

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

(10)

**O.A. NO. 370/92**

~~PRAY NO.~~

**DATE OF DECISION** 01.11.1995

Shri Alimuddin Mohammed Ansari Petitioner

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

Versus

Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

**CORAM**

The Hon'ble Mr. N.B. Patel : Vice Chairman

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

**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

Shri Alimuddin Mohammed Ansari,  
Laxmipara, Street No.3,  
Surendranagar-363 001.

(11)

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India  
Through:  
General Manager,  
Telecommunication Department,  
Nr.Gujarat High Court,  
Ahmedabad.
2. Sub-divisional Officer (Phone)  
Telecommunication Deptt.  
Surendranagar.
3. Executive Engineer,  
Telecommunication Deptt. (Phone)  
Surendranagar.

(Advocate: Mr.Akil Kureshi)

ORAL ORDER

O.A. 370/92

Date: 1.11.95

Per: Hon'ble Mr.N.B.Patel

: Vice Chairman

The applicant, who was working as a casual workman in the Telecommunications Department and whose employment is orally terminated w.e.f. 11.5.1989, challenges the validity of the said termination on the ground that it was violative of Section 25F of the Industrial Disputes Act. The case of the applicant is that he was almost continuously working since January, 1987 till 10.5.1989 and had completed more than 240 days during the relevant period from 12.5.1988 to 11.5.1989 and, therefore, he could not have been terminated except by giving him a notice as required by Section 25F of the ID Act and by offering ~~or~~ paying him retrenchment compensation as envisaged by that provision.

2. The respondents have not admitted that the applicant had put in 240 days or more days of work during the relevant period i.e. 12.5.1988 to 11.5.1989 and, on that ground, they have contended that the provision of Section 25F of I.D. Act was not applicable to the case of the applicant and the

oral termination of his employment was quite valid. It is also contended by the respondents that the Respondents' Department, i.e. Telecommunications Department, is not an 'Industry' and, therefore, also Section 25F of the I.D.Act was not applicable to the case of the applicant.

3. So far as the controversy relating to the number of days for which the applicant had worked during the relevant period of 12.5.1988 to 11.5.1989 is concerned, the applicant has produced certificates at Annexure 'A' showing the monthwise number of days for which he had worked from January, 1987 to May, 1989. There is no effective ~~controversy~~ <sup>controversy</sup> ~~controversion~~ of this evidence furnished by the applicant. It clearly shows that, during the relevant period, the applicant had completed more than 240 days of work and, therefore, if the Telecommunications Department is held to be an 'Industry', there cannot be any doubt about the total illegality of the oral termination of the applicant's employment. We have no hesitation in holding that the Telecommunications Department satisfies all the ingredients which are required to be satisfied for an undertaking to be held as an 'Industry' within the meaning of that under ~~termination~~ the Industrial Disputes Act. In another case, we have ~~also~~ referred to the fact that the Department itself has issued instructions to its subordinate offices stating that 'Telecommunications Department is an "Industry" within the meaning of the I.D.Act.'

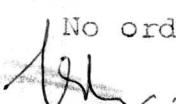
4. In the result of the above discussion, we find that Section 25F of the Industrial Disputes Act was applicable to the applicant's case and the oral termination of his employment was illegal, void ab initio and of no effect. It is, therefore, quashed and set aside.

(13)

The only question then is as to what consequential benefits should be awarded to the applicant. In this connection, it requires to be noted that, though the applicant was terminated w.e.f. 11.5.1989, he has approached the Tribunal by filing the present O.A. as late as on 7.9.1992. One of the grounds on which the O.A. is resisted is the ground of delay. The applicant had filed an M.A. which was disposed of by stating that the O.A. was admitted subject to the condition of limitation and question of condonation of delay. In view of the delay in filing the O.A., we are clearly of the opinion that the applicant should not be awarded any back-wages for the period prior to the date of the filing of the O.A. So far as other consequential benefits are concerned, we hold that it will be in the interest of justice to award to the applicant credit for the actual number of days, for which he had worked till his impugned termination, for the purpose of according him temporary status and for payment of retirement benefits if and when the same become available, to him.

3. In the result, the O.A. is allowed. The order terminating the employment of the applicant is hereby quashed and set aside and the respondents are directed to reinstate the applicant in service on the same terms as before with back wages from the date of the filing of the O.A. (minus any income earned by him during the relevant period by gainfully employing himself) within a period of four weeks from the date of receipt of a copy of this judgment, failing which they will be required to pay wages to the applicant from the day next to the day of expiry of the said period of four weeks. The claim for back wages for the period prior to the filing of O.A. is rejected. The respondents shall give credit to the applicant for the number of days, for which he had actually worked till the impugned termination, for the purposes of according of temporary status and for payment of retirement benefits to him, if and when the same become payable to him.

No order as to costs.

  
(V. Radhakrishnan)  
Member (A)

  
(N.B. Patel)  
Vice Chairman



D.N. 3268/16/XV/

Supreme Court of India  
New Delhi.

Dated this the

From: The Assistant Registrar,  
Supreme Court of India,  
New Delhi.

To: The Registrar,  
High Court Central Administrative Tribunal,  
Ahmedabad Bench, Ahmedabad.

CIVIL APPEAL NOS. 16656 of 1996.

Union of India & Ors.

... Appellants.

