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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 134/92
T.A. NO.

DATE OF DECISION 09-8-94

Mr. Maheskumar Nathalal Vyas **Petitioner**

Mr. P.H. Pathak **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 ?
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 ?

} NO

(10)

Mahesh Kumar Nalkhal Vyas
Vishant Bhavan,
Kangolpuri, Majurgaon,
Ahmedabad.

Applicant

vs.

1. Chief Postmaster General,
Gujarat Circle, Navrangpura,
Ahmedabad.
2. Postmaster,
ST. Stand Main Exchange,
Behrampura, Ahmedabad.

Respondents.

For Applicant - Sri P.H. Palkak, Advocate,
For Respondents - Sri Akil Kureshi, Advocate.

JUDGMENT

IN

O. A. 134192

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

Dated 09-8-94

The applicant Sri Mahesh Kumar Nalkhal Vyas has challenged the order dated 18.6.1991 about the termination of his services. The case of the applicant is that he was working as extra departmental agent under the respondents since 1.4.1990 in the permanent vacant post. There was no complaint against him and he was discharging his duties satisfactorily yet the respondents terminated his services vide order dated 18.6.1991 without giving any notice and following the procedure under Section 25 F of Industrial Disputes Act. Thus the order of termination was ex-facie illegal. This order was passed with ulterior motive of accommodating Sri M.V. Gasoda. Hence the prayer for

questionment of impugned ^{order} is made!!

The contention of the respondents is that that the applicant was engaged as an outsider to work as an extra-departmental mail carrier because the regular person was absent or non-
available. It is also averred that neither the applicant was a regular appointee nor was any order of appointment issued. It is, however, admitted that the service rendered by the applicant is as under:

- i) From 6.4.90 to 12.4.90 vice Sri B.T. Brahmanna (absent)
- ii) " 16.4.90 to 23.4.90 " " R.M. Kundery "
- iii) " 2.5.90 to 7.5.90 " " H.D. Makwana "
- iv) " 10.5.90 to 30.5.90 _____
- v) " 3.10.90 to 4.10.90 _____
- vi) " 3.11.90 to 26.12.90 _____
- vii) " 1.1.91 to 28.1.91 " " H.D. Makwana "
- viii) " 29.1.91 to 30.1.91 _____
- ix) " 9.2.91 to 27.3.91 _____
- x) " 1.4.91 to 17.6.91 _____

The respondents also urged that the mere fact that the applicant worked satisfactorily, did not confer any right for regular appointment. The procedure for regular appointment is given and through that procedure was selected Sri M.V. Garoda, and on his joining, the applicant was relieved.

In the rejoinder, the applicant challenged the contention of the respondents. It is averred that the respondents have knowingly shown break in service while he continuously worked and he ought to have been considered for regular absorption.

We have heard the learned counsel for the applicant and the respondents and have perused the versions of the parties.

In the case, point raised is that since the applicant had worked for more than 240 days, the procedure given under section 25 F of Industrial Disputes Act ought to have been followed. The respondents gave the chart of working days ~~and~~ reproduced above but it is also argued that the postal department being not an industry, the provisions of the Industrial Disputes Act, were not applicable. This Tribunal in more than one cases has held that the postal department falls within the definition of an industry. Thus the argument that the department of the respondent is not an industry, carries no weight.

So far as the number of working days are concerned, there is controversy between the parties. The applicant contends that he continuously worked from 1.4.90 to 18.6.91 whereas the chart given by the respondents shows 68 working days in 1990 and 156 days in the year 1991. The chart does not show any ground of engagement of the applicant for the period from (iv) to (vi) and from (viii) to (x) above. In case, the applicant was engaged for the reason that some regular employee was on leave, the employment of the applicant should have ceased from the date when regular employee returned from leave.

In the period from (iv) to (vi) and from (viii) to (x), no regular employee is shown to have gone on leave, yet the applicant

was engaged. It reinforces the contention of the applicant that he worked continuously. Whenever there is dispute about the number of working days between the parties, the cases are not entertained by this Tribunal because in that assessment, the jurisdiction lies with the Industrial Tribunal or the Labour Court. In the present case, we did not find such a dispute.

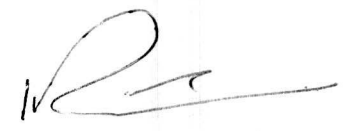
Looking to the working days from the angle we have discussed above, we come to a conclusion that the applicant worked for more than 240 days with the department of the respondents which is an industry. Consequently the provision of 25 F of Industrial Disputes Act become applicable. There is no dispute that the procedure as given thereunder for retrenchment, has not been followed. Every termination of service which is not caused by exceptions, is retrenchment, and if retrenchment is not done according to the procedure under Sec. 25 F of the Act, it is illegal.

The case of the applicant in the main application was that the order of termination being illegal, be quashed but in the rejoinder, the issue of absorption

on the completion of 240 days, has^u also been raised. The provision under Section 25 F of Industrial Disputes Act is confined to adoption of prescribed procedure if a workman who has completed 240 days, is to be retrenched. The completion of 240 days work does not, under that law import the right to regularisation. This view was taken by Supreme Court in *Madhyamik Shiksha Parishad U.P. vs Anil Kumar Mishra and others* 1994 Lab. I.C. 1197. The result, therefore, is that the plea of the applicant about absorption is not tenable. On the quashment of termination order, the status ante shall be restored and the respondents shall be at liberty to proceed with according to law.

The above discussion leads to the conclusion that the impugned order of termination of service of the applicant being illegal, is quashed and the status ante of the applicant is restored. The application is disposed of accordingly.


(Dr. R. K. Saxena)


(K. Rammoorthy)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 04134/92 of 19

Transfer Application No. _____ Old W. Pett. No

CERTIFICATE

Certified that no further action is required to be
taken and the case is fit for consignment to the
Record Room (Deceased)

Dated : 27.09.94

Countersigned :

cecelaf
Signature of the Dealing
Assistant

Section Officer/Court officer