

10

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO.
~~T.A.NO.~~

564 of 1989

21st Nov. 1997
DATE OF DECISION _____

Shri M.S.Pathan

Petitioner

Mr.P.H.Pathak

Advocate for the Petitioner [s]

Versus

Union of India and others.

Respondent

Mr.Akil Kureshi

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Ramakrishnan : Vice Chairman

The Hon'ble Mr. T.N.Bhat : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

ND

Shri M.S.Pathan,
Pathan Vada,
Lavani Vada,
Petlad,
Dist.Kera,
Pin - 388 450.

11
... Applicant.

(Advocate : Mr.P.H.Pathak)

Versus

1. Union of India,
Notice to be served through
The Chief Post Master General,
Navrangpura,
Ahmedabad.
2. The Sub-Post Master,
Head Post Office,
Petlad.

... Respondents.

(Advocate : Mr.Akil Kureshi)

JUDGMENT
O.A.NO. 564 OF 1989.

Date : 21st Nov.1997.

Per : Hon'ble Mr.T.N.Bhat : Member (J)

1. In this O.A. the applicant has challenged the verbal order of his termination from 1st July, 1988 issued by the respondent no.2. He further seeks the benefits of the Hon'ble Supreme Court's Judgment in the case of daily wage employees.

2. The applicant was engaged in the Postal Department initially for short periods of time in the year 1984 but he later worked continuously after July, 1985 for a number

of years. His services have been terminated from 1st July, 1988 and according to the applicant this termination is bad, for the reason that the applicant had completed more than 240 days of service in each year and also that the respondents had while terminating the services contravened the mandatory provisions contained in the Industrial Disputes Act. Relying upon the Judgment of the Hon'ble Supreme Court regarding regularisation of services of daily wage employees who have put in 360 days of service, the applicant states that his services could not have been terminated. He also claims regularisation.

3. It is, however, admitted by the applicant that he has all along worked as an outsider casual labour class-IV.

4. The respondents have resisted the O.A. on the ground that the Judgment of the Hon'ble Supreme Court is not applicable to the applicant as he is not a casual labour, properly so called, but had only been engaged intermittently as an outsider as and when there was work available due to the regular employee being on leave or for such other reasons.

5. The applicant has also filed rejoinder.

6. We have heard the learned counsel for the parties at length and have perused the material on record.

21.10.97

(B)

6. We may state at the very outset that although initially the applicant was engaged only intermittently for one day to 23 days in a month, subsequently from 1.8.1985 to 28.2.1987 he worked continuously with some breaks on account of holidays. But, it is an established fact, as is evident from Annexure-R-1, that the applicant had been engaged in place of regular employees who had either proceeded on leave/training or who had been promoted and regular employees were not available to fill up the vacancy. After 28.2.1987 also the applicant continued to be appointed for intermittent periods right up to 1.6.1988. The learned counsel for the applicant also admits that there is a practice in the Postal Department to prepare a panel of persons who are engaged to work temporarily on posts which become vacant due to the regular employees proceeding on leave and such like contingencies. We are, therefore, convinced that the applicant is not a casual labour so as to attract the application of the Judgment of the Hon'ble Supreme Court in the Daily Rated Casual Labour's case. But, as already indicated, he has worked for a number of years as an outsider Group-IV employee. The question that arises is as to what benefits would he be entitled to. A similar question arose before this Bench of the Tribunal in O.A./524/89 and a bunch of other cases which have been disposed of by a common judgment dated 13.10.1997 ; and we are convinced that the facts and circumstances of the instant case also attract the application of the said Judgment-order. In that Judgment we took note of the fact that the Postal Department has already prepared a scheme for such outsider employees which was yet to be approved by the

Yours
21.10.97

competent authority. While disposing of the bunch of those O.A.'s it was held by us as follows : -

"In the facts and circumstances of the case brought out above in considerable detail, we direct the department to take a decision on the finalisation of the scheme after taking into account the representations given by the E.D. Agents and also the suggestions given by Mr. Pathak keeping in view the provisions of Rule 5 of the Recruitment Rules within three months from the date of receipt of a copy of this order and to take whatever steps may be called for to give effect to the decision.

" While taking this decision, they will take into account the interests of not only such of the applicants who have obtained a stay against the termination of their service but also of others in the Gujarat Circle who are similarly situated and had worked for a number of years but whose services might not be continued at present in the absence of any stay from the Tribunal. Pending completion of the above exercise, the services of such of the applicants who are working at present, shall not be terminated".

