

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 247 OF 1992

Text No.

DATE OF DECISION 24-6-1994

Bharat Punjalal Parmar, **Petitioner**

Mr. P.T. Jasani, **Advocate for the Petitioner (s)**

Versus

Union of India & Ors. **Respondents**

Mr. Akib Kureshi **Advocate for the Respondent (s)**

CORAM

The Hon'ble Mr. K. Ramamoorthy, Admn. Member.

The Hon'ble ~~Mr.~~ Dr. R.K. Saxena, Judicial Member.

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 ?

Bharat Punjalal Parmar,
aged about 25 yrs, Hindu,
Occupation : Service,
Resi. at P & T Colony,
Block No.3, Quarter No.C/24,
Satellite Road,
Jodhpur Char Rasta,
Ahmedabad.

..... Applicant.

Versus.

1. Union of India
through, Chief Post Master General,
Gujarat Circle,
Opp. Cama Hotel,
Khanpur, Ahmedabad.

2. Chief Post Master General,
G.P.O., Ahmedabad.

3. Senior Superintendent of
Post Offices,
Ahmedabad City Division,
General Post Office,
Ahmedabad.

4. The Director of Postal Services,
Office of the C.P.M.G.,
Opp. Cama Hotel,
Khanpur, Ahmedabad.

..... Respondents.

Advocates: Mr. P.T. Jasani for the applicant.

Mr. Akil Kureshi for the respondents.

J U D G M E N T

O.A.No. 247 OF 1992

Date: 24-6-1994.

Per: Hon'ble Dr. R.K.Saxena, Judicial Member.

The applicant, Shri Bharat Punjalal Parmar,
has filed this application with prayer that the
order of reinstatement be passed because the
respondent No.3, Senior Superintendent of Post Offices
has not allowed the applicant to work from 10-3-92.
Besides the reinstatement, the applicant also claimed
for back wages.

..... 3/-

2. Brief facts of the case are that Shri B.P. Parmar was appointed on 1-2-1989 as an outsider Postman, General Post Office, City circle, Ahmedabad. Since then he had been working ^h sincerely and without any complaint to any person. He also worked even during the period of communal riots in sensitive areas. The respondents did not dispute the appointment of the applicant as an outsider postman. The only point which has been stressed in the counter-affidavit is that the applicant was appointed and working in leave vacancies and other vacancies, but he was never recruited as a regular employee nor was appointed as a regular postman. It is further averred that the ^{a/} appointment of the applicant was ^h short-gap arrangement. It has come in the application as well as in the counter-affidavit that a complaint was made against three postmen of Beat No.30 and the applicant was also one of them. The complaint was that the Postmen of Beat No.30 had been collecting money from public in the name of Diwali Boni and sometimes the residents ^f of the locality of Beat No.30 were put to inconvenience by not delivering their mail till the Diwali boni was given to them. It was also alleged in the said complaint that one Shri Shantilal, who was a regularly appointed Postman of Beat No.30 had been

demanding the amounts ranging from Rs. 21/-, 51/- to 101/- as Diwali boni. Other Postmen also followed the suit. This complaint was investigated and the allegations were found true. According to the applicant, Shri S.B. Parmar, ASP, Vigilance obtained a confessional statement of the applicant under duress in which there was admission about the collection of illegal money from the public. On the basis of this confessional statement, the services of the applicant were terminated. The respondents did not bring on record any such order of termination, but it was mentioned in the counter-affidavit that the applicant was relieved from service. On the other hand, the applicant contends that he was not allowed to discharge his duties from 10.3.92. He preferred an appeal to the Director of Post Offices but with no success. He, therefore, came to Tribunal with the prayer disclosed above.

3. The admitted facts in this way are that the applicant was working as an outsider postman and he was removed from service after he had worked for about 750 days, without giving any charge-sheet or holding a departmental enquiry. The opportunity of defending himself was also not afforded on the ground

that the applicant had made a confessional statement before Shri S.B.Parmar. The learned counsel for the respondents argued that there was no necessity to hold a departmental enquiry because the applicant was not an employee of the department but was only an outsider postman and he had made a confessional statement.

4. Before we deal with the question whether the departmental enquiry before removal from service was necessary or not, we would like to find out as to how the appointment of the applicant was made and what was his status while working as outsider postman in the department. The service rules for Extra Departmental Staff have been framed and they are called "The posts and Telegraphs Extra Departmental Agents (Conduct and service) Rules, 1964". These rules deal with large category of employees who have been designated as Extra Departmental delivery agents. This delivery agent has been equated ^{with} / the regular post of postman by SAVOOR Committee which was constituted to look into the system of Extra Departmental Agents — which was in vogue right from 1854 and to suggest improvements in their conditions ^{the} service/or their merger with ^A regular post. At present we are not concerned with the history of this service. However, this Posts and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964 deal with all