Versus

Shri Alim-ud-din Mohammed Ansari

... Respondents.

Judl  
M/S  
24/8/97  
Sir,

In continuation of this Registry's letter of even number  
dated the , I am directed to transmit herewith  
the Original Record relating to the matter, forwarded to this Court  
under your letter No. CAT/A'bad/Judl. 2417/97 dated the 14th March  
1997 as per the details given below.  
Please acknowledge receipt.

Yours faithfully,

*lc.msw*  
ASSISTANT REGISTRAR.

DETAILS OF O.R.  
Page No. 1 to 53 [Part 'A']

② Smt D.P.  
82-4-41  
As the record is ready being for Supm Cat  
& nothing is to be done by al this end the my  
reference to you to record for

MS  
Smt D.P. 82-4-41  
D.R.S.  
Record Keeper

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

Application No.

091370192

Transfer Application No.

CERTIFICATE

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

Dated : 27.11.95

Countersign :

27/11/95

Section Officer.

*ocdcap*  
Signature of the Dealing  
Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

18

INDEX - SHEET

CAUSE TITLE

041370182

NAME OF THE PARTIES

MD. A.M. 115000

VERSUS

4-0-1-2 000

OA/8/293/92

15

Serial Number of the application OA/0A/370/92

I N D E X

Date of paper or date of filing	Description of paper.	Part to which the paper belongs page No.	Remarks
2.	OA MASTHou1/92 Combination of delay	A 1 to 9 B 1 to 9 A 10 to 12	

16  
Termination

OASH/243/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

ORIGINAL APPLICATION NO.

OF 92.

Alimuddin Mohammad Ansari. ..Applicant.

Versus :-

Union of India & Ors. ..Respondents.

I N D E X

Sr.No.	Annex.	Particulars.	Pages.
1.	.	Memo of the application	1 to 10x
2.	A	Copy of the details & working days & certificate of the applicant.	12 to 14
3.			

138  
Date :- -03-92  
Place :- Ahmedabad.

P.H. Pathak  
Advocate for Applicant.

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO.

OF 1992

I. Applicant : Alimuddin Mohammed Ansari

Laxmipara, Street No. 3

Surendranagar-363001

II. Respondents

: 1) Union of India

Notice to be served through  
General Manager

Telecommunication Department

Nr. Gujarat High Court

Ahmedabad

2) Sub divisional Officer (Phone  
Telecommunication Deptt.

Surendranagar

3) Executive Engineer

Telecommunication Deptt.

(Phone )

Surendranagar

III. Order under challenge

: Non granting of the benefits  
and judgement of O.A. 597/88  
dt. 8.10.91 even after the  
promise given to the applicant  
to wait for the judgement  
for illegal termination of  
his service by the respondent  
No. 2 from 11.5.89.

IV. Jurisdiction  
& V. Limitation

: The applicant declare that  
the application is within  
jurisdiction of this Hon'ble  
Tribunal and the applicant  
has filed Misc. Application for  
condonation of delay for  
limitation.

VI. Facts of the case :

1. That the applicant is a citizen of India and has to approach this Hon'ble Tribunal by way of this application against the arbitrary termination of services by the respondent No.2 from 11.5.89. That at the time of termination of the applicant, no notice whatsoever or any reason for termination were given. The applicant's services were terminated in total arbitrary manner and keeping his juniors in service. That the identical matter of one of the employee is allowed by the Hon'ble Tribunal i.e. O.A. No. 579/88. The case of the applicant is directly covered by the judgement.

2. It is submitted that the applicant has initially joined the services of respondent department at Surendranagar w.e.f. 1.1.87. That the applicant is working continuously till his illegal termination by the respondents.

Copy showing the details of working days of the applicant, detailed certificate etc. are annexed and marked as Annexure 'A' collectively to this application. That the applicant was appointed by calling his name from the Employment Exchange and he was registered with Employment Exchange in the list of unemployed persons. That the applicant has completed about 640 days in service and he is entitled to be regularised in service. That the applicant was working as casual labourer under the respondent No.2 at Surendranagar. That the impugned termination of service of the applicant is ex facie arbitrary, illegal and unconstitutional and is required to be quashed and set aside and the applicant is required to be reinstated in service with all consequential benefits.

3. It is submitted that after the verbal termination of service of the applicant, the applicant has time and again

approached to the respondent No. 2 & 3 and requested that he is facing great hardship and he may be reinstated in services. That it is further requested that as he has completed more than 360 days of services, as per the news in the newspaper, the Hon'ble Supreme Court has directed the department to regularise those who have completed 360 days and therefore, he is also required to be absorbed. That the respondent No. 2 has time and again called the applicant and has said that he is waiting for the judgement in case of S. P. Jala. That the applicant was promised by the respondent No. 2 that he need not to spend the money and he should wait till the decision of the Hon'ble Tribunal in O.A. 597/88. That ~~the~~ after termination of service of the applicant, his family circumstances are very worst and he is facing starvation situation.