7. Therefore in line with the above directions given in O.A. NO. 520/89 and the bunch of nine other O.A.'s we dispose of this O.A. in terms of the said Judgment directing the respondents to take a decision on the finalisation of the scheme already prepared taking into account the representations given by E.D. Agents and the suggestions of the learned counsel for the applicant and also keeping in view the provisions of Rule 5 of the Recruitment Rules. We further direct that the decision shall be taken within

Tan
21.11.97

3 months from the date of receipt of a copy of this Judgment-order, and to take whatever steps would be necessary to give effect to the decision. While taking the decision, the respondents shall take into account the interest of all the concerned employees in the Gujarat Circle including the applicant herein. Pending decision as above, the applicant may continue to be engaged as before in his turn and according to his position in the panel of outsider employees.

8. We may mention that the learned counsel for the applicant, who also represented most of the applicants in the bunch of the O.A.'s disposed of by the Judgment-order dated 13.10.1997, had suggested some improvements in the scheme, namely, that more than one chance should be given to the outsider employees to clear the examination and in case of those who have worked for long periods minimum educational qualifications should not be insisted upon. He has also suggested that on regularisation, 50% of the service rendered earlier should count for pension on the analogy of the practice being followed in case of casual labour.

With the above order, the O.A. is disposed of, leaving the parties to bear their own costs.

T.N.Bhatt
21.11.1997
(T.N.Bhatt)
Member(J)

V.Ramakrishnan
21.11.1997
(V.Ramakrishnan)
Vice Chairman

ENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

Application No. 09/564/89

Transfer Application No.

CERTIFICATE

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room (Decided).

Date:- 01/12
Countersign:-

Signature of the Dealing
Assistant

Section Officer

✓
3/12/97

AHMEDABAD BENCH
AHMEDABAD

INDEX - SHEET

CAUSE TITLE OA 564 89

NAME OF THE PARTIES Shri M. S. Pathan

VERSUS

4-0-18

Slc No 583/18
13/12/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. NO. 564 /1989

Shir M.S. Pathan

.. Applicants

vs.

Union of India & Ors.

.. Respondents

I N D E X

Sr. No.	Ann.	Particulars	Page No.
1.	-	Memo of the petition	1 to 12
2.	A.	Copy of the representation dated 7.7.89	13
3.			

6/18
242

Ahmedabad

Date:

P.H. Pathak

Advocate for the Applicant

j jurisdiction of the Hon'ble Tribunal and is within the limitation under section 21 of the Administrative Tribunal Act 1986.

VI Fact of the Case :-

1. That the applicant is the citizen of India and was working as casual labour under the respondent no. 2 since 1984. That the initial stage the applicant was given work for short period i.e. for 1 to 2 months and since July 1985 the applicant has worked continuously without any actual ~~any~~ break in services. That the applicant has put about 3 years of services before he was verbally terminated by the respondent no. 2 with effect from 1st July 1988. That the applicant has completed more than 200 days of services in each year. The action on the part of the respondent no. 2 to terminate the services of the applicant without following the mandatory provisions of I.D Act and without giving him an opportunity of being heard is *prima facie* arbitrary, illegal and is liable to be quashed and set-a-side and the applicant is entitled reinstatement with full backwages and continuity of services.
2. It is submitted that ~~the~~ during the tenure of about 3 years of services the ~~the~~ applicant has worked under the respondent no. 2 at

Petlad and the applicant was known as outsider Casual labour Class IV. That the applicant was given work at Sub Post Office situated near Tower and at Zanda Bazar. That the applicant was paid ~~daily~~ wages on the basis of daily wage employee. That the difficulties were started in services of the applicant, after the judgement of the Hon. Supreme Court of India, regarding the regularisation of the services of the daily wage employees who have put 360 days of services. That the respondents have thereafter started giving artificial break for few days. That the applicant has put continuous services of more than 240 days as per the provisions of Section 25 B of I.D. Act. That the Hon'ble Suprme Court has directed the administration to regularise the services of the employees who have completed 360 days of services the applicant is fulfilling the requirement to be regularised as Class IVth employee but the department has adopted exploitative tactics and under the guise of so called daily wage employee the applicant was exploited for about 3 years and was deprived of the benefits and status of the regular employee of the department. That the said action on the part of the respondent no. 2 is amounts to unfair labour practice under the provisions of I.D. Act. It is pertinent to note that no appointment order was given to the applicant at the time of appointment and no termination order was served to the applicant at the time of termination by the respondent no. 2.

