

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A./21/98 in
O.A.NO. 120/92
T.A.NO.

DATE OF DECISION 25/6/98

S.R. Bharai **Petitioner**

Mr. P.H. Pathak **Advocate for the Petitioner [s]**
Versus

Union of India and Others **Respondent**

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, 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 Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

PL

S.R. Bharai,
S.D.T.O.,
Visavdar Telegraphs Exchange,
Visavdar,
Junagadh.

... Applicant

(Advocate: Mr. P.H. Pathak)

VERSUS

1. Union of India
Notice to be served through
General Manager Telecom
Gujarat Circle,
Navrangpura, Ahmedabad.

2. Divisional Engineer
Telegraphs
Junagadh Division
Junagadh.

... Respondents

(Decision by Circulation)

ORDER

R.A./21/98
in
O.A./120/92

Dated: 25/6/98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicant in the main OA has filed the above Review Application against the order and judgment dated 12.3.98.

2. The OA was filed against the oral termination of services of the applicant. The applicant's case was that he was appointed as Telephone Operator under the Div. Engineer Junagadh Division and that he worked continuously without any break and completed 240 days in all the years of service and that the termination of services was against the provisions of Industrial Disputes Act, 1947. The Respondents

stated that the applicant was never appointed on a continuous basis. He was asked to work as short duty telephone operator and that he worked in different telephone exchanges wherever there was work and that he was paid on hourly basis and that the applicant had never completed 240 days of regular service. The applicant however insisted that he was appointed on regular basis and worked continuously (vide rejoinder).

3. This Tribunal after examining the records and submissions of the counsel held that the applicant was never appointed on regular basis as Telephone Operator or that he worked continuously as claimed by him but was only asked to work as short duty operator on hourly basis. As the applicant miserably failed to establish that he was appointed as Telephone Operator on regular basis and that he worked continuously and completed 240 days of service in all the years, his contentions were rejected and the OA was dismissed.

4. The main ground in the Review Petition is that the applicant was regularly appointed as Telephone Operator and the respondents have not produced their records to rebut this contention. It was also stated that the respondents did not produce documents as demanded by the applicant. Even if it is admitted that the applicant worked only as Short Duty Operator on hourly basis, the matter should have been further examined to see whether the applicant would still have worked 240 days in a year. It was also suggested that the various judgments referred to by the applicant were not examined in detail.

5. The main contention of the applicant was that he was

appointed on a regular basis as Telephone Operator. These contentions were examined in the light of the documents produced by the parties. The records produced before us established that the applicant had never worked as a regular telephone operator on a continuous basis but only as Short Duty Telephone Operator on hourly basis for certain periods. As the applicant failed to establish his case as claimed, the O.A. was rejected. In the circumstances, the question of considering the judgments referred to by the applicant did not arise.

6. In the judgment dated 12.3.98, the issues were considered in the light of the records produced and the submissions made including the grounds now urged. We do not find any valid grounds in the R.A. and accordingly the same is dismissed. No costs.

Dhaeeg
(P.C. Kannan)
Member (J)

DRK
✓ 6/11/98
(V. Ramakrishnan)
Vice Chairman

hki

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

Serial No. 163

Register No. 4

Page No. 82

Date: 28/9/05

Respectfully submitted:

Hon'ble Vice Chairman,

Hon'ble Member (J) (HOD)

Hon'ble Member (A)

Hon'ble Member (-)

Certified copy of order dated 29/4/05 in P.A./
Special C.A. No. 8275 of 1998 passed by the
Hon'ble Supreme Court / Hon'ble High Court against the
Judgment / Oral Order passed by this Tribunal in Original
Application No. 120192 placed for perusal please.

Dealing Clerk

J. Master

~~(S.O. 28/9/05)~~

Position of this Case is: 1. Conforming SAT Order.

2. Partly allowed.

3. Reversing SAT Order. ✓

Registrar

Hon'ble Vice Chairman,

Hon'ble Member (J) (HOD)

28/9/05

Hon'ble Member (A)

Hon'ble Member (-)

URGENT

32184
Decree Dispatch
Date 28/9/98

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 8275 of 1998
(Under Article(s) 14, 16, 226, 227 of the Constitution of India)

1. S R BHARAI

Petition

vs

1. UNION OF INDIA & ANOTHER

Respondent

TO

1. UNION OF INDIA

2. DIVISIONAL ENGINEER

THROUGH CHIEF GENERAL MANAGER,
TELECOM GUJARAT CIRCLE,
KHANPUR, AHMEDABAD.

TELEGRAPHS,
JUNAGADH DIVISION,
JUNAGADH.

3. THE MEMBER

CENT. ADM. TRIBUNAL, OPP. SARDAR
PATEL STADIUM, ASHRAM ROAD,
AHMEDABAD. (REF. R.A.21/98 IN
O.A. NO.120/92).

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 28/09/1998 praying to grant the prayers and etc...