4. That the applicant has in bonafide belief waited for the judgement of S. P. Jhala. That this Hon'ble Tribunal was pleased to allow the application of Mr. S. P. Jhala and directed the respondent department to reinstate him with all consequential benefits. That the judgement delivered by the Hon'ble Tribunal is dt. 8.10.91. That Shri Jhala has reported ~~that~~ with the judgement and it has come to the notice of the applicant and therefore, again the applicant has approached to the respondent No. 2 & 3 and requested that as now the judgement is arrived at, he may be reinstated in services. That the respondent No. 2 & 3 have said that the applicant has to wait till they get some information from the department. That the applicant was not the only person who was given the promises, but there are 6-7 other casual labourers terminated identically to the applicant, approached to the respondent No. 2 and they were also promised in the same manner. That now after the judgement of the Hon'ble Tribunal, it seems that the respondents ~~do~~ not want to

implement the same and therefore, now the applicant feel that he is misled by the respondent No.2. That the applicant is claiming the benefits in this application of the judgement of the Hon'ble Tribunal in earlier case, which is similarly situated to the case of the applicant.

5. That even after the judgement received by the respondents in case of Jhala, he is not reinstated and the applicant is also not extended the benefits of reinstatement, the applicant has approached to the union representative and requested him to help the applicant to approach to this Hon'ble Tribunal.

That the economic condition of the applicant is not so sound that he can approach to the Hon'ble Tribunal and with the help of the union, the employees including the applicant has approached to this Hon'ble Tribunal by way of this application. Thus, the delay in filing of the application is due to bonafide belief and trust in the respondent No.2 & 3. That the cause of action start in favour of the applicant after the copies received by the respondents. That there is no malafide intention on the part of the applicant to delay the proceeding. On the contrary, he is interested in early employment in the matter.

6. It is submitted that so far the merit of the case is concerned, the applicant is having a strong *prima facie* case in his favour. That the case is directly covered by the judgement of the Hon'ble Tribunal in O.A. 597/88. The operative portion of the judgement of the Hon'ble Tribunal is reproduced here as under :

" The order or oral termination passed by respondent No.2, with effect from 10th April, 1987 is held illegal and hence the same is quashed and set aside. The respondents are directed to reinstate the applicant in service within one month

from the date of the receipt of this order and to pay all the back wages till the date of reinstatement within four months from the date of receipt of the copy of this order. The respondents are also directed to consider the case of the applicant for regularisation as per his seniority and rules applicable to the applicant. We pass no order as to costs. having regard to the facts of this case. The application is allowed to the above extent".

7. It is submitted that the applicant has worked for more than 360 days and therefore, covered by the judgement of the Hon'ble Supreme Court reported in AIR 1987 2342. It is ~~pertinent to note that~~ held specifically that the deptt. of telecommunication is of permanent nature of work and they cannot be permitted to deprive the employees of regularisation etc. That the Hon'ble Supreme Court has directed the respondent department to prepare the scheme and to implement the same in true spirit for regularisation of services of the casual labourers like applicant. That on the other hand, the respondents have adopted the practice of terminating the services of seniormost employees who have completed the requisite number of days to get the benefits of judgement of the Hon'ble Supreme Court, which is arbitrary, illegal and unconstitutional. The applicant's service is also verbally terminated by the respondent No. 2 That the powers are exercised in totally arbitrary manner and is required to be quashed and set aside and the applicant is required to be reinstated with all consequential benefits.

8. That as stated in the earlier para, the case is directly covered by this Hon'ble Tribunal on the similarly situated employee, Shri S. P. Jhala. On this very ground, the applicant is also required to be extended the said benefits of reinstatement with all consequential benefits. The applicant further declare that in good faith and keeping trust in the respondents, the applicant has waited for favourable result but now it seems that it is the delay tactics adopted by the respondents to frustrate the claim of the applicant.

It is submitted that the respondents department is an industry within the meaning of Sec.2(j) of the Industrial Disputes Act and applicant is a workman under Sec.2(a) of the Act. The services of the applicant cannot be terminated by the respondents by such a verbal order. That the respondents are under the obligation to observe the mandatory provisions of Sec.25 (f) read with Sec.25(b) (g) and Rule 77 of the Industrial Disputes Rules (c). That the applicant has completed 240 days of service in each year. That the precondition of retrenchment under Sec. 25(F) is to give a written reasponed notice and to pay the retrenchment compensation etc. to the ~~xe~~ applicant. Here the applicant is not given any compensation or notice at the time of his termination i.e. from 11.5.89. and so in light of the judgement of the Hon'ble Supreme Court in case of Mohanlal vs. Bharat Electronics Co. the termination is void ab initio and the applicant should be reinstated in service with full backwages.

60. It is further submitted that Rule 77 is obligatory on the part of respondents to publish a seniority list of the casual labourers before 7 days of the actual date of retrenchment. Here the respondent department has not maintained any seniority list and has adopted a pick & choose policy. That while terminating the services of the applicant many juniors to the applicant are continued. Not only this but even after the termination of the applicant many fresh employees are recruited by the

S  
23

respondents are under obligation to give respondents as a dailywage employees. The respondents are under obligation to give the first preference to the applicant in case of fresh employment in the department. The legislature has taken the due care to protect the interest of the workman against the hire and fire policy of the management and with a view to protect the fundamental rights of the employees guaranteed under Article 14 and 16 of the constitution of provisions under sec. 25(g) and Rule 77 are provided in the Industrial Dispute Act. 1947.

