

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

R.A. No.02 OF 1995 IN O.A. No.134/1992

~~O.A. NO.~~

~~T.A. NO.~~

DATE OF DECISION 24-04-1995

Maheshkumar Nathalal Vyas **Petitioner**

Mr. P.H. Pathak **Advocate for the Petitioner (s)**

Versus

Union of India & Another **Respondent**

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

CORAM

The Hon'ble Mr. K. Ramamoorthy, Member (A)

The Hon'ble ~~Mr.~~ 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

(B)

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Maheshkumar Nathalal Vyas,
Vishant Bhavan,
Kangalpura, Majur Gaon,
Ahmedabad.

..... Applicant

(Advocate : Mr. P.H. Pathak)

Versus

1. Chief Postmaster General,
Gujarat Circle,
Khanpur,
Ahmedabad.

2. Postmaster,
S.T. Stand Main Exchange,
Behrampura,
Ahmedabad.

..... Respondents

(Advocate : Mr. Akil Kureshi)

ORDER

R.A. No. 02 OF 1995 IN O.A. No.134/1992

Date : 24-04-1995

Per : Hon'ble Mr.K. Ramamoorthy, Member (A)

The review has been sought for on the ground that the order is silent on specific consequential benefits being given to the applicant.

2. The matter was heard. The order clearly stipulates as under:

"the impugned order of termination of the services of the applicant is illegal and quashed and status ante of the applicant is restored"

3. The order is clear enough. The counsel for the respondents also agreed that there was no need for any specific direction and department will see

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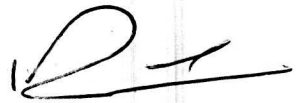
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to it that the consequential action such as reinstatement and grant of consequential benefits will be given. On this statement the counsel for the respondents does not press the review. ^{application} The review application is accordingly disposed of. No order as to costs.



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



(K. Ramamoorthy)
Member (A)

kvr

RAS + 4/1/94

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
REVIEW APPLICATION NO. 02 OF 1994/95
IN
ORIGINAL APPLICATION NO. 134/92

Maheshkumar Nathalal Vyas
Vishant Bhavan
Kangalpura, Majur gaon
Ahmedabad ..applicant

vs

- 1. Chief Postmaster General
Gujarat Circle
Khanpur, Ahmedabad
- 2. Postmaster
S.T. Stand Main Exchange
Behrampura, Ahmedabad ..respondents

MAY IT PLEASE THE HON'BLE TRIBUNAL:

- 1. That the present Review Application is filed for review the order dt. 9.8.94, received by the applicant ~~on~~ 12.8.94. There is prima facie error on the face of the judgement. The relevant provisions of law are not at all considered by the Hon'ble Tribunal. Copy of the judgement of the Hon'ble Tribunal under review is annexed and marked as Annexure 'A' to this application.
- 2. That as the copy of the judgement supplied to the applicant is not a typed copy but is a hand-written copy and therefore the applicant has made an application to the Registry to give a proper typed copy to the applicant.

Filed by Mr. P.H. Pathak
Learned Advocate for Petitioners ..2/-
with second set & copies
copies copy served to other side

By Registrar, C.A.T.(J)
A'bad Bench
14/1/94

3. The following relevant facts and provisions of law and the arguments advanced by the advocate of the applicant is not considered by the Hon'ble Tribunal. It is well settled principle of law by all the courts of the country that whenever the order of termination is held to be bad in law the normal directions should be reinstatement in services with full back wages and continuity of services. That in the present case, the Hon'ble Tribunal has held that the order of removal from services is illegal and not sustainable but unfortunately the Hon'ble Tribunal has not granted the relief prayed for in O.A. about reinstatement in service, payment of back wages and benefits of continuity of services.

4. It is submitted that so far the prayer regarding regularisation is concerned, the same was not pressed before the Hon'ble Tribunal and the advocate of the applicant has made a request that it may be kept open for the applicant to make a representation to the administration to consider the case for regularisation and therefore the advocate of the applicant has not argued the point regarding regularisation.

That unfortunately, the judgement was not dictated by the Hon'ble Tribunal in the open court but it was dictated in the chamber, which has resulted into gross injustice to the applicant because the facts which were not argued before the Hon'ble Tribunal are taken into consideration and the Hon'ble Tribunal has not kept open the liberty to the applicant to make a representation but has rejected the prayer of the applicant for regularisation. That it was not warranted nor asked for by the applicant as that point was not argued at all before the Hon'ble Tribunal. It is

✓ (9)

important to note that there are large no. of juniors to the applicant who are regularised by the administration and therefore the applicant has deemed it fit to make a detailed representation to the administration and therefore the para on page 5 of the judgement whereby the Hon'ble Tribunal has dealt with the issue of regularisation is required to be deleted from the judgement.

5. That the Hon'ble Tribunal has not granted consequential benefits to the applicant after declaring the termination of the applicant as void ab initio. That the general principle is, when it is declared that the termination is void ab initio, consequential benefits about continuity of service etc. must follow. The said prayers are specifically asked for by the applicant in his Original Application as well as at the time of argument also the advocate of the applicant has argued but the Hon'ble Tribunal has not considered the said fact nor has given any reason for denial of the said benefits to the applicant nor any arguments were advanced before the Hon'ble Tribunal by the other side for denial of such benefits.