The applicant was marking his present in muster roll. That there was no reason for the respondent no. 2 terminating the services of the applicant except the applicant has requested the respondent no. 2 to grant him the benefits of the Hon'ble Supreme Court judgement and the dues thereof. That the immediate effect of the request of the applicant has resulted into verbal termination of the services of the applicant with effect from 1st July 1988. That upto 30th June 1988 the applicant has worked and he was toled not to come from 1st July 1988 by the respondent no. 2. That after the termination of services of the applicant, the applicant has made several representations and requested the respondents to give employment to the applicant as he is from very poor family. A copy of the representations of the applicant dated 7.7.88 is annexed and marked as Annexure A to this application. That there after the applicant was promised by the respondent no. 2 that the applicant will be continued in services as per that the applicant was again reemployed with effect from 12.8.88 upto 11.9.89. That as the applicant was given employment and promises by the respondent no.2 that he will be provided with the work the applicant was representing to the respondent authorities for his reinstatement and getting the benefits of the supreme court judgement. That after long delay of the representation no fruitful result was available and therefore the applicant approached to the union

Office bearers. It was not possible for the applicant to approach his Hon'ble Tribunal without the help of the Union. The Union representative have helped the applicant to file the present application challenging the arbitrary exercise of powers by the respondent no. 2. That as there was no other alternative remedy available to the applicant, the applicant has to approach this Hon'ble Tribunal by way of this application. The family of the applicant is facing starvation as the applicant is out of job since morethan about one year. and he is waiting for favourable reply from the respondents. That the Hon'ble Supreme Court has in terms directed the administration that daily wager should be paid the salary on the basis of equal pay for equal work. That large number of employees working under the respondents were paid the dues long back but reason best known to the respondent no. 2 till date the respondents is not paid his dues nor granted the benefits of Supreme Court Judgement. The applicant has completed 360 days of services and is entitled for regularisation as Class IVth employee. The action of the respondent terminating the services of the applicant is malafida exercise of powers because prior to termination the applicant has requested the respondent no. 2 to extend the benefits of Supreme Court Judgement and increased salary. And therefore the applicant was given the artificial break on the record and immediately from first July 1988 the

applicant's services was terminated verbally by respondent no. 2 without following any provisions of law, which is ~~ex facie~~ arbitrary, illegal and is required to be quashed and set-a-side.

3. It is submitted that it is not the case of the department that there was no work available with them and therefore the applicant was terminated, on the contrary the fresh employees were accommodated and therefore the applicant was terminated. That after the termination of the applicant services of many new persons were employed as daily wage employees. The Section 25(H) cast the obligation on the employer to give written offer to the ~~obligation on the employer to give written~~ retrenched employee for reemployment before giving any opportunity to any fresh employee. That there is no valid reason for terminating the services of the applicant as well as the verbal order of termination is ~~also~~ also ~~ex facie~~ bad and is required to be quashed and set aside.

4. It is submitted that the respondent Postal Department comes in the purview of the Industry under the meaning of Section 2 (2) (j) of the Industrial Dispute Act 1947. That the applicant is a workman and the respondents are under obligation to follow the precondition of retrenchment before terminating the services of the applicant. Admittedly the applicant has worked more than 3 years continuously and his services cannot be terminated by verbal order. The Hon'ble Calcutta Bench has decided the case on Extra Department Post Master and was held that the termination of Extra Departmental Post Master without following section 25(F) of the Industrial Dispute Act as void ab initio. The pertinent part of the judgement is reproduced here as under.

JQ

// 7 //

"So, we hold that although the applicant was terminated from his services as an Extra Departmental Agent that should be regarded as retrenchments, ~~hence~~ Now we find that the said retrenchments have not been done as per the provisions of the i Section.
~~Neither notice in writing indicating the month notice is given~~

Neither the applicant has been given one month notice in writing indicating the reasons for retrenchment nor had been given the wages for the period of notice, or any compensation. Such being the position we hold that as the mandatory provisions with the order of termination/ retrenchment is bad in law."

5. That this Hon'ble Tribunal has also taken the similar view in case of Original Application 570 of 88 and was pleased to quash and set aside the verbal termination of a daily wage employees and directed the department to reinstate the employee concerned with full backwages and continuity of services. That the respondent department is under obligation to obtain prior permission of the appropriate authority before affecting the retrenchment under the provisions of Section 25(N) of the Industrial Dispute Act. That even after the retrenchment also the obligation is on the respondents to give first preference in case of reemployment to the outsiders. Rule 78 specifically clear that the respondents have to give a registered notice to the retrenched employee. Here none of the provisions of the Industrial Dispute Act were followed at the time of termination of services of the applicant as well as reemploying the other new persons and therefore also the termination of services of the applicant is in flagrant violation of section 25(F) read with section 25 B, G of the Industrial Disputes Act read with Rule 77, 79 of the Industrial Disputes Act. It is submitted that the Section 25 G read with Rule 77 Industrial Dispute Rules (C) which are held to be mandatory by this Hn. Tribunal as well as various High Courts which says that before affecting the termination of services of the employee it is the duty of the employer to publish the seniority list of the employees whose cadre the termination is to be affected

before seven days of the termination. The legislature has taken the case to avoid pick and choose policy by the employer. In the case of the applicants here large number of juniors to the applicant was continued in services as well as no seniority list whatsoever was published by the respondents and therefore also the verbal termination of services of the applicants from 1/7/88 is required to be quashed and set aside and the applicants are entitled for reinstatement with consequential benefits.

6. It is submitted that it is not the case with respondent department that there is no work. The respondent wants to accommodate other persons in the place of the applicant and so the termination of the services of the applicant is with malafide intention and is liable to be quashed and set aside. It is submitted that the petitioner is having the preferential rights over the other outside candidates under the provisions of section 25(H) of the I. D. Act 1947.

which read as under :-

"S. 25 H Re-employment of retrenched workmen where any workman are retrenched, and the employer persons to take into his employ any persons he shall, in such manner, as may be prescribed given an opportunity to the retrenched workman who are citizens of India to offer themselves for reemployment and such retrenched workmen who offer themselves for reemployment shall have preference over other persons."

That the rules of the Industrial Disputes Act Rules (C) 78 provides for registered notice to the retrenched employees for re-employment. That the case of the applicant is covered by the judgement of the Hon'ble Supreme Court in case of 1961 LLJ II P.110 as well as the judgement of the Hon'ble High Court of Gujarat in the case of Gujarat Machine Tools Corporation. That the applicant should not be terminated

96

by the respondents to accommodate another person. The respondents exercised the powers ~~in~~ total arbitrary manner and is liable to be quashed and set aside.

7. It is submitted that the daily wager employees have approached the Hon'ble Supreme Court through their Union pointing out their grievance and rotation as daily wager since years. The Hon'ble Supreme Court was pleased to held that the department is exploiting the labourers and adopting the unfair labour practice. The Hon'ble Supreme Court has directed the respondent department to prepare a scheme within 8 months from the date of the judgement to regularise the services of the daily wager employees who have completed 360 days of services. That the said directions were given in the year 1987 and there after with a view to frustrate intention of the Supreme Court Judgement the respondents department was started terminating the services of senior most employees who have completed more than 360 days of services. That large number of applicant are filed before this Hon'ble Tribunal have held the termination as illegal and quashed and set aside the verbal order of the termination. But unfortunately the department has not taken care to comply with the Supreme Court judgement and not framed any scheme neither regularise the services of the applicant but ~~on~~ the contrary by verbal order the applicants were sentenced to economic death penalty from 1/7/88. That the applicants have thereafter made representations to the respondents infrom their stayation situation as well as the legality and arbitrary powers exercised by the respondent no. 2, but it ~~is~~ has reached ^{to} deaf ears and therefore the applicants have to approach this Hon'ble Court by way of this application. It is pertinent to note here that the applicant was not given any ~~re~~ service ~~ca~~des or appointments orders. That itself shows the malafide intention of the department. and for the proof of the employment of the applicant's ~~the~~ Pay Registers and the ~~present registers which are~~

// 11 //

H.O

(C) Be pleased to direct the respondents to regularise the services of the applicants as they have completed 360 days of service and grant consequential benefits to the applicant with 12 % interest.

(D) Be pleased to direct the respondents to grant the benefits available to regular employees who are working as Postman and Packer from the initial date of appointment with 12 % interest.

VIII

Interim relief :

(A) Pending admission and penal disposal be pleased to direct the respondents to continue the applicants in service and to pay salary regularly.

(B) Any other relief to which the Hon'ble Tribunal deems fit and proper in the interest of justice.

IX

The applicant has no other alternative remedy ~~available~~ available except to approach to this Hon'ble Tribunal by way of this application. The applicant has not filed any other application in any other court including the Hon. Supreme Court of India with regard to the subject matter of this petition.