11. That this Hon'ble Tribunal has also taken the view in the case of Narottam Kachra and ors. vs. Union of India and ors. that non-compliance of the Rule 77 makes a termination fault an the employee should be reinstated in service and should be paid full backwages. That the respondents are under statutory obligation to obtain the prior permission of the appropriate government before terminating the services of the employee under Sec. 25(n) of the Industrial Dispute Act. That no such permission was obtained by the respondents before terminating the services of the applicant. The Hon'ble Central Administrative Tribunal ( Madras Bench ) has taken the view that if the prior permission of the appropriate government is not obtained under Sec. 25(f) then the order of termination is ~~not obtained~~ & void ab initio. In light of the overall circumstances. the verbal termination of the applicant is liable to be quashed and set aside and the applicant should be directed to be reinstated in service with full backwages and continuity of service.

12. It is submitted that with a view to avoid the

hardship to the employees by the employees and to avoid the unfair practices, Sec. 25(t) and Schedule Fifth are amended in the Industrial Disputes Act 1947. As per the provisions of Item-10 of the Schedule Fifth the action on the part of respondents to continue the applicant as a daily wage employee and to deprive him of the benefits available to the regular employee amounts to unfair labour practice.

The Hon'ble Supreme Court has while dealing with the identical case of 'Badli' employee of Reserve Bank of India held that cotating an employee as Badli&s temporary for more than 240 days with a view to deprive him of the benefits of the Labour Laws amounts to unfair labour practice. The Hon'ble Supreme Court be further directed the Reserved Bank of reinstate and to regularise the services of the 'Badli' employee and awarded Rs 3000/- as costs.

The case of the applicant is directly covered by the various judgements of this Hon'ble Tribunal as well as the Hon'ble ~~Exxim~~ Supreme Court of India. The order or verbal termination of the applicant w.e.f. 11.5.89 is ex-facie illegal, invalid and inoperative in law and is liable to be quashed and set aside.

VII :- Reliefs sought For :-

In the above mentioned facts of the case the applicant prays :-

- a) That the Hon'ble Tribunal be pleased to declare the impugned verbal termination of the applicant w.e.f. 11.5.89 as illegal invalid and inoperative in law and be

Pleasend to quash

(6)  
(23)

pleased to quash and set it aside and further direct the respondents to reinstate the applicant in continuity of service with full backwages.

- b) Be pleased to direct the respondents to regularise the services of the applicant in light of the judgement of the Hon'ble Supreme Court of India in the case of dailywage employees of the respdt. department and to apy all the benefits of the principle of equal pay for equal workfrom initial date of appointment with 12% interest.
- c) be pleased to hold that the action of the respdt. to continue the applicant as a dailywager employee for a long period amounts to unfair labour practice.
- d) Any other relief to which this Hon'ble Tribunal deems fit and proper in the interest of justice together with costs.

**VIII. Interime relief :-**

- a) Pending admission and final disposal of this application be pleased to direct the respondents to take the applicant back in service and to pay the wages regularly.
- b) Be pleased ~~to~~ to direct the respondents to give first preference to the applicant for re-employment in the respondents department.
- c) Any other relief to which this Hon'ble Tribunal deems fit and proper in the interest of justice together with costs.

**IX :-** The applicant has not filed any other application

26  
X  
: 19 :

in any other court with regard to the subject  
matter of this ~~suppikia~~ application.

X. :- Details of Postal Order

Postal Order 205082

Date :- 17/8/02

Court Post Office N.V.P. P.O.

Ahmedabad.

Amount of Rs.50/-

XI :- Details of index

An index in duplicate  
of the documents to be  
relied upon is enclosed.

XII :- Details of remedies

exhausted :

Applicant have no other remedy  
except to approach this Hon'ble  
Tribunal

X List of enclosures : As per index.

Date :- 19/8/02

Ahmedabad.

P.H. Pathak  
Advocate for applicant.

VERIFICATION :-

I, Shri Alimuddin Mohammed Ansari Muslim Adult residence at Suprednranagar, hereby state that I have gone through paras 1 to 12 of the application and I have verified the same, and are true to the best of my knowledge and information.

Date : - 17/8/92  
Ahmedabad  
ad.

A. M. Ansari

P. H. Pathak  
filed by Mr. ....  
Learned Advocate for Petitioners  
with second set & three copies  
copies copy ~~second~~ / net served to  
other side

17/8/92 Dy. Registrar C.A.T.O.  
Amd. Beach

SURENDRANAGAR TELEGRAPHS

ENGINEERING DIVISION

SURENDRANAGAR 363 001.

PERSONAL RECORD OF EMPLOYMENT ON MUSTER ROLL

Name ALIMUDIN ANSARI

Date of Birth Dt. 13.07.1969

Father's home MOHMAD RAFIQUE

NEW S.S.C. EXAM FAILED

Present Adress Lakshmipara Seri No. 5  
Surendranagar 363001

Present address As above

Employment Exchange  
Regn. No.4 Office

Recruited thro C.E.  
Ref. No.

Signature of thumb  
Impression of Casual labours Alimudin Mohmad Rafik

TRUE COPY

(Advocate)

29

13

NAME	PERIOD		A/O NO.	BOOK NO.	MR NO.	DAYS	SIGNATURE of G.O.
	From	TO					
Jan '87						26	
Feb '87			49	NK 8047	23	28	
March '87			51	NK 8052	01	25	
May '87			54	NK 8052	04	6	
April '87			60	NK 8052	11	25	
May '87			66	NK 8052	15	27	
July '87			31	NK 8054	05	24	
Dec. '87			022	NK 8069	20	30	
Jan '88			030	NK 8095	03	31	
Feb '88			42	NK 8095	28	29	
March '88			43	NK 8096	28	28	
April '88			54	NK 8070	8	31	
May '88			070	NK 8070	14	30	

NR TELECOM OFFICER  
PHONES CABLE  
SURENDRANAGAR.