6. That as per the advice of the advocate of the applicant, the present Review Application is required to be filed and as stated by the advocate of the applicant, after hearing both the party the Hon'ble Tribunal has not dictated the order in presence of the advocates of the parties and the same was dictated and completed in the chamber and therefore the advocate of the applicant was not able to point out the prima facie error on the face of the judgement of the Hon'ble Tribunal.


7. In the abovementioned circumstances of the case, the applicant pray that :

(A) The Hon'ble Tribunal be pleased to review the decision dt. 9.8.94 and direct the respondents to reinstate the applicant in service and grant all consequential benefits to the applicant including back wages and continuity of service.

(B) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

Date : 12/9/94

Ahmedabad


(P. N. Pathak)
Advocate for the applicant

AFFIDAVIT

I, Shri Maheshkumar Nathalal Vyas, adult, residence or Ahmedabad, do hereby solemnly affirm that what is stated above is true to best of my knowledge and information and I believe the same to be true.

Solemnly affirmed at _____ on this _____ day
of _____ 1994

Explained & interpreted
in Gujarati by me

DEPONENT

Advocate



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

REVIEW APPLICATION NO. 02 OF 1994 95

IN

ORIGINAL APPLICATION NO. 136/92

Maheshkumar Nathalal Vyas

Vishant Bhavan

Kangalpura, Majur gaon

Ahmedabad

..applicant

vs

1. Chief Postmaster General

Gujarat Circle

Khanpur, Ahmedabad

2. Postmaster

S.T. Stand Main Exchange

Bhramapura, Ahmedabad

..respondents

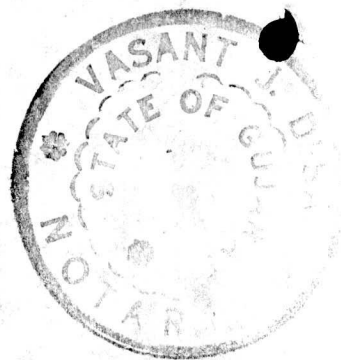
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..2/-

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- (B) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

Date :
Ahmedabad

(P. H. Pathak)
Advocate for the applicant

AFFIDAVIT

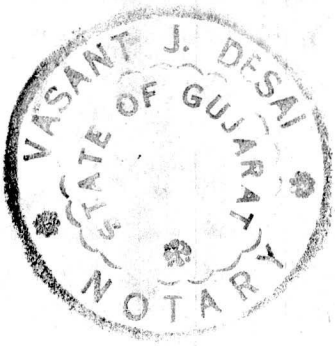
I, Shri Maheshkumar Nathalal Vyas, adult, residence of Ahmedabad, do hereby solemnly affirm that what is stated above is true to best of my knowledge and information and I believe the same to be true.

Solemnly affirmed at *Ahmedabad* on this *2nd* day of *Dec* 1994

Explained & interpreted in Gujarati by me

[Signature]
Advocate

X M N Vyas
DEPONENT



S. NO. 7387/ 1994
SOLEMNLY AFFIRMED
BEFORE ME
V. J. Desai
NOTARY
01 2.12.94

Mr. P.H. Pathak

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 134/92

T.A. NO.

DATE OF DECISION 09-8-94

Mr. Maheshkumar 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.

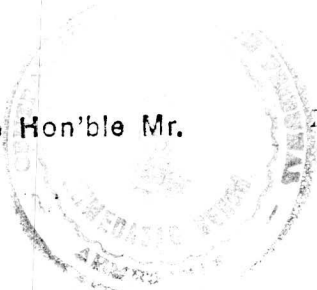
K. Ramamoorthy

Member (A)

The Hon'ble

Dr. P.K. Saxena

Member (J)



Mahesh Kumar Nattatal Vyas
Vishant Bhavan,
Kanjolpuri, Majurgao,
Ahmedabad.

Applicant

vs.

1. Chief Postmaster General,
Gujrat Circle, Navrangpura,
Ahmedabad.
2. Postmaster,
S.T. Stand Main Exchange,
Behrangpura, Ahmedabad.

Respondents.

For Applicant - Sri P.H. Patil, Advocate,
For Respondents - Sri Akil Kureschi, Advocate.

JUDGMENT

IN

O. A. 134192

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

Dated 09.8.74

The applicant Sri Mahesh Kumar Nattatal 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 25F 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. Gorda. Hence the prayer for



- 3 -

over (b) 10

quashment of impugned, 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 asserted 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. Kunday "
- 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 asserted 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 records 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 Tribunal Disputes Act ought to have been followed. The respondents gave the chart of working days as 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 150 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. Wherever 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.

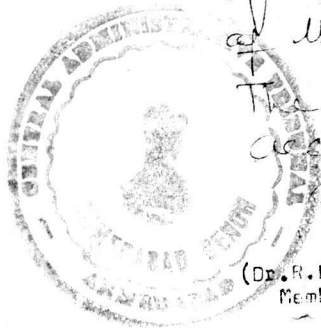
The case of the applicant in the main application was that the order of termination being illegal, be quashed but in the rejoinder, the issue of absorption



on the completion of 240 days, it 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 *Machyanki 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)
Member (J)

(K. Ramamoorthy)
Member (A)

Proposed by: *[Signature]*

Checked by: *[Signature]*

TRUE COPY

[Signature]
Section Officer (J)

Central Administrative Tribunal
Ahmedabad Bench