

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 365 of 1992.
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DATE OF DECISION 21/4/1995

Shri Vashrambhai Devjibhai **Petitioner**

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

Versus

Union of India and ors. **Respondent**

Shri Akil Kureshi **Advocate for the Respondent (s)**

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The Hon'ble Mr. V.Radhakrishnan : 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 ?

CATEGORY

CENTRAL ADMINISTRATIVE TRIBUNAL

REGULAR AND PERIODIC

.02,4,0
.02,1,0

REMARKS

DATE OF DECISION

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Shri Vashrambhai Devjibhai
Kabir Street,
Dhrangadhra,
Dist : Surendranagar.

...Applicant.

(Advocate : Mr.P.H.Pathak)

Versus

1. Union of India,
Notice to be served through
General Manager,
Telecommunication Department,
Nr.Gujarat High Court,
Ahmedabad.

2. Sub.Divisional Officer (Phones),
Telecommunication Department,
Surendranagar.

3. Divisional Engineer of
Telecommunication of Department
Surendranagar.

...Respondents.

(Advocate : Mr.Akil Kureshi)

JUDGMENT
O.A. NO. 365 OF 1992

Date: 21/4/1995.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.P.H.Pathak and Mr.Akil Kureshi
learned advocates for the applicant and the respondents
respectively.

2. The applicant joined the respondents' department
at Surendranagar on 8th April, 1985 and was continuously
working upto 25.8.1988. When his services were orally
terminatted, the applicant was originally appointed by
calling names from Employment Exchange. He had also
completed about 640 days as casual labourer. The

applicant approached the Department for re-engagement but he was not re-engaged. The contention of the applicant is that the respondent-department is an Industry and as the applicant was discharged from service without notice or retrenchment compensation as provided in Section 25-F of Industrial Disputes Act, 1947, his termination is illegal and void. Hence, the applicant has prayed for the following reliefs :

- (A) That the Hon'ble Tribunal be pleased to declare the impugned verbal termination of the applicant w.e.f. 25/8/88 as illegal invalid and inoperative in law and be pleased to quash and set it aside and further direct the respondents to reinstate the applicant in continuity of service with full back wages.
- (B) Be pleased to hold that the action of the respondents to continue the applicant as a daily wager employee for a long period amounts to unfair labour practice.
- (C) Any other relief to which this Hon'ble Tribunal deems fit and proper in the interest of justice together with costs.

3. The respondents have filed the reply. They have stated that the applicant was discharged from service as there was no work to be carried out by the department. They have also questioned the delay in filing the application. However, they have admitted that the applicant was employed as casual labourer from April, 1985 to August, 1988. They have stated that according to the policy of the department, services of the labourers engaged after 30.3.1985, for specified work shall be dispensed with after completion of that particular work.

They have also denied that the respondent-department is an Industry and hence, provisions of Industrial Disputes Act does not apply. Accordingly, they have prayed for rejection of the application.

4. During the arguments Mr.P.H.Pathak learned advocate for the applicant stated that the applicant has produced copies of statement showing days of work under the respondents. It clearly shows that the applicant has worked for more than 240 days prior to the termination. More over it is now well established that the Respondent-Department has been recognised as an Industry and hence provisions of Industrial Disputes Act applies. As the applicant was neither given retrenchment compensation nor one months' notice as required under Section 25 F of the Industrial Disputes Act, 1947, his termination was illegal and void. Mr.Akil Kureshi learned counsel for the respondents argued that the applicant had been engaged for doing specified item of work and once the work was completed his services were no longer required and hence, he was retrenched and it was quite in order.

5. There is no dispute regarding the fact that the applicant had worked for more than 240 days or more prior to his termination i.e. 25.8.1988. Since, the applicant had worked for more than 240 days, during the relevant period his employment could not have been terminated validly except by giving him one month's notice or notice pay in lieu thereof and by paying him retrenchment compensation as required under Section 25 F of the Industrial Disputes Act, 1947. There is no dispute about the fact that the applicants' employment had been

terminated verbally i.e. without giving any notice and without paying him any retrenchment compensation as required by Section 25 F of the Industrial Disputes Act.

6. In view of the above, there is no alternative but to hold that the termination of the employment of the applicant was void, ab initio being violative of the statutory provisions of the Industrial Disputes Act, and has to be declared as such. The Respondents are directed to reinstate the applicant within six weeks from the date of receipt of this copy of the judgment. The only question is as to what consequential benefits should be awarded to the applicant on his reinstatement. The applicant's services were terminated in 1988 and he approached the Tribunal for the first time on 10th August, 1992 by filing this O.A. and there is no question of his being awarded any back wages for the period upto 10th August, 1992. However, he is awarded back wages for the period subsequent to 10.8.1992 after deducting any amount he might have ~~been~~ earned elsewhere during this period. He shall also been given continuity of the service with effect from the initial date of appointment, but only for the purpose of grant of temporary status and terminal benefits. The applicant is also entitled to all normal benefits flowing from his regularisation. It is made clear that this grant of continuity of service to the applicant will be without affecting the seniority and promotion, if any, of any

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other casual employees who might already have been engaged or re-engaged since the termination of the employment of the applicant.

O.A. stands disposed of accordingly.

No order as to costs.

R.K.Saxena

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

V.R.K.

(V.Radhakrishnan)
Member(A)

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