TRUE COPY.

(Advocate)

Sub Divisional Office  
Phones Surendranagar

This is to certify that Shri Alimuddin that is working on A.C.G. 17 as a Casual Labour under SDOP SEN the particular of which as under csble work.

Date from	TO	Total days	Name of ITO	Name of Inch. work	Sign Mazdoor of work	Signature incharge
15/07/88	30/7/88	15	(1) A.G.	M.D. Rafique		
01/08/88	28/8/88	28	Patel J.T.O. cable	S.I.O. Cable(s)		
01/09/88	29/9/88	29	SEN			
01/10/88	28/10/88	28	(2) M.K.			
01/11/88	28/11/88	28	Prajiya J.T.O. Cable			
01/12/88	29/12/88	29				
05/01/89	28/01/89	24				
01/02/89	28/02/89	28				
01/03/89	28/03/89	28				
01/04/89	28/04/89	28				
01/05/89	10/05/89	10				

M.D. Rafique

S.I.O. Cable(s)

Surendranagar.

TRUE COPY.

(Advocates)

(3)

Submitted.

The App. has been formed in  
order & may be given to the  
concerned <sup>official</sup> for fixation of date for  
admission

MS  
02/11/82

S.O. Christian  
7-9-92

DY Reg. ~~for 2nd~~  
2/11/92

1/1/92  
MAISI 406/1992 dt 15/10/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD.

ADMARICA. NO. MAI 11992 IN OA 1370/1992

Sh. Ahsasi A.M.

APPLICANT (S)

Sh. P.H. Pathak

COUNSEL

Sub-DIV off (Phone) <sup>VERSUS</sup>  
Re: Enq. Phone Tele. Deptt

RESPONDENT (S)

Sh. Akil Kuleshy

COUNSEL

Date	Office Report	Orders
7/10/92	concloneration of delay	Adv copy not served on other side Pl. issue notice regarding the delay D/P.A D/26/92 D/27/92 notices served on person & kept copy A/B 33692

14/10/92

33

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

M.A. NO. OF 1992.

in

O.A. NO. 370 366 OF 1992.

Ansari. Ali muddin. M. M  
Siyaram Ram Parichan Ram  
Chatulal Ram Tech  
Telephone Exchange.  
Surendranagar (363001)

..Applicant.

Versus

Union of India & Ors.

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

2. Sub Divisional Officer (Phone)  
Telecommunication Department  
Surendranagar.

3. Executive Engineer (Phone)  
Telecommunication Deptt.  
Surendranagar. ..Respondents.

APPLICATION FOR CONDONATION OF DELAY

MAY IT PLEASE THE HON'BLE TRIBUNAL :-

1. \* That the applicant here has filed the abovementioned original Application. That grievance of the applicant is that his services are terminated verbally, without following any procedure of law by the respondent No.2 and 3 from 10.5.89. That with the applicant, the other employees were also terminated.

2. That after termination of service of the applicant and the other employees, the applicant has repeatedly requested the respondent No. 2 & 3 to reinstate him in service as he is the only earning member in the the family

Rece. C.P.T.  
A.P.J. Karsik  
14.10.92.

L.R/9X1

family. It was also pointed out to the respondents that as per the news paper report, the Hon'ble Supreme Court has directed the respondent department, to prepare a scheme for regular absorption of the casual labourers working in Post & Telegraph Deptt. That the respondent No.2 & 3 have time and again given promises to the applicant that they are waiting for the reply from Head office, regarding regularisation of service of the casual labourers. That they called the applicant time and again and with other labourers, the applicant has also reported time and again to the respondent No.2 & 3 for reinstatement in service. That the applicant relied on the promises made by the respondent No.2 & 3 and therefore, has not filed any case before the Court of law.

3. It is further submitted that subsequently some notices were issued by this Hon'ble Tribunal to the respondent office and it has come to the notice of the applicant that one of the labourer, who was working with the applicant i.e. S.P. Zala, has approached to the Hon'ble Tribunal. That thereafter the applicant has also requested the respondent No. 2 & 3 to provide him with work to enable him to maintain himself and his family. That the respondent No. 2 & 3 thereafter informed the applicant to wait till the decision in the similar case, in case of Mr. S.P. Zala i.e. O.A. No. 597/88. That the judgement of the Hon'ble Tribunal is delivered on 8.10.91 whereby it is held that the order of verbal termination of service is arbitrary and illegal. The Hon'ble Tribunal was pleased to set aside the same and directed the respondents to reinstate

the applicant with all consequential benefits. That even after the judgement ~~the~~ of the Hon'ble Tribunal, again the applicant has requested the respondent No. 2 & 3 to reinstate him in service in light of the judgement of this Hon'ble Tribunal in the case of similarly situated employees. That as Mr. Zala was not reinstated even after the judgement, the respondent No. 2 & 3 have informed the applicant that the department is filing appeal against the judgement of the Hon'ble Tribunal. Now when Mr. Zala is reinstated in service but unfortunately, the respondent No. 2 & 3 have not fulfilled their promises given to the applicant and therefore there is no alternative available to the applicant except to approach ~~to~~ this Hon'ble Tribunal by way of this application.

