

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

NO
Termination

3

O.A. No. 80 of 1990
T.A. No.

DATE OF DECISION 25-11-1992

Shri M.G. Kaji Petitioner

Shri C.D. Parmar 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 ?

Shri Mohmадhusain Gulamabbas Kaji
Mardvali Street,
Kodinar 362 720
Dist. Amereli

Applicant.

Advocate Shri C.D. Parmar

Versus

1. Union of India
Owing and representing
through :

The Collector,
Customs and Central Excise
Kothi Compound. Rajkot.
2. Deputy Collector, Customs and
Central Excise Collectorate
Centre Point, Karansinhji Road,
Rajkot.
3. Office of the Assistant Collector,
Central Excise, Bhavnagar.
4. The Office of Inspector of Central
Excise, Kodianr 362720

Respondents.

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 80 of 1990

Date : 25-11-1992

Per Hon'ble Shri N.V. Krishnan

Vice Chairman.

The applicant was engaged as a Casual worker by respondent No.3 on compassionate grounds by the letter

3

by the letter dated 9th April 1984 (Annex.A-5) by the third respondent because his father was a Government employee who died in harness on 5th January 1983 as a Sepoy. It is stated that, subsequent to such appointment the applicant passed Std.VIII, which is the eligibility condition for appointment as a Sepoy. He states that for some time he was also appointed as Sepoy but his service was terminated on 31st May 1988 by the impugned order Annexure A-1, issued by the 4th respondent. ^{u/s} It is submitted in the application that applicant is a workman and the respondents' office is an industry and the termination is violative of Section 25-F of the Industrial Disputes Act, 1942 (hereinafter referred to as the I.D.Act, for short). The applicant has, therefore, sought the following reliefs:

- (a). That your Lordship be pleased to declare and hold that the petitioner continues in service and his services cannot be terminated without following the provisions of I.D.Act, Section 25 (F), (G) and (H) and Rule 77 of the Central Rules 1957 and allowing his juniors to continue. The impugned order Annexure A-1, No.G-1/87 dated 31-5-1988 is illegal, inoperative in the eye of law and ab initio void because it is without jurisdiction.
- (b). The termination of service of the petitioner is discriminatory and violative of principles of natural justice and Art.14 and 16 of the Constitution of India.

U

(c). Furthermore, Your Lordships be pleased to order the respondents that the applicant is eligible and entitled to hold the post of Sepoy on compassionate ground, since his father and grandfather had also rendered services in the department. The applicant is fully and senior most among all. The appointed Sepoy Mr. J.K. Rathod only resumed the duty and applicant's services are terminated is of no consequences, nor condition precedent. The applicant is entitled ~~on~~ his own footing."

2. The respondents have filed a reply contending that the office of the Asstt. Collector of Central Excise is not an Industry and that it is in exercise of the sovereign functions of the State that the respondents are discharging their duties. Therefore, the applicant can have no claim under Section 25-F of the I.D. Act. It is stated that the applicant's case for appointment as a sepoy was considered initially but as he did not have the requisite qualification of 8th Class pass, his case was rejected and he was appointed only as a Casual labourer. Subsequently when the applicant obtained the necessary qualification his case was again considered but by that time he was overaged by 6 years 10 months and 11 days. Therefore, another person was selected and to appoint the selected person as sepoy, it was found necessary to terminate the services of the applicant by Annexure A-1 Order.

3. We have heard the parties and perused the records.

4. We are satisfied that the office of Central Excise cannot be considered to be an industry

because the functions performed in this office are the sovereign functions of the State viz. taxation. Therefore, prayer made relying on Section 25-F of the I.D. Act is baseless and is rejected.

5. Admittedly, the applicant was engaged as a casual labourer on compassionate grounds. Compassionate employment is always made by relaxation of rules, particularly regarding age of entry in service, etc. The applicant, as a casual labourer, is entitled to be considered for regularisation in Group D post and the post of Sepoy is one such Group D post. The applicant has been engaged as a casual labourer deliberately on compassionate grounds. He cannot now be barred from appointment to the Group D post of Sepoy on the only ground that he is overaged, because his compassionate engagement as casual labourer was in relaxation of the rule, particularly regarding age. Such a casual labourer cannot be kept out of consideration for ~~regularisation~~ regularisation on account of his excess age.

6. In this view of the matter, as well as the fact that the applicant had rendered about four years of continuous service as casual labourer, the respondents are bound to consider him for regularisation in group D post, notwithstanding his age.

7. Therefore, we allow this Application partly and direct the 1st respondent to consider the case of

✓

the applicant for regularisation in the next Group D vacancy that may arise, in preference to all other candidates and issue suitable orders in accordance with law, keeping in view the observations made by us in this judgment.

8. Application is accordingly disposed of.

Neru
(R.C.Bhatt)

Member (J)

Chairman
28/11/92
(N.V.Krishnan)
Vice Chairman

*AS