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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

(3)

O.A. No. 47 of 1990
T.A. No.

DATE OF DECISION 8th October 1992.

Shri Bhima Vaida Dasa

Petitioner

Shri R. U. Sampat

Advocate for the Petitioner(s)

Versus

Union of India and Ors.

Respondent

Shri Akil Kureshi

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan

Vice Chairman

The Hon'ble Mr. R.C. Bhatt

Member (J)

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

Bhima Vaida Dasa
 C/o R.V. Sampat,
 Advocate,
 'Nasrin Manzil',
 M.G. Road,
 Opp. Old Bus Stand,
 Junagadh 362 001

Applicant.

Advocate Shri R.V. Sampat

Versus

1. Union of India
 through ; The General Manager,
 Gujarat Circle, Ahmedabad.

2. The Telecom District Engineer (T.D.E)
 Genda Agad Road, Junagadh

Respondents.

Shri Akil. Kureshi

O R A L J U D G E M E N T

In

O.A. 47 of 1990

Date : 8-10-1992

Per : Hon'ble Shri R. C. Bhatt Member (J)

Shri R. V. Sampat for the applicant.

Shri J. D. Ajmera for the respondents.

1. This application under section 19 of the Administrative Tribunal Act 1985, is filed by the Applicant, Casual labourer, who was working in Telecom District Engineer (T.D.E) Officer, seeking the relief that the order of his termination dated 31-1-1990, be declared null void and inoperative against him

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and has also prayed that the respondents be directed to include his name in the list of Casual Labourers recruited prior to 31st March 1985, according to seniority and the applicant should be absorbed as per his seniority.

2. It is the case of the applicant that he was serving as Casual Majdoor in the office of the SDOT at Porbandar since February 1983 and he had completed more than one thousand working days on muster of Casual Labourer. It is alleged that at the time of this application, he was posted at Adityana Telephone Exchange as Casual Majdoor. It is also his case that in the Gradation list of Casual labourers his name was not found which was issued by the T.D. E Junagadh though it was shown in the list which was prepared by the SDOT Porbandar Office vide letter 3rd July 1986 and the respondents did not include his name inspite of his representation (Annexure A-1), dated 23rd August, 1989. It is alleged that the order of oral termination be quashed and he should be reinstated and that he should be absorbed in service as per his seniority.

3. The respondents have filed reply contending that the applicant was discontinued on 30th January 1990, since he was not considered as appropriate candidate, his name was also not included in the Gradation List of Casual labourers as per Departmental Rules as there was a break in his engagement for a considerable period of

more than two years i.e. from December 1985 to May 1988. It is contended that the applicant was given re-engagement with effect from 1st March, 1990, as per the interim order of this Tribunal. It is contended that the application be dismissed.

4. The applicant has filed rejoinder reiterating that, his name was shown in the office letter dated 3rd July 1985 as stated in his application, but his name was left out by the T.D.E without hearing him. He states that he was discontinued without any **reasons** or just ground. It is contended that the T.D.E was legally bound to include his name in the Gradation list as he was on muster roll on 31st March 1985.

5. The learned Advocate for the applicant drew our attention to Annexure A-4 which is certificate, given by the SDO Telegraphs, Porbandar, Sub-Division, SDO, Porbandar which shows that the applicant had worked for 304 days from December 1988. Deducting 31 days of December 1988, from this total, it is clear that he has worked for more than 240 days in the calendar year 1989. The question arises whether the respondents can orally terminate the service of the applicant without following the provisions of Section 25 F of the Industrial Disputes Act. In the instant case, the applicant a Casual Majdoor was a workman and the respondent the Telecom Department an industry, and therefore, the provisions of the Industrial Disputes Act will apply. In the instant case, the applicant having worked for 240 days in a year prior to his termination he can be said to be in continuous service prior to his termination, as defined under section 25 B of the Industrial Disputes Act, and therefore,

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his termination without following the provisions of Section 25-F would amount to retrenchment. The oral order of termination was therefore illegal. The termination was illegal as admittedly no notice under Section 25-F or due compensation as envisaged under that section was paid to the applicant before his oral termination. The learned Advocate for the respondents does not dispute the fact that no notice was given, nor any compensation was paid to the applicant before oral termination of his service. Moreover, the contents of the Annexure A-4 have also remained unchallenged. Hence we rely on that document and hold that the oral termination was bad in law. However, the question of reinstatement does not arise because, admittedly the respondents have re-engaged the applicant from 1st March 1990. Therefore, the question would be whether the respondents are bound to pay the arrears of the wages to the applicant from 1st February 1990 to 28th February 1990 i.e., the wages of one month. In view of the fact that the oral termination of the applicant is held illegal, the respondents are bound to pay the back-wages to the applicant of that period, and we allow that prayer.

6. It was next contended by the learned Counsel for the applicant that though the name of the applicant was found in the office letter No. 221/134 dated 3rd July, 1983, referred to in Annexure A-1, his name was not included in the Gradation list dated 3rd March, 1989, though he has worked as Casual labourer since February 1983.

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7. The learned Advocate for the respondents submitted that the name of the applicant was not shown in the Gradation list, dated 3rd May 1989 because of break in his engagement for a considerable length of time from December 1985 to May 1988. He submitted that the applicant had remained absent during this period and as per Departmental instructions the break within a period of six months can only be condoned. The applicant has controverted this contention of respondents by filing rejoinder contending that he is not to be blamed at all for the break which occasioned, because according to him there was neither lethargy on his part nor was he responsible for the said break and he was discontinued without any reasons or just grounds.

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8. The respondents have not produced any documentary evidence to show that any reply was given to the applicant's representation Annexure A-1. Therefore, it can safely be concluded that his grievance as per Annexure A-1 about the inclusion of his name in the gradation list dated 3rd May, 1989, has remained unattended. The learned Advocate for the respondents submitted that the respondents would decide that point according to rules and if the applicant's name is deleted from that gradation list, he would be given an opportunity to be heard on that point. We are satisfied with this submission of the learned Advocate for the respondents because at this stage, we have no sufficient material on record to reach the conclusion whether his absence was voluntary one or not.

9. In this view of the matter, we pass the

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the following order.

O R D E R

9. The oral termination of the applicant's services with effect from 31st January 1990 is quashed and set aside and respondents are directed to pay his wages for the period 1st February 1990 to 28th February 1990 as he is re-engaged from 1st March 1990. The wages for the period of February 1990 be paid to him within two months from the receipt of this order.

10. The respondents are directed to decide the representation Annexure A-1 of the applicant dated 23rd August, 1989, about his grievance of non-inclusion of his name in the Gradation list dated 3rd May 1989 and if the respondent no. 2 is not a competent authority to decide that point, ^{as he} is directed to receive the order on that issue from the competent authority within three months from the receipt of this order. The competent authority if, is not inclined to include the name of the applicant in the Gradation list, an opportunity shall have to be given to the applicant of being heard, before taking such decision. The applicant if has grievance by the ultimate order on that point given by the competent authority, he would be at liberty to approach this Tribunal against the same according to law.

No order as to cost. Application is disposed of.

Renu
(R.C. Bhatt)
Member (J)

N.V. Krishnan
(N.V. Krishnan)
Vice Chairman.