4. It is submitted that the time which was spent for filing of the present application is relying ~~is~~ on the promises given by the respondents and waiting for the judgement in the case of similarly situated employee. That on merit, as stated above and in the original Application, the applicant is having a strong *prima facie* case. The similarly situated employee is reinstated and granted all consequential benefits. Therefore, there is no justification available to the respondents to except to reinstate the applicant also and grant other benefits. The respondents are highly antagonised and in no circumstances are of the view to grant the similar benefits which were granted to Mr. Zala. That the delay in filing of the application is technical objection and the meritorious case cannot be thrown out merely on the ground of delay as held

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by the Hon'ble Supreme Court in AIR 87 SC 1353. Therefore, looking to the overall circumstances of the case, the delay in filing of the present application is required to be condoned in interest of justice.

5. In the abovementioned facts and circumstances of the case, the applicant pray that :-

A) The Hon'ble Tribunal be pleased to condone the delay in filing of the present Original Application and particularly in light of the judgement in O.A. 597/88.

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

Date :- 13/10/92

Ahmedabad.

( P.H. Pathak )  
Advocate for the applicant.

:- AFFIDAVIT :-

Ansari Ali Muddin Ali

I Shri Siyaram Ram Parichan Ram, adult, residence of Surendranagar, do hereby solemnly affirm that what is stated above is true to the best of my knowledge and information and I believe the same to be true.

Solemnly affirmed at Ahmedabad on this 13<sup>th</sup> day of Oct 1992.

A.M. Ansari

DEPONENT.



S NO 5352 1992  
SOLEMNLY AFFIRMED  
BEFORE ME

V.J. Desai  
NOTARY

DI 13-10-1992

Filed by Mr. P.H. Pathak Adv.  
Learned Advocate for Petitioners  
with second set & ~~one~~ TWO spares  
Copies copy served/not served to  
other side

15/10/92 Dy. Registrar C.A.T.(J)  
A'bad Bench

MAI / 1992 IN OA/370/92

Submitted.

The Appl. has not been found in ozone, the defect is indicated ~~is~~ below

1. Adv. copy <sup>is</sup> not served on other side.

obj. letter has been issued.

Wf  
15/10

S.O. P. Chisham  
19-X-92

D.Y. Reg.

is put up for appl. pl  
obj. letter has been issued.

Wf  
18/10

PD

19-X-92 on tour

20/10

13  
15/38

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BRANCH AT AHMEDABAD

MISCELLANEOUS APPLICATION NO. 404 OF 1992

IN

ORIGINAL APPLICATION NO. 370 OF 1992

Shri A.M. Ansari .. Applicant

VERSUS

Union of India & Others .. Respondents

REPLY ON BEHALF OF THE RESPONDENTS

I, Shri M. J. Dhadia AE (HRD)  
Supernumerary working with the C/o TDE  
Supernumerary do hereby file this  
reply to the miscellaneous application on behalf  
of the respondents as under:

1. That I have read the miscellaneous application  
and the accompanying original application. I have  
perused the relevant papers of the case and  
record pertaining to the present matter. I am  
also authorised to file this reply on behalf of the  
respondents. I am therefore competent to file this  
reply to the miscellaneous application on behalf of  
the respondents.

*Reply filed by me  
to day  
M. J. Dhadia  
7/2/92*

*Filed on 7/2/92  
Contd. on 6/3/92*

3. At the outset I say and submit that no part of the miscellaneous application shall be deemed to have been admitted by me unless hereinafter specifically stated. All the averments and allegations made in the miscellaneous application shall be deemed to have been denied in this reply unless specifically admitted hereinafter.

4. At the outset I further say and submit that the miscellaneous application is misconceived and untenable and the same is required to be rejected. I further say and submit that the applicant has not made out any ground for condoning the delay caused in filing the original application. I say and submit that the applicant has made false and frivolous allegations and has made vague averments in order to explain the huge delay of more than two years in filing the original application.

5. In reply to para 1, I say and submit that the services of the labour was not required by the department and his services were dispensed with on completion of the specific work and no fresh labour was recruited for that particular work thereafter.

6. In reply to para 2 of the application, I say and submit that the contents are incorrect and

I deny the same. It is denied that the applicant has repeatedly requested the respondent No.2 and 3 to reinstate him in service. It is pointed out by the respondents that as per the news report, the Honourable Supreme Court of India has directed the respondents to prepare a scheme. It is further denied that the respondent No.2 and 3 have time and again promised to the applicant that they are awaiting for the reply from head office regarding regularisation of the services of the casual labour. It is denied that the respondents had called the applicant time and again and along with other labourers the applicant had also reported repeatedly to the respondent No.2 and 3 for reinstatement in service. It is denied that the applicant had relied on the promises made as stated above and that therefore he need not file the present case. I say and submit that the above allegations are absolutely false and bogus and the same are got up.