And whereas upon the Court ordered "Rule" to issue on 28/07/1999

And Whereas Upon hearing THE HIGH COURT
MR PH PATHAK for the Petitioner no. 1
MR MM TIRMIKI for the Respondent no. 1-2
MR ASIM J PANDYA for the Respondent no. 2

Court passed the following order :-

CORAM : BHAWANI SINGH, C.J. & H.K.RATHOD, J.
DATE : 29-4-2005.

"This Special Civil Application arises out of the
..... Parties shall bear their own costs."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

2719 *Heer Ramkhan*
Putup
2719 *SKM*

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 8275 of 1998

575

9

Date of Decision: 29-04-2005

S R BHARAI
Versus
UNION OF INDIA

(For Full Title See Page 2)

Coram:
The Hon'ble Mr. Justice Bhawani Singh, Chief Justice
The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

Yes.

For the petitioner:

MR PH PATHAK

For the Respondents:

MR ASIM J PANDYA

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Special Civil Application arises out of the judgment and orders of Central Administrative Tribunal (CAT), Ahmedabad Bench, dated 12-03-1998/25-06-1998, in Original Application No.120 of 1992/Review Application No.21 of 1998, holding that petitioner is not entitled to

Whether Reporters of Local Papers may be allowed to see the Judgment?

Yes

protection under the provisions of the Industrial Disputes Act, 1947 (for short 'the I.D.Act'), particularly Section 25F.

2. Petitioner submits that he was selected after following the due procedure and given appointment against vacant post of Telephone Operator, vide order dated 21-11-1983. However, his services were terminated orally from 31-12-1989, although he had been working continuously as Telephone Operator. Aggrieved by the termination, he preferred Original Application No.120 of 1992 before the CAT, but vide order dated 12-03-1998, the Application was rejected. Review Application No.21 of 1998 was also rejected on 25-06-1998 in a mechanical way, without properly considering the questions raised.

3. Respondents opposed the Application and stated that CAT has no jurisdiction to entertain the Application, which, otherwise is barred by limitation; petitioner was initially working on hourly rate basis at Visavadar, later, this arrangement was discontinued on account of surplus staff in the District and automation of the Exchange; he was not regularly appointed, his services were to be utilised on hourly rate basis when there was shortfall in the strength of Telephone Operators due to the vacancies and he was relieved from service from 28-05-1985 and not from 1990, as suggested by the petitioner.

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4. Petitioner disputes these averments and states that he was appointed on regular basis following due and proper procedure and was not engaged on hourly basis; he was paid salary at the end of the month and worked continuously without any break; he was transferred to other places as well and had completed 240 days; and Telephone Operators, declared surplus, had been absorbed in clerical cadre. It is denied that due to automation of Exchanges there was no work. It is stated that vacancies existed, against which there was need for Telephone Operators.

5. Shri P.H.Pathak, learned counsel for the petitioner, contends that petitioner was engaged regularly on monthly salary. He worked continuously without any break and completed 240 days of service, therefore, entitled to protection under the provisions of I.D.Act. It is submitted that oral termination of the petitioner without offering retrenchment compensation is illegal, arbitrary and against the provisions of I.D.Act, since respondent did not follow the mandatory provisions of the I.D.Act, therefore, action of termination of petitioner's services is void ab-initio and as such petitioner is entitled to be considered as continuous in service with all consequential benefits. Reference is made to decisions: State Bank of India vs. N.S. Money (AIR 1976 SC 1111), L.Robert D'Souza vs. Executive Engineer, Southern Railway (AIR 1982 SC 854), H.D. Singh vs. Reserve Bank of India (AIR 1986 SC 132), Punjab Land Development and Reclamation Corporation Limited vs. Presiding Officer, Labour Court (AIR 1990(3) SCC 682),

D.K.Yadav vs. I.M.A. Industries Limited (1993) 3 SCC
259, Sarabhai Chemicals vs. Subhash N. Pandya (1984(1)
GLR 329.

6. Shri Asim J.Pandya, learned counsel for the respondents, submits that petitioner was offered work of short-duty Telephone Operator on hourly basis whenever there was shortage of regular Telephone Operator and as he was not appointed as regular Telephone Operator, question of completion of 240 days' service by the petitioner in a year does not arise. Reference is made to Himanshu Kumar Vidyarthi and others vs. State of Bihar and others (1997.4 SCC 391).

7. Therefore, questions fall for our consideration are nature of appointment of the petitioner, nature of work entrusted to the petitioner, period for which he worked and whether he was in continuous service and as such entitled to protection under the provisions of the I.D.Act.

8. Perusal of R.P.A.D. letter (Annexure-A) from the Divisional Engineer, Telegraphs, Junagadh Division, Junagadh of Indian Posts and Telegraphs to the petitioner clearly mentions that petitioner is being appointed pursuant to "recruitment to the cadre of Telephone Operator in the P & T Department". It is stated to have been made pursuant to public advertisement and petitioner's application. He was selected subject to terms specified therein, but none of the terms stated that appointment is on hourly basis, temporary and

terminable by oral order. Therefore, there is no manner of doubt that petitioner was appointed on regular basis against available post to the cadre of Telephone Operators in the P & T Department. Contention to the contrary is liable to be rