CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 60/91

T.A. NO.

DATE OF DECISION 20-7-94

Mr. H.S. Gohil — Petitioner

Mr. M.A. Kadri — 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. K. Ramamoorthy — Member (A)

The Hon'ble Dr. R.K. Saxena — 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 ? No.
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Hashmukhbahi Somabhai Gohil
Rainwada Vankarvas, Ambli Falia
Dholka, Dist. Ahmedabad. Applicant

Advocate Mr. M.A. Kadri

Versus

1. Union of India
Notice may be served through
the Secretary Ministry of
Communications Sansad Bhavan
Sachivalaya, New Delhi

2. General Manager, Telephones
Gujarat Circle, Ahmedabad.

3. Sub Divisional Officer,
Dholka Sub Division (Telephones)
Dholka. Respondents.

Advocate Mr. Akil Kureshi

JUDGMENT

In

O.A. 60 of 1991

Date: 20-7-94

Per Hon'ble Dr. R.K. Saxena Member (J)

The applicant Shri Hasmukh Somabhai Gohil came to the Tribunal with the facts that he was appointed as Casual Labourer on 1-12-1983 with the respondent No.3. He continuously worked upto 31-5-1984 and completed continuous service of 120 days. He was serving deligently but the resp[illegible]t No.3, discharged him from the service by an oral

He was again taken on duty on 1-8-1986, on the basis of the medical certificate and continued upto 31-8-1986 when he was again orally discharged. The respondent No.3 took the applicant on 1-10-1986 and allowed to work till 30-4-1987 and on that date i.e. 30-4-1987, his services were terminated by an oral order. He was again taken on work on 1-6-1987 and he worked till 31-8-1987 when he was again discharged from service. On 1-9-1988 he was allowed to resume duties and continued to dischrage duties till 30-9-1988. Again he was taken on work on 1-11-1988 and continued discharging his duties till 6-7-1989. In this way, the respondent no.3, deliberately brought breaks in the service of the applicant. The reason given by the applicant is that the respondent No.3 whose tiffin used to be brought for lunch from (the house of the respondent no.3) his house fell down and this fact had given cause for oral termination of the services of the applicant on 7-4-1989. The contention of the applicant that during this period he worked under the respondents for more than 240 days and yet his services were terminated on the sweet will of the respondent no.3. Not only this, the persons whose names are given in para 4 (i) of the application were junior to the appplicant but those juniors were allowed to continue in the servicee whereas the applicant was driven out of job. The applicant also averred that he was entitled to all the benefits under the Industrial Disputes Act, 1947. The respondent No.3 deliberately violated the provisions of section 25 F and 29 of the Industrial Disputes Act by neither giving any notice nor paying him any compensation, before

termination of service. It is also stated that the Ministry of Personnel, Public Grievances being department of Government of India, had issued an order dated 7-6-1988 to prepare a seniority list of such casual labourers but no compliance was made. It is also averred that if the applicant had continued in service, he would have been confirmed by now. On these grounds the relief sought is that the respondents in general and respondent No.3, in particular be directed to take the applicant on duty, the order of oral discharge or termination of the service of the applicant be quashed, and the breaks in service be ignored and the period so spent be treated as period on duty.

3. The respondents through counter-affidavit filed by Shri S.C. Tiwari, contested the case on the grounds that the applicant was engaged as daily wager for specific work and after the completion of the said work, he was relieved. Since he was engaged for specific work, neither the order of his being engaged nor relieving orders were given in writing. It is, therefore, contended that the applicant had not been engaged for a continuous period and he had completed only 120 days upto 31-5-1984. He was no doubt engaged on 1-8-1986 again but he was engaged only for 14 days. Similarly it is averred that the applicant was again engaged and he worked from 1-10-1986 to 30-4-1987 but he was relieved soon after the work was over. The contention of the respondents is also to the effect that the applicant had never worked against permanent

vacancy and had not completed the period of 240 days. As such there was no question of giving any notice or compensation under the provisions of the I.D. Act 1947. As regards temporary status being given to some labourers and being denied to the applicant, it was pointed out that the applicant did not fulfil necessary condidtions which were laid down by the Hon'ble Supreme Court and therefore, the applicant was not entitled for any benefits.

3. In reply to this counter, the applicant filed rejoinder and it was stressed therein that the Telecommunication Department is an Industry where the applicant had worked in permanent cadre and the provisions of the said Act when his services weree terminated without observing the procedure given thereunder, were attracted.

4. We have heard the learned counsel for the applicant and the respondents. The main question in this case is as to whether the applicant was a Casual Labourer and what was the period of his work with the respondents. It is also to be ascertained whether he had worked for 240 days and if so whether the termination of the services of the applicant without following the procedure, was legal. The applicant also sought protection provided under the Industrial Disputes Act. The averments whch are made either by the applicant or by the respondents lead to no definite conclusion. As a matter of fact, it requires evidence to judge whether the applicant had worked,

for more than 240 days. The respondents have brought four Registers starting from June 1982 to June 1987 to verify the factum of the days of work of the applicant. Mere perusal of these Registers will not be sufficient to arrive at a particular conclusion because it is also necessary to find out whether these entries are correct and believable. This work can be done and should be done only by the agencies which are mentioned under the Industrial Disputes Act.

5. This Tribunal has taken view in the case of Nanbha and Jasraj Vs. Union of India decided on 14-7-1994 that whenever there is dispute of facts, the best scrutiny can be done only by the Industrial Tribunal or the Labour Court. Both the parties shall be at liberty to adduce evidence and to cross-examine the witnesses appearing in support of a particular fact. This kind of exercise is not possible before this Tribunal which is exercising the powers of the High Court under Article 226 or 227 of the Constitution. Considering all these points in detail, this Tribunal in the case of Nanbha & Jasraj Vs. Union of India (supra) held that the applicant should approach the Industrial Tribunal or the Labour Court. The same situation is obtainable in this case also. There is basic difference between the parties about the status of the applicant. It has been categorically stated by the respondents that the applicant was daily rated labourer and was engaged for

a particular period which taken together does not touch the limit of 240 days. It is also pointed out that the applicant was not engaged as permanent employee and his position was that of purely daily wager like seasonal worker. This fact is also to be ascertained The distinction has also been made by the Hon'ble Supreme Court in the case of Maharashtra State Co-operative Cotton Growers Marketting Federation Ltd. Vs. Maharashtra State Go-opeartive Cotton Growers Marketting Federation Employees Union and another 1994 Lab I.C. 959 between the workmen employed on the side of perenial employees and a seasonal employees and has held that the benefit of 240 days is not applicable to the seasonal workers. It, therefore, becomes all the more necessary that deeper scrutiny of all these facts may be made for which the Industrial Tribunal or the Labour Court is the only forum. The applicant should approach the said forum according to the provisions of the Industrial Disputes Act. The application, is, therefore, rejected. No order as to costs.

(Dr. R.K. Saxena)
Member (J)

(K. Ramamoorthy)
Member (A)

*AS.