
directed to reinstate the applicant on his original
post with full backwages and continuity of service.

3. The fact that the applicant was serving as night watchmen under the respondent No.3 from 26th November, 1984 to 31st January, 1989 is not in dispute as stated by both the learned advocates before us at the time of hearing of this application. The applicant has been terminated by the impugned order Annexure A-2 on the ground that as per the order of Senior Superintendent, Mehsana, the watchmen on the contingency post should not be engaged from 1st February, 1989 without the previous sanction of DPS and hence the applicant was directed not to resume duty till the approval was given by Sr. Superintendent. The applicant has averred in the application that the termination of his services by this order dated 31st January, 1989 was in clear violation of the mandatory provision of Section 25F of the I.D. Act, 1947 and hence the same deserves to be quashed and set aside. The applicant has averred in the application that he has produced the certificate dated 11th August, 1988 Annexure A regarding his satisfactory work. The applicant has averred in the application that the reason for termination of the services of the applicant can not be accepted. He had also made representation Annexure A-2.

4. The respondents in the reply have not disputed that the applicant had served upto 31st August, 1989 as a daily wager. The contention of the respondents

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as found in the reply is that the applicant's post was not on the approved authorised post and the post was created temporarily in view of continued communal riot in the ~~town~~^{town} during the year 1984. It is contended that the impugned order can not be termed as termination of services of the applicant. It is contended that on the release of the applicant the post of night guard stands discontinued/abolished as no further retention was considered necessary in view of the departmental policy.

5. The applicant has filed rejoinder controverting all the contentions taken by the respondents in their reply.

6. It is not in dispute that the applicant is a 'workman' and the respondents 'an industry' under the provisions of I.D. Act. It is not in dispute before us that the applicant had put more than ~~22~~ 240 days of work before he was terminated by the impugned order Annexure A-2 dated 31st January, 1989. The contention of the respondents that the impugned order was not a termination order can not be accepted because reading that order, it is clear that the applicant was asked not to resume the duty which is in substance ~~of~~^a termination order. The respondents were bound to follow the mandatory provision of Section 25F of the I.D. Act before terminating the services of the applicant which is admittedly followed in this case. We have perused

the records and heard the learned advocates of the parties. The action of the respondents in terminating the services of the applicant ^{by telling him} ~~and~~ not to resume duty _L as per order Annexure A-2 dated 31st January, 1989 ^{amounts} ~~amounts~~ to retrenchment which is not legal as the mandatory provision of Section 25F of the I.D. Act is not followed. Hence in our opinion the said order is illegal and it is quashed and the respondents are directed to reinstate the applicant in his original post with full backwages. Hence we pass the following order:

ORDER

The application is allowed. The impugned order dated 31st January, 1989 vide Annexure A-2 passed by the respondent No.3 is quashed and set aside and the respondents are directed to reinstate the applicant in service with full backwages and continuity of service. The respondents are directed to reinstate the applicant within one month from the date of the receipt of the order of this Tribunal and to pay full backwages within three months from the receipt of the order of this Tribunal. The applicant to file an affidavit before the respondents, if he has made any gainful earning during this period. The application is disposed of accordingly with no order

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as to costs. The applicant at liberty to make representation to the concerned respondents for regularisation of his services and the concerned respondents then to dispose of the representation if made, according to rules.

Sd/-
(M.R.Kolhatkar)
Member (A)

Sd/-
(R.C.Bhatt)
Member (J)

vtc.

Prepared by :

Compared by :

TRUE COPY

[Signature]
Section Officer (J) (12/7/93)
Central Administrative Tribunal
Ahmedabad Bench

True Copy
Akil Kureshi
AD