

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

WY

R.A. NO. 21 OF 1992 in

O.A. No. 42 OF 1991

~~REXXND.~~

DATE OF DECISION 18-6-1992

The Union of India and ors. **Petitioner**

Mr.Akil Kureshi **Advocate for the Petitioner(s)**

Versus

Hemabhai D. Bhatia **Respondent**

Mr.K.C.Bhatt **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. M.Y.Pirolkar : Member (A)

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 ?

1. The Union of India
(Through the Director General,
Department of Posts,
Ministry of Communications,
New Delhi.)
2. The Chief Postmaster General,
Gujarat Circle,
Ahmedabad - 9.
3. The Superintendent of Post Offices,
Banaskantha Division,
Palanpur - 385 002.
4. The Assistant Superintendent of Post
Offices, Palanpur Sub-Division,
Palanpur - 385 002.

...Applicants

(Original
Respondents).

Versus

Hemabhai Danabhai Bhatia,
Ex.E.D.D.A.
Chamarwas,
Chhapi - 385 210.

...Respondent.

(Original
Applicant).

Decision by circulation :

R.A. NO. 21 OF 1992

in

O.A. NO. 42 OF 1991.

Date : 18-6-92.

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

The original respondents of O.A.NO.
42 OF 1991, who are applicants in this Review
Application have filed this application for review
under Rule-17 of the Central Administrative
Tribunal (Procedure) Rules 1987, for review of
the Judgment given in O.A./42/91, on 28th February,
1992.

2. The applicants have mentioned in this Review Application that the point regarding violation of the provisions of the Section-25-F, of the Industrial Disputes Act, was never raised by the original applicant in the O.A. or in his rejoinder and therefore, the said point was not available to the original applicant and the same therefore, ought not to have been considered by the Tribunal. This is not a new point raised by these applicants but the learned advocate who appeared for the applicants i.e., the original respondents had submitted at the time of arguments in O.A. that the applicant had not applied in the O.A. that he should be given benefits of Industrial Disputes Act, and we have observed in the Judgment that the applicant had not applied in the original application accordingly, but he had challenged the impugned order of termination of his service as illegal, bad in law etc., and for the reasons mentioned in para-9 of the Judgment, we have held that the submission of learned advocate for the respondents that the applicant could not get advantage of the Industrial Disputes Act as he had not relied on his provision in his application could not sustain. We have also referred to the decisions of the other Tribunal on the point of applicability of the Industrial Disputes Act to the ^{original} applicant.

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Therefore, we do not entertain this objection in Review Application and the same objection is rejected. The applicants have also averred in the Review Application that the question of application of Section-25-F of the Industrial Disputes Act 1947 is one of mixed question of facts and law and without any pleading on the same point, the same should not have been considered by the Tribunal. For the reasons given in para-9 of the Judgment in O.A. and for the reasons given in para-11, of the said judgment, We have held that the provisions of Industrial Disputes Act, would apply to the applicant as he would be a 'workman' as defined in the Industrial Disputes Act. The applicant had produced Annexure-A/2, the certificate of the Sub-postmaster, Chhapi, that he worked as E.D.A., Chhapi, from November, 11, 1988 to 11th July, 1990. In para-11, we have held that we are satisfied that the applicant worked for more than a year, meaning thereby that he had worked for more than 240 days in a year prior to his termination as appears from the certificate produced by the applicant at Annexure-A/2, and the respondents could not terminate his service without following the provisions of Industrial Disputes Act, as it amounts to retrenchment. Therefore again this point could not be taken in review application, because the decision is given on

facts of the case and after considering the relevant decision on the point. Therefore, the objection of the applicants that the point about applicability of Section-25-F, of Industrial Disputes Act, should have been not ~~not~~ considered by the Tribunal, is rejected.

3. The other objection taken in this review application by the applicants is that the Section-25-F, of Industrial Disputes Act, has no application because there was no material on record to establish that the original applicant was workman and had completed 240 days in the preceding year and secondly Section-2 (o.o.) (b.b.) of the said Act also make Section-25-F inapplicable to such cases. So far the first part of the objection regarding ^{non} completion of 240 days is concerned, we have on the strength of the certificate Annexure-A/2 of the Sub-Post Master, Chhapi, held that the applicant had worked for more than 240 days in a year prior to his termination. The said certificate Annexure-A/2, was not challenged by the original respondents. On the strength of the decisions relied by the learned advocate for the original applicant and reproduced at para-9, and 11 of the Judgment, we have held that the original applicant was a workman as defined in the Industrial Disputes Act. Therefore, the said decision is on merits and again ^{same point} ~~not~~ could not be reagitated in review.

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application.

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4. So far the other part of the objection about the non-applicability of Section-25-F, of the Industrial Disputes Act, is concerned, the applicants have averred in the review application that the services of the original applicant was purely ad hoc and temporary and it was a stop gap arrangement. The applicants have mentioned in this review application that it was clearly understood by the original applicant that as soon as the regular appointees through proper channel would be available, his services will be liable to be terminated without any notice. It is contended that the provisions of Section -2 (oo) (bb), of the Industrial Disputes Act, would necessarily be require material to be produced on record which an opportunity was not available to the original respondents and there is an error on the face of the record. We have already discussed in the Judgment that the respondents in the reply had contended that one Shri P.I. Barot, E.D.A. ^{an} *EDRANA* Branch Office, Head Quarter at Chhapi, was on leave from 11th November, 1988 and the appointment of the original applicant was a stop gap arrangement. We have held that the original applicant worked as substitute to one Shri P.R. Barot, from 11th November to 26th March, 1989.

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up to which time Mr. Barot had taken leave but after the resignation of Mr. Barot from the post dated 26th March, 1989, the original applicant was working vice Shri Barot and was continued by S.P.M.Chhapi, till the regular impugned order was passed. The respondents had produced at Annexure-R/2, the order of acceptance of resignation of Mr. Barot with immediate effect from 30th June, 1989. We therefore, held that the position of the applicant with effect from 30th June, 1989, would not remain that of substitute, because, from 30th June, 1989, Mr. Barot was no more a EDA and in his clear vacancy the applicant continued as EDA, thereafter from 30th June, 1989, till 11th July, 1990. We therefore, held in para-6 of the Judgment that it can hardly be said that this continuation as EDA of the original applicant was stop gap arrangement, and we have held that he continued as E.D.A. We, therefore, considering the factual position ultimately held that the termination of the original applicant was in violation of Section-25-F, of the Industrial Disputes Act, In the instant case, Section-2 (oo) (bb), would not apply because the termination of the original applicant was not as a result of non renewal of the contract of the employment between the original respondents and the applicant on its expiry or of such contract alleged

being terminated under the stipulation in that behalf contained therein. We have rejected the contention of the respondents that the applicant had continued as a substitute and we have held that he continued as E.D.A. after P.I. Barot, gave resignation, on 27th March, 1989, which was accepted with immediate effect from 30th June, 1989. In the instant case, the documents - Annexure-2 and 3, produced by the respondents show that the applicant worked as substitute of Shri P.R. Barot from 11th November, 1988 to 26th March, 1989, but his position with effect from 30th June, 1989 to 11th July, 1990, when he was working as E.D.A. in clear vacancy would not amount to stop gap arrangement, nor there is any question of - applicability of the contract, in this case as envisaged under Section-2 (oo) (bb). Therefore, we reject the objection of the original respondents that Section-2 (oo) (bb) of the Industrial Disputes Act, would be applicable, which requires material on record to be produced and much opportunity was not available to them. We had sufficient material before us to come to the conclusion with the original applicants' services could not have been terminated in violation of Article-25-F, of the Act. We are not satisfied

that there is any error apparent on record as
alleged. Having considered all the objections
raised in the review application, we find that
none of the ingredients of order XLVII Rule-1,
of the Civil Procedure Code are attracted in
this case to review our judgment. Hence the
review application is rejected.

