

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(3)

O.A. No. 463 OF 1990.

~~TXN:XX~~

DATE OF DECISION 25-10-1993.

Shri Babulal Shambhulal Shah, Petitioner

Mr. C.H. Vora, 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?

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Shri Babulal Shambhulal Shah
Aged Adult, Occupation - Nil
residing at Gin Press
At Lakadia, Taluka Bhachau,
District - Kutch.

..... Applicant.

(Advocate: Mr. C.H. Vora)

Versus.

1. Union of India
(Notice to be served through
the Secretary,
Ministry of Telecommunication,
New Delhi).

2. Sub Divisional Officer,
Telecom, Gandhidham,
District - Kutch.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A.No. 463 OF 1990

Date: 25-10-1993.

Per: Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

In this original application under section 19 of the Administrative Tribunals Act, 1985, the applicant has contended that he was working as a peon in the Lakadia Telephone Exchange in Bhachau taluka of Kutch district with effect from July 1987 and that he was drawing a salary of Rs. 150/- per month which was subsequently raised to Rs. 400/- per month. From Ann.A-1, it appears that the S.D.O Telecom Gandhidham Kutch had visited the office on 29th June 1990, and that the visit was in connection with the complaint made by LM(P) Lakadia the immediate superior, regarding the work of the applicant. It appears that there was some discussion and a letter was obtained from the applicant to the effect that "if any irregularity will be found the applicant would be removed from service". It

appears that subsequently by the letter dated 21st June, 1990 vide Annexure A-3, the applicant withdrew his earlier letter dated 20th June, 1990 but he also stated that he will perform his duty regularly. The letter dated 2nd July, 1990 Annexure A earlier quoted therefore, conveyed the decision of the department that he would be removed from service after 30 days of the receipt of the letter. The letter dated 26th July, 1990 vide Annexure A-2 confirms what is stated in the earlier letter and states that the applicant was being removed from service from 5th August, 1990.

2. The contention of the applicant is that the applicant has not committed any misconduct and the order of removal is illegal, improper, unjust, arbitrary, discriminatory and against the principles of natural justice. The applicant has alleged that the removal of the applicant was at the instigation of the Lineman (LM-P) Gangaram at Lakadia who wanted to accommodate some f favourite person in the department. The relief sought by the applicant is to quash the letters dated 2nd July, 1990 and 26th July, 1990 removing the applicant from service with effect from 5th August, 1990 and to reinstate the applicant in service with full backwages and other appropriate relief.

3. The respondent department in the written statement have denied that the applicant was a peon. According to the department, the applicant was a part-time sweeper and that he was discharged from service after giving one month's notice and that in the same being termination simpliciter, the applicant can not claim any relief. The respondents however have taken other grounds

which appear to be inconsistant with the other grounds. In para 5 of the reply, it is stated that the applicant has been discharged as carrier station Lakhadia has been closed down in August 1990, its equipment being transferred to Nakhatrana. In para 7 it is stated that the applicant did not attend duty at all and did not sign in the attendance register and thus there was no option but to remove him from service after one month's notice. In para 8 it is stated that the applicant was misbehaving with the local officer-in-charge and was not punctual, that he gave a written appology on 20th June, 1990 but that he backed out of the same by means of a letter dated 21st June, 1990. Thus it appeared that the applicant was not keen on a sympathetic settlement of the matter and therefore, it was decided to terminate him after giving one month's notice to him.

4. We have heard the learned advocates for the parties. Irrespective of what is contended by the parties, the fact that Annexure A-1 refers to one month's notice indicates that the department had, by implication, treated the status of the applicant as that of a temporary employee of the department whose services could have been terminated by giving one month's notice under relevant rules. If so, the termination order ought to have been in the prescribed format. It is noted, however, that the Annexure A-1 dated 2nd July, 1990 ~~however~~, could not be treated as a notice of termination simpliciter since it casts a stigma on the applicant regarding his "improper work and irregularity". Therefore, department if it wanted to terminate his services ought to have made

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the nature of the misconduct known to him and given him a hearing in accordance with principles of natural justice. The department not having done this, is guilty of gross violation of principles of natural justice. Considering the facts of the case, there is no alternative therefore, but to set aside the letters dated 2nd July, 1990 and 26th July, 1990 terminating the services of the applicant with effect from 5th August, 1990. We are, however not inclined give the relief of backwages in the circumstances of the case. The advocate of the applicant under instructions of his client has also waived this relief. We therefore, dispose of the matter by passing the following order:

O R D E R

Application is partly allowed. Annexure A-1 and A-2 dated 2nd July, 1990 and 26th July, 1990 respectively are quashed and set aside. The department is directed to reinstate the applicant in the same position in which he was working prior to his termination with effect from 5th August, 1990, within one month from the date of the receipt of the order by the department. The applicant is held not entitled to backwages. There would be no order as to costs.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.C.Bhatt

(R.C.Bhatt)
Member (J)