X

Number of the Postal Order Details :

Postal Order No. 194289 Dated : 13/12/89.

Issued by the Gujarat High Court Post Office, Ahmedabad. amount of Rs. 50/-.

XI

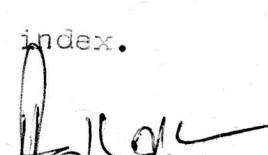
An index in duplicate containing the details of document is produced herewith.

XII

List of enclosure : as per above index.

Ahmedabad

Date : 13/12/89.


H. H. Pathak
Advocate for the Petitioner

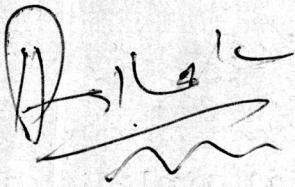
12
VERIFICATION

I undersigned shri M.S. Pathan solemnly affirm on oath
and hereby declare that whatever stated in above application is
true to my knowledge and i believe the same as true. I have not suppressed
any material facts from the Hon'ble Tribunal.

Ahmedabad,

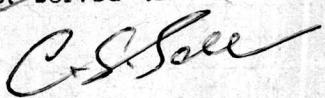
Date : 29-11-89

MS/11-2/1152 07/12/1989. 228786441



P. M. Pathan

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



DL 13/12/89 Dy. Registrar C.A.T.(J)
A'bad Bench

Ann A (8)
VS

MUTAHARULLAKHAN SIDDIKULLAKHAN PATHAN

O/S. C.L. IV. PETLAD.

Dated:- 7/7/88.

To

The Senior + Supdt of Post Offices,
Kheda Division at. Anand 388 001.

Sub:- Injustice by Sub-Post-Master. (L.SG.) Petlad, 388 450.

Sir,

I, Shri. M.S. Pathan O/S. C.L. IV working as O/S C.L. IV in Petlad. (L.SG) Office from 8/5/84. But due to misunderstanding and wrong interpretation of S.P.M. Petlad. (L.SG) I have to suffer lot of Loss of pay and salaries and service. In june '88. Sub Divisional Inspector Petlad. (Postal) Had given allotment of qualified EDA to Petlad. (L.SG) Office, one candidate actually last Now commence on Feb 88 as O/S should be relieved as a rule. But S.P.M. Petlad (L.SG) releived me from service showing without any reason. Now in these hard days he wrongly terminated my O/S Service by wrong interpretation of S.P.M. Petlad. (L.SG) kindly intervene in the matter and give me justice at an early date and give me the opportunity to serve the department and oblige me.

Yours faithfully,

Sd/-
(M.S. Pathan)
O/S C.L. IV Petlad

Copy to:-

1. S.D.I. (Postal) Petlad for N/A.
2. To, +Shri N.D. Patel
Circle Secretary NUREA.
Guj. Circle
S.P.M. Untkhari
Bhajej S.O.
3. To, Shri J.C. Pandya
NUEDA III Gujarat Circle
14 Gayatri Society
Maninagar Char Rasta
Ahmedabad . 8.

-/Copy/-

TRUE COPY.

[Signature]
(Advocate)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT
AHMEDABAD.

O.A. NO. 564 of 1989

M.S. Pathan

.. Applicant

Versus

Union of India & Ors.

• Respondents

REPLY ON BEHALF OF THE

RESPONDENTS:

I. A. C. Vahiq working
as Asst. Supt of Po's in the office of
SSP Po's Kheda dy. At present do state as under :

That I have read the copy of the application and am conversant with the facts and circumstances of the case and am authorised to file this reply on behalf of the respondents.

1. At the outset, I say that I deny the all averments made by the applicant in this application. I further say that the contents of this application are misconceived by the applicant and therefore the same is not maintainable and deserves to be dismissed.

2. With regard to para 3, 4 and 5, I say that the action of the respondents is in accordance with the provisions of law and the application being devoid of any merits deserves to be dismissed. I further say that the application is filed beyond

THE PEKING

the period of limitation as prescribed under section 21 of the Administrative Tribunals Act, 1985 and therefore the same deserves to be dismissed on the sole ground of bar of limitation only. I further say that the applicant is out-sider and he was engaged by the respondents as and when the work was there and therefore the status of the applicant reveals no legal locus standi for filing this application before this Hon'ble Tribunal and therefore the application is not maintainable and deserves to be dismissed.