aspects of service containing elaborate provisions controlling the appointment, leave, termination of service nature of penalties, procedure for imposing penalties and other matters relating to the conduct and service of those extra departmental agents. There is a Schedule annexed to the rules, naming the appointing authority in respect of each category of employees. It, therefore, emerges that besides regular employees of the post and telegraph department, there is another category of Extra Departmental Agents which is governed by these rules. The contention of the learned counsel for the respondents, ^{is} that the applicant was not covered even by these Extra Departmental Agents Rules but at the same time — third category of the employees could not be shown. The applicant has, however, averred in the application that he was a daily-wager. Such daily wagers may be in some of the Government Departments as well as in the industries. The learned counsel for the respondents does not admit that Post & Telegraph Department is an 'Industry' and thus the category of daily-wager who may be called a 'workman' is not applicable ^{in this case} according to him. In the cases S.N.Patel V/s. Union of India & Ors. and Rafiq Saiyed V/s. Union of India & Ors., decided by Division Bench of this Tribunal on 12-5-94

and 10-6-1994 in which one of us was the Member, held the view that Post office is an 'Industry'. This view was based on the decision of Calcutta Bench of CAT in Ashok Kumar Sinha V/s. Union of India & Ors., 1989 Lab. IC 670 and Ahmedabad Bench in the case M.A.Bukhari V/s. Union of India & Ors. ATR 1989(1) CAT 162. The learned counsel for the respondents again argued that Post Offices is not an Industry, but no case law on the point was shown to us. While trying to find out the meaning of Civil Post, we came across the decision of the Supreme Court in the case Supdnt. of Post Offices, V/s. P.K. Rajamma & other cases decided by common judgment in AIR 1977 SC 1677 in which the status of the Extra Departmental Agents of the Posts and Telegraphs Department was considered by the Supreme Court and it was held that the Extra Departmental Agents held civil posts and could not be removed from service without complying with Article 311(2) of the Constitution. What is civil post, was again considered in another case, State of Assam & Ors. V/s. Kanak Chandra Dutta, AIR 1967 SC 884, it was held :

"There is no formal definition of "post" and 'civil post'. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a



post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Art.311. In Art.311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Arts.309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of the relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of ~~the~~ his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

Thus it is clear that the regular employees and Extra Departmental Agents of the Posts & Telegraphs Department holding civil posts and the protection of Article 311 of the Constitution is available to them.

5. The learned counsel for the respondents, as is already observed, could not show that there was any provision for third category of employees other than

regular and Extra Departmental Agents as enumerated above.

What has been urged by him is that he was an outsider and was engaged to discharge the functions of a postman in leave vacancies and other vacancies. Thus in his view, the applicant was other than Extra Departmental Agent. We will have to see whether the applicant may be placed or not in the category of Extra Departmental Agent. The rules of Extra Departmental Agents also deal with the method of recruitments and it is not in dispute that the applicant was not appointed through the procedure as was given in these rules. The question therefore, arises as to whether the applicant should be deemed to have been appointed as Extra Departmental Agent. In a case Rishal Singh V/s. State of Haryana, JT 1994(2) SC 157., the point of adhoc promotion was for consideration before the Supreme Court. In that case the Deputy Inspector General of Police had promoted a Constable temporarily as Head Constable on anexisting vacancy and it was stated that he could be reverted at any time. Their Lordships of the Supreme Court formed the view that temporary and adhoc promotion could be permissible on administrative exigencies but such power of temporary or adhoc promotion being made, must be traceable to statutory force of power or instructions having force of law. In the absence of it, the conclusion derived was that the promotion of the Constable on the post of head constable was on regular basis. The analogy of this case — may not be applicable in the present case

because in the case of Rishal Singh, he was holding a substantive post of Constable and was promoted on adhoc or temporary basis. Here the applicant was ~~not~~ holding any substantive post because he was not selected or appointed against any substantive vacancy. In such a situation when a person is not appointed on regular basis or through the procedure prescribed under Extra Departmental Agencies Rules, he was not held entitled to the protection of Article 311 in the case *A Shantakumari V/s. Regional Director of Postal Service, A.P. & Ors. 1982(2) SLJ 173(A.P.)*. In this way, what emerges is that the applicant who was not appointed according to the procedure laid down under Extra Departmental Agencies Rules, cannot be deemed to be holding a civil post. But there is no dispute that he was working in the Department as Postman and according to the applicant, he had worked for 750 days and this fact was not controverted by the respondents. In this situation when it was already held that Post and Telegraph Department is an 'Industry', the applicant can definitely be given the status of a workman. If a workman has completed 240 days, he cannot be removed without the procedure, as prescribed, *being followed*. In this connection, we may look into the provisions of Industrial Employment (Standing Orders) Act, 1946 (hereinafter called 'Act') which deal with the uniform

Standing Orders providing for the matters enumerated in the Schedule to the Act. The "Standing Orders" has been defined under section 2(g) to mean Rules relating to matter set out in the Schedule. The Schedule deals with 11 categories of matters and of them matters relating to termination of employment and the notice thereof to be given by the employer and workman and suspension or dismissal for misconduct and acts or omission which constitute misconduct are specified at Sr.No. 8 & 9. The scheme of the Act appears to be that the rules regarding the matters enumerated in the Schedule shall be prepared on the basis of the Model Standing Orders and get them certified. So long as Standing Orders are not finally certified, the provision of application of Model Standing Orders was made under section 12(A). It is, therefore, presumed that various industries must have got Standing Orders certified. If independent rules are framed by any industry or a Government department which is held to be industry, they shall be applicable under section 13(A) of the Act in place of certified standing orders or Model Standing Orders.

6. The Industrial Employment (Standing Orders) Central Rules, 1946, were framed by the Central Govt. in exercise of the powers conferred under section 15 read with clause (b) of Section 2 of the Act.

Schedule-I is given after the Rules and the Clauses 13 and 14 of this Schedule-I deal with termination of employment and disciplinary action for misconduct respectively. Clause 14 is exhaustive in the manner that the way in which a charge sheet is to be given to a workman, is indicated in Sub clause (2) and the procedure of disciplinary proceedings is given in Sub-clause (4). In this connection particular reference of sub-clauses 14(b)(a), 2(c) may be had. It is reproduced below:

"14a(b) A workman who is placed under suspension shall be paid subsistence allowance in accordance with the provisions of Section 10-A of the Act.)

15(ba) In the inquiry, the workman shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member.

(bb) The proceedings of the inquiry shall be recorded in Hindi or in English or in the language of the State where the industrial establishment is located, whichever is preferred by the workman.

(bc) The proceedings of the inquiry shall be completed within a period of three months:

Provided that the period of three months may, for reasons to be recorded in writing, be extended by such further period as may be deemed necessary by the inquiry officer.)

(c) If on the conclusion of the inquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly."

7. The **perusal** of this procedure makes it abundantly clear that a workman shall be charge-sheeted and an opportunity to defend himself shall be given. If on the basis of the evidence adduced, the charges are found established, the show-cause notice about imposition of penalty shall be given. Looking from this angle, we find that this procedure has not been adopted. The respondents made an enquiry which appears to be a preliminary one in nature, on the receipt of the complaint not only against the present applicant but against two other postmen also and Shri S.B.Parmar, Vigilance ASP obtained confessional statement of the applicant on the basis of which he was removed from service. It could not be disclosed on behalf of the respondents if the statements of any of the witnesses were recorded in support of the charge if any, and whether an opportunity of cross-examination was given to the applicant. It is already pointed out that no formal charge sheet was given to the applicant. Thus simply jumping over on recording the statement of the applicant and that too a confessional statement, is not understandable and is not based on any procedure or the principles of natural justice. The applicant was removed from service on the basis of the confessional statement but no opportunity of explaining the facts and defending himself was given. In this way, the order of removal or putting him off the



duties is not sustainable under law. In these circumstances when we find that the applicant had the status of a workman, the statutory procedure as discussed above, ought to have been followed.

8. Assuming that the Extra Departmental Agents Rules 1964 were made applicable to ~~being~~ such outsider Postmen in compliance with Section 13-B of Industrial Employment (Standing Orders) Act, 1946, the procedure given for termination of the services under Rule 8 ought to have been adopted. Anyhow, the respondents do not admit the application of these rules in the case of an outsider postman and since we have held that an outsider postman holds the status of a workman, the procedure for termination of service given under the Model Rules ought to have been followed. ^{In default of} ~~In~~ following ^{the} ~~the~~ said procedure, the applicant is materially prejudiced and there had been denial of the principles of natural justice and therefore, the order of removal from service or putting off the job is not sustainable in law.

9. The learned counsel for the respondents argued that in case the applicant is held to hold a status of workman, the remedy lies under Industrial Disputes Act and for that purpose the applicant ought to have

approached the forum established therefor under the said Act. He has invited our attention to the Full Bench decision of Five Members of the Central Administrative Tribunal in A.Padmavally & Ors. v/s. CPWD and Telecom, Full Bench Judgments (CAT) Vol.II, 334. In this case, the Full Bench has taken the view that the Tribunal, is a substitute for all Courts including High Court but excluding Supreme Court and the authorities under Industrial Disputes Act. It was further held that the original jurisdiction of Industrial Tribunal or of Labour Court under the Industrial Disputes Act cannot be exercised by the Central Administrative Tribunal. It can exercise powers of Superintendence like High Court over the Industrial Tribunals. In view of this settled principle of law, we come to the conclusion that for non-compliance of the provisions of domestic enquiry against a workman, the applicant ought to have approached the Industrial Tribunal. Since he has not exhausted all the remedies available to him and thus no relief can be given to him from this Tribunal. He is directed to approach the Industrial Tribunal as required under the provisions of Industrial Disputes Act, 1947. The application is