7. In reply to para 3 of miscellaneous application I say that the contents are incorrect and I deny the same. It is denied that after this Honourable Tribunal had issued the notice in the case of Shri S.P. Zala, the applicant had also requested respondent No.2 and 3 to provide them

with work but informed him to maintain himself and his family. It is further denied that respondents No.2 and 3 thereafter informed the applicant to wait till the decision in the case of Shri S.P.Zala. It is denied that even after the judgement in the case of Shri S.P.Zala, the applicant had requested respondents No.2 and 3 to reinstate him in service. It is further denied that the respondent No.2 and 3 informed the applicant that the department is filing the appeal against the judgement. It is also denied that respondent No.2 and 3 have not fulfilled the promise given to the applicant. It is denied that any such promise was ever given.

8. In reply to para 4 of the miscellaneous application, I say that the contents are incorrect and I deny the same. It is denied that the applicants had spent time for filing the present application in relying upon the promise given by the respondents or that they were waiting for the judgement given in the case of a similarly situated person. I say that the respondents have never gave any such promise as alleged by the applicant. I deny that the applicant has a strong case on merit. I deny that the case of Shri S.P.Zala is similar to that of the applicant. I deny that the delay in filing the application is technical.

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9. In reply to para 5 of the miscellaneous application, I say that the delay caused in filing the original application is inordinate delay. There is no explanation given by the applicants in the miscellaneous application that the allegations and averments made in the application are absolutely false, bogus and got up. The delay caused in filing the original application is not required to be condoned and the miscellaneous application is required to be rejected.

Ahmedabad

Date : 07-12-92

W/F 7/12/92  
(M. J. Dhadia)

VERIFICATION

I, Smt. M. J. Dhadia do hereby affirm that what has been stated by me hereinabove are true ~~and~~ to the best of my knowledge, information and belief and I believe the same to be true.

Ahmedabad

Date: 07-12-92

W/F  
(M. J. Dhadia)

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BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH AT AHMEDABAD

ORIGINAL APPLICATION NO.370 OF 1992

A.M. Ansari

... Applicant

v/s.

Union of India & Ors.

;;: Respondents

Written Reply on behalf of  
the respondents

*Recd on  
13/4/93  
Ansari  
13/4/93*  
I, Shri M. J. Dhadia working  
as Assitt. Engineer(HRD) with the respon-  
dents No. 3 herein, do hereby state in reply to the  
above application as under:

1. That I have perused the relevant papers  
and files pertaining to the above application and  
I am conversant with the facts of the case. I am  
authorised to file this reply on behalf of the  
respondents.

2. At the outset I say and submit that no  
part of the application shall be deemed to have  
been admitted by the respondents unless specifi-  
cally stated so herein. All the statements, aver-  
ments and allegations contained in the application  
shall be deemed to have been denied by the res-  
pondents unless specifically admitted by me  
hereinafter.

From:  
Mr. Aleil Kureshi  
Adv.

2+022  
16/4/93

Fixed on:

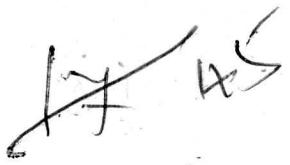
14/4/93 BIR

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3. I further say and submit that the application is barred by delay and laches. The applicant has not approached this Hon'ble Tribunal within the period of limitation prescribed under the provisions of law. The application is therefore, barred by the law of limitation.

4. In reply to paras-4 and 5 of the application, I say that this Hon'ble Tribunal has no jurisdiction to entertain the present application. I say that the petition is barred by the law of limitation and the application is therefore, required to be rejected.

5.1. In reply to para-6.1 of the application I say that the applicant was engaged for a specific work and on completion of the work his services were terminated and dispensed with along with other labourers as services of the applicant and other similarly situated labourers were no longer required after the completion of the specific work. It is further submitted that after the completion of the work for which the applicant was engaged no work was available and therefore, the applicant could not be engaged any further. As there was no work available and the specific work for which the applicant was engaged was over applicant's services



were terminated along with services of other similarly situated persons looking to the seniority. I deny that the termination is arbitrary and the applicant's juniors have been kept in service. I further deny that the case of the applicant in original application No.579 of 1988 is identical to that of the applicant. In any view of the matter review application against the judgment of this Hon'ble Tribunal in Original Application No.597 of 1988 is pending.

5.2. In reply to para-6.2 of the application, I say that the applicant was employed as a labourer from February 1987 upto May 1988 till availability of work and as the specific work for which the applicant was engaged was over and as no other work was available the services of the applicant were dispensed with. I say that there is no policy that on completion of certain number of work the applicant is required to be regularised, as alleged. I deny that termination of the applicant's services is ex facie illegal or unconstitutional or the same is required to be quashed and set aside or that the applicant is required to be reinstated in service.

5.3. In reply to para-6.3 of the application I say that the contents of the same are incorrect and misleading and I deny the same. I deny that

after the termination time and again the applicant had approached the respondents No.2 and 3 and requested that he is facing great difficulty and he may be reinstated in service. I further deny that as the applicant has completed more than 360 days of service he is required to be absorbed. It is denied that the respondent No.2 had time and again called the applicant and said that he is awaiting for the judgment in the case of Shri S.P. Jhala. It is further denied that the applicant was promised by the respondent No.2 that he need not spend money and that he should wait till the decision in O.A. No.597 of 1988 is given. It is denied that the respondents had held out any such promise or that the respondents have prevented the applicant from approaching this Hon'ble Tribunal. I say that the said averments made by the applicant are absolutely incorrect and false.