M.Y. Patolkar
(M.Y. Patolkar)
Member (A)

R.C.Bhatt
(R.C.Bhatt)
Member (J)
18/6/92

AIT

C.A. 45/92

in

O.A. 42/91

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Date	Office Report	ORDER
(13) 19.10.92	<p>Reug. Sub Amendment to C.A. 42/91</p> <p>POD 9/11/92 30.</p>	<p>Mr. K.C. Bhatt for the applicant in the C.A. The C.A. is to be filed in accordance with the provisions of the Contempt of Court (C A T Rules, 1992) which has come into force from 8th Sept. 1992, the date of publication ⁱⁿ of the Gazette. The learned counsel seeks time to amend the application to bring it a confirmity with the requirement of this rules. He however prays, in view of the urgency notice may be issued to the respondents in respect of the present application, subject to the condition, a copy of the application be sent to the returnable on 25.11.92 respondents. The amendment should be carried out within two weeks. List again on 11th November, 1992. Reply by 25th November, 1992.</p> <p><u>per</u> (R.C.Bhatt) Member (J)</p> <p><u>per</u> (N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>

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M.A. 349/92 in O.A. 42/91

Date	Office Report	ORDER
2-11-1992		<p>List on 25-11-1992.</p> <p><u>ne</u> (R.C.Bhatt) Member (J)</p> <p><u>kr</u> (N.V.Krishnan) Vice Chairman.</p> <p>*AS. XXXX</p>
(7) 25.11.92		<p>Present: Mr. Akil Kureshi, Adv/Apt. Mr. K.C. Bhatt, Adv/Res.</p> <p>Mr. Akil Kureshi for the applicant in M.A. 349/92, which was filed by the original respondents. Mr. K.C. Bhatt for the original applicant. Call on 7th December, 1992.</p> <p><u>ne</u> (R.C.Bhatt) Member (J)</p> <p><u>kr</u> (N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>

C.A. 45/92

in
O.A. 42/91 /x1992

Date	Office Report	ORDER
(23) 11.11.92	<i>Reb. Sub. the notice relevant on 23/11/92 already in Nov 4/1 3/11/92 16/11/92</i>	<p>Present : Mr. K.C. Bhatt, Adv/Apt.</p> <p>The amendment in the application has been carried out as directed earlier. Issue notice to the respondents returnable on 25-11-92.</p> <p><i>Q</i></p> <p>(N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>
(15) 25-11-92		<p>Present: Mr. K.C. Bhatt, Adv/Apt. Mr. Akil Kureshi, Adv/Res.</p> <p>Mr. Akil Kureshi submits that the order has been complied with and he will make a statement in this regard in filing a reply within two weeks. Call on 17th December, 1992.</p> <p><i>U</i></p> <p><i>M</i> (R.C.Bhatt) Member (J)</p> <p>(N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>

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TE	OFFICE REPORT	ORDERS.
.12.92		Mr.K.C.Bhatt for the applicant.
26		?Mr.Akil Kureshi for the respondents. At the request of the parties, call on
	16.12.1992.	
		(R.C.BHATT)
		(N.V.KRISHNAN)
	MEMBER (J)	VICE CHAIRMAN
		*SS
16.12.92		Mr.K.C.Bhatt for the applicant.
18		Mr.Akil Kureshi for the respondents.
		The respondents have filed an affidavit reply today. A copy has been served on the applicant. The affidavit states that the original order, ^{is} complied with and in view of the submission learned counsel for the applicant states that the application may be closed.
		2. In view of the written submission and made that the Contempt Application is closed and the notice issued is discharged.
		(R.C.BHATT)
		(N.V.KRISHNAN)
	MEMBER (J)	VICE CHAIRMAN
		*SS

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DATE	OFFICE REPORT	ORDERS.
7.12.92 21		<p>Mr.K.C.Bhatt for the applicant.</p> <p>Mr.Akil Kureshi for the respondents.</p> <p>Shri Akil Kureshi xx who have filed notes for the M.A. is enforcement M.A./349/92. In the present case, the M.A. is do not want. Hence, the M.A. is dismissed.</p> <p> (R.C.BHATT) MEMBER (J)</p> <p> (N.V.KRISHNAN) VICE CHAIRMAN</p> <p>*SS</p>