Before, I deal with categorical averments made by the applicant in this application, it is necessary to point out the brief history of the case which is as follows:

Petla~~d~~ L.S.G. S.O. is separate unit for sanctioning the leave of Postman/Group 'D' officials to make alternative arrangement. In leave cases of Postman/Group 'D', it is intimated that whenever there is an ~~actuate~~ shortage of staff in Postman/ Group 'D' official, the S.P.M. is empowered to engage outsider on purely temporary as Postman/Group 'D' on adhoc ~~base~~ basis if the candidate is fulfilled the departmental ~~base~~ requirements regarding qualification and obtaining security from recognised society.

Shri M.S. Pathan (applicant herein) who is not A.P.C. for group 'D' / Postman cadre and who is purely outsider was engaged as Group 'D' as outsider on daily wages. The arrangement was ad hoc and not regular. He was already informed by the S.P.M. Petlad that his arrangement was purely temporary and liable to be terminated at any time ~~and~~ ~~is~~ without any notice.

It is further submitted that Shri V.D. Suthar had taken over the charge of SPM ~~P~~ Petlad from April, 1987 and Shri Pathan (applicant) was working as outsider Petlad S.O. when Shri Suthar joined his duties at Petlad, Shri Pathan was engaged on daily wages on the vacancy which felt due to proceedings on leave by the regular employees or in exigency of staff position in the office in short term arrangement and not on regular basis.

3. With regard to para VI(1), I say that I deny the contents thereof. I deny that the applicant was working as casual labour and he worked continuously without any actual break in service and I say that the applicant was working as outsider and his services were not continuous one. It is submitted that the applicant was engaged on daily wages during working days of the office. I also deny that the applicant has completed 230 days continuously without break.

There is no provision or condition under which

the applicant can claim that he is to be continued on the job being an outsider one.

Thus the applicant is not entitled to reinstatement or any consequential benefits as claimed for by him.

4. With regard to para VI(2), I say that I deny the contents thereof. I deny that the applicant has worked for 3 years with the respondent No.2.

However, I say that the applicant himself attempts in this paragraph that he has worked intermittently ^{Zamda} at the various places i.e. Zarak Bazar (Petlad) TSO and Petlad S.O. etc. Zarak Bazar (Petlad) ^{TSO} ~~RSO~~ is ^{Zamda} under the control of SDI (P) Petlad and Petlad SO is the independent office. Naturally, from this it becomes clear that there is break in the services of the applicant and as claimed by him that the applicant served the respondents continuously ~~is~~ is itself a false one. There is no case of infringing the provision of any of the act or direction of ~~in~~ any court of law.

5. With regard to para VI(3), I say that I deny the contents thereof. However, it is submitted that the employees are recruited in the department as per recruitment rules framed by the department. Accordingly, the resultant clear vacancy could have been filled in. The applicant was not eligible for appointment as on regular measure as he was not

fulfilling the condition of recruitment rules.

Since he was engaged purely as outsider as short term arrangement there was no cause of retrenchment of his service and giving appointment to another person as regular employee.

6. With regard to para VI(4), I say that the contents of this para are misconceived by the applicant in as much as ~~the~~ ~~xx~~ ~~xx~~ judgments referred by him are not relevant with the facts of this case nor they are applicable.

7. With regard to para VI(5), I further say that the contents of this para are also not applicable and the respondent offices are not 'Industry' nor the applicant is 'workman' for the purpose of Industrial Disputes Act, 1947 and therefore the contents of this paragraph are misconceived by the applicant.

8. With regard to para VI(6), I deny the contents thereof. However, I say that the applicant has no right for regular appointment as regular employee of the department as claimed by him because he was not fulfilling the condition of recruitment rules as clearly discussed in the foregoing paragraphs. As regards filling of regular vacancy, it is ~~xx~~ required by the candidate to fulfill all the requirements of

the recruitment condition.

In view of the foregoing paragraphs, it is clear that the applicant is not eligible for recruitment nor the applicant has served the department as sufficiently or in the capacity of any remunerative services. Therefore, the application being devoid of any merits deserves to be dismissed and the applicant does not deserve any relief/s what has been prayed for by him.

Place : Anand

Date : 18-6-90

Sevalni
SENIOR SUPDT OF POST OFFICES
Kheda Division At ANAND-388 001

Verification

I, A. C. Vahia. working

as SSP in the office of SSP

Kheda dm. At Anand. do state and verify that what has been stated by me hereinabove is true to my knowledge and belief and I believe the same to be true.

Place : Anand

Date : 18-6-90

Sevalni
SENIOR SUPDT OF POST OFFICES
Kheda Division At ANAND-388 001
(Deponent)

Reply/Regoinder/written submissions
filed by M. *Sh. A. J. M. S.*
learned advocate for petitioner/
Respondent with *secy.*
Copy served/not served *or otherwise*

Sh. A. J. M. S.
DL 21/6/90 By Registrar C.A.T (1)
Abad Ranch

24/8
12
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD

O.A. NO. 564 OF 1989

M. S. Pathan

.. Applicant

Versus

Union of India & Ors.

.. Respondents

REJOINDER

COPY SERVED
P.M. J.D. Ahmed
New
D-30-7-90
22/8/90

1. I, Shri M. S. Pathan, applicant has 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 contentions of the application are misconceived and not maintainable, and deserves to be dismissed. It is not true that action of the respondents is in accordance with ~~the~~ law and application is having no merit deserves to be dismissed. It is not true that the application is filed beyond time. It is not true that the applicant was engaged as and when there was work. I say that I was working continuously and it is not true that the applicant cannot claim any legal right or status and the application is not maintainable require to be dismissed. It is not true that I was working at the place of employees who are on leave. It is not true that my appointment was as ad-hoc and not regular. It is not true that I was informed by S.P.M. Patel that my appointment is purely temporary and liable to be terminated at any time without any notice. The respondents have not mentioned the

the name of the employee who is on leave against whom I was given employment. I say that I was working continuously on the vacant post. The contentions of respondents about temporary arrangement etc. are misconceived and denied by me. I reiterate and rely what I have stated in my application.

3. With reference to para 3-5 of the reply, it is not true that the applicant was not working as casual labourer continuously. It is not true that I was working as outsider and my services were not continuous one. It is not true that the applicant has not completed 240 days continuously without break. It is not true that there are no provisions under which the applicant can claim continuity of services and therefore, the applicant is not entitled to reinstatement or any consequential benefits. The respondents have not cared to read the mandatory provisions of law and therefore, my services were ~~not~~ terminated ~~and~~ in arbitrary manner which is illegal. It is not true that the applicant has not worked for 3 years with respondent No.2. It is not true that I ~~have~~ worked intermittently. I say that I was working continuously in the respondent department. It cannot be said that the offices under SDI(P) Petlad are independent offices. I say that the ~~decision~~ power of the competent authority to transfer me from one post office to another and for such transfer I cannot be deprived of ~~of Continuity~~ my right for regularisation and protection ~~of~~ ~~the~~ I.D. Act, 1947. It is not true that there was any actual break in services of the applicant and the applicant was not working continuously. It is not true that there is no violation of any provisions of I.D. Act by the respondents. It is not true that I am not eligible for the regular appointment to the post and I am not fulfilling the

condition of recruitment rules. The respondents have made very vague statement to mislead the Hon'ble Tribunal.

It is not true that I was engaged purely as outsider and for short period. I reiterate and rely what I have stated in my application para VI (1.2.3).

4. With reference to para 6-8 are concerned, I say that the contentions of respondents are misconceived. It is not true that the contentions of para VI (4) are misconceived and the judgements referred in the said paras are not relevant with the facts of this case. It is not true that the contentions of para VI (5) are also not relevant and the respondent department is not an 'Industry' and the applicant is not 'workman' as per I.D. Act, 1947. That the said points are concluded by the decision of this Hon'ble Tribunal and my advocate will point out the same at the time of hearing of the matter. It is not true that the applicant has no right for regular appointment as the applicant is not fulfilling the condition of recruitment rules. I called upon the respondents to point out what are the eligibilities for regular appointment and what is lacking in case of the applicant. The respondents have made very vague statements which are baseless and incorrect. It is not true that the applicant is not eligible and the application is having no merit required to be dismissed. I reiterate and rely what I have stated in my application and I further say that I have worked continuously and my case is a strong *prima facie* case and I am required to be regularised by the respondents. I say that my service particulars, muster rolls etc. are available in the respondent department and therefore, I called upon the respondents to produce the same.

VERIFICATION

I, Shri M. S. Pathan

adult

resident of Petlad state that I have gone through the para 1 to 4 of the application and I say that I have verified the same and state that they are true to the best of my knowledge and information. I have not suppressed any material facts from the Hon'ble Tribunal.