5.4. In reply to para-6.4 of the application I say that the contents of the same are incorrect and I deny the same. I deny that the applicant under bona fide belief waited for the judgment in the said Original Application No. 597 of 1988. I say that the judgment of this Hon'ble Tribunal in said case is under review, as stated earlier. I deny that once again after the judgment was delivered in the said case, the applicant approached

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the respondent Nos. 2 and 3 and requested that he should be reinstated in service. I deny that the respondents No.2 and 3 have told the applicant to wait till the information about the said judgment is received. It is further denied that not only the applicant, but several other persons whose services were similarly terminated were also held out the said promise. I say and submit that said averments are false and are made only with a view to explaining the delay. I deny that the respondents have misled the applicant. I deny that judgment in the aforesaid O.A. No.597 of 1988 is applicable in the present case.

5.5. In reply to para-6.5 of the application, I say that the contents of the same are incorrect and I deny the same. I deny that benefit of the said judgment is required to be extended to the applicant or that the applicant's condition did not permit him to approach this Hon'ble Tribunal earlier. I deny that the delay caused in filing the application is due to bona fide belief, as alleged. I deny that cause of action started in favour of the applicant after the copies were received by the respondents. It is denied that there is no mala fide intention on the part of the applicant to delay the proceedings. I say that cause of action arose on the date of termination and the applicant has not approached this Hon'ble

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Tribunal for a long time without any ~~any~~ reason.

5.6. In reply to para-6.6 of the application, I say that the contents of the same are incorrect and I deny the same. I do not admit that the applicant has a strong *prima facie* case or that his case is directly covered by the judgment of this Hon'ble Tribunal, as alleged.

5.7. In reply to para-6.7 of the application, I say that the Policy of the Department is that services of labourers engaged after 30.3.1985 for specific work should be dispensed with after completion of the particular work. I say that in absence of work the services of the applicant had to be terminated. I say that the Department has neither recruited any fresh labourer nor continued services of similarly situated person. I say that the Scheme referred to by the applicant in this paragraph is not applicable to the applicant and he cannot have benefit of the same.

5.8. In reply to para-6.8 of the application I say that the contents of the same are incorrect and I deny the same. I deny that the Honourable Tribunal's judgment directly covers the present case. I deny that the applicant is required to be reinstated in service or backwages are required to be paid. It is incorrect to say that the applicant in good faith in keeping trust with the respondents waited for favourable result or that there is any delay tactics adopted by the respondents to

frustrate the applicant. I say that the allegations made in this paragraph are totally baseless. In any view of the matter review application is pending against the said judgment in the case of S.P. Jhala. I say that the applicant is much junior to said Shri Jhala and the applicant's case is therefore, not identical to that of Shri Jhala.

5.9. In reply to paras-6.9, 6.10 and 6.11 of the application, I say that the contents of the same are incorrect and I deny the same. I deny that the respondent is an industry within the meaning of Section 2(j) of the I.D. Act or that applicant is a workman within the meaning of Sec. 2(q) of the I.D. Act. It is denied that termination cannot be effected by verbal order. It is denied that Section 25F has any application to the present case. It is not admitted that the applicant has completed 240 days of service in the last twelve calander months. I say that Rule 77 of the Industrial Dispute Rules has no application to the present case. I deny that termination is in violation of Articles 14 and 16 of the Constitution of India. I say that the judgments referred to in these paragraphs are not applicable to the facts of the present case. I crave leave to refer to and rely upon the said judgments for their true and correct interpretation.

5.10. In reply to para-6.12 of the application, I say that the contents of the same are incorrect and I deny the same. I say that if the applicant is invoking provisions of the Industrial Disputes Act, 1947, he should be relegated to the alternative remedy available to him. I say that as per the order of the Hon'ble Supreme Court of India the respective Department has framed the Policy by which no casual labourer should be engaged after 31.3.1985 and those who are engaged for specific work should be dispensed with after completion of the said work. As work was not available and specific work for which the applicant was engaged was over the services of the applicant had to be terminated. I say that question of regularisation of service on the basis of the said Scheme does not arise as the said scheme is not applicable to the applicant. I say that services of the applicant have been terminated in accordance with the rules, regulations and law applicable to the case.

6. In reply to para-7 of the application, I say that in view of what has been stated above the application is misconceived, untenable and the applicant is not entitled to any ~~xx~~ relief as claimed by the applicant. Under the circumstances

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this Hon'ble Tribunal be pleased to reject the application forthwith.

Ahmedabad,

Dt. 07-3-1993.

W.M.A.

(M. J. Dhadia)  
Assistant Engineer (HRD)  
Telecom District.

Verification SURENDRANAGAR - 363 001

I, Shri M. J. Dhadia working as Assistant Engineer (HRD) with the respondent No. ..... herein, do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Ahmedabad,

Dt. 07-3-93.

W.M.A. 7

(M. J. Dhadia)  
Assistant Engineer (HRD)  
A. Engineer  
A. Telecom District.  
SURENDRANAGAR - 363 001

✓  
Reply/Rejoinder/written submissions  
filed by Mr. Akif Kureshi  
earned advocate for .....  
Response with Cec and Sel  
Cop. Selwati on other side

19.3.93  
Dy. Registrar C.A.T (I)  
A'bad Bench

BEFORE THE HON'BLE C.A.T., AHMEDABAD

O.A.NO. 370/92

A.M. Ansari ... Applicant

VS.

Union of India & Ors. ..Respondents

Written Reply

filed on: -3-1993