Date : 26/7/90

Ahmedabad

P. H. Pathan
m-s-pathan

Reply/Rejoinder/written statement
filed by Mr. P. H. Pathan
learned advocate for petition /
Respondent with second
Copy served/not served on the side

EP 307190

Dy. Registrar
A'bad Bench

C. H. Pathan
307182

DEPARTMENT OF POSTS : INDIA

O/O SR. SUPDT. OF POST OFFICES KHEDA DIVISION AT NADIAD 387001

M.S. Pathan
OA/564/89 filed by Shri S.N. Mir

• • • •

As per the record of office of the Sr. Supdt. of Post Offices, Kheda Division. Shri M.S. Pathan the applicant had worked for the following period.

Name (1)	Period From (2)	Days (3)	Vice whom worked (4)	Cause of Vacancy (5)
				To
1. Shri M.S. Pathan Out sider	25-3-85	-	1	Shri R.K. Jadav Gr. 'D' Zanda Bazar PO
2. -do-	11-3-85	25-3-85	09 days	Shri C.S. Taiming Solanki Cl. IV Petlad
3- -do-	5-7-85	31-7-85	23 days	Shri H.J. Promotic Vyas Cl. IV Petlad
-do-	1-8-85	31-8-85	25 days	-do-
-do-	2-9-85	30-9-85	23 days	-do-
-do-	1-10-85	31-10-85	25 days	-do-
-do-	1-11-85	30-11-85	24 days	-do-
-do-	1-12-85	31-12-85	25 days	-do-
-do-	1-1-86	31-1-86	26 days	-do-
-do-	1-2-86 to 28-2-86		24 days	-do-
-do-	1-3-86	31-3-86	24 days	-do-
-do-	1-4-86	30-4-86	25 days	-do-
-do-	1-5-86	31-5-86	25 days	-do-
-do-	2-6-86	30-6-86	24 days	-do-
-do-	1-7-86	31-7-86	26 days	-do-
-do-	1-8-86	30-8-86	24 days	-do-
-do-	1-9-86	30-9-86	25 days	-do-
-do-	1-10-86	31-10-86	26 days	-do-
-do-	3-11-86	29-11-86	24 days	-do-
-do-	1-12-86	31-12-86	26 days	-do-
-do-	1-1-87	31-1-87	25 days	-do-
-do-	2-2-87	28-2-87	24 days	-do-
4. -do-	18-3-87	21-3-87	4 days	Smt. R.K. E/Leave Jadav Cl. IV Zanda Bazar PO

5.	Shri M.S.Pathan Outsider	2-7-87	17-3-87	13 days	Shri H.J. Gyas Cl.IV Petlad	Promotion
6.	-do-	30-3-87	4-4-87	6 days	Shri R.F. Solanki Cl.IV Petlad	Leave
7.	-do-	4-5-87	23-5-87	17 days	Shri L.M.Valand Cl.IV Petlad	Leave
8.	-do-	1-6-87	15-6-87	13 days	Shri R.K.Garasia Cl.IV Petlad	"
9.	-do-	17-8-87	26-8-87	10 days	Shri U.M.Parmar Cl.IV Petlad	"
10.	-do-	7-9-87	-	1 day	Shri R.F.Solanki Cl.IV Petlad	"
11.	-do-	25-9-87	1-10-87	6 days	Shri R.K.Garasia Cl.IV Petlad	"
12.	-do-	12-10-87	17-10-87	6 days	Shri R.J.Thakor Cl.IV Petlad	"
13.	-do-	3-12-87	5-12-87	3 days	Shri B.J.Thakor Cl.IV Petlad	"
14.	-do-	18-12-87	30-12-87	10 days	Shri P.K.Garasia Cl.IV Petlad	"
15.	-do-	1-1-88	30-1-88	23 days	Vacant	-
16.	-do-	1-2-88	29-2-88	25 days	Shri-P.K.Garasia Cl.IV Petlad	Retd
17.	-do-	1-3-88	30-3-88	25 days	-do-	-do-
18.	-do-	2-4-88	30-4-88	25 days	-do-	-do-
		2-5-88	31-5-88	25 days	-do-	-do-
		1-6-88	30-6-88	26 days	-do-	-do-

Thus the applicant was discharged on the last working day and reengaged from the first working in each month for the following period.

Sl.No. (3) 5-7-85 to 28-2-87

Sl.No. (16) 1-2-88 to 30-6-88

The pay & allowances of the applicant were sanctioned exclusive of Sundays & Holidays.

The concerned registers are appended
Wif. (two)

SENIOR SUPDT. OF POST OFFICES
Kheda Division NADIA-387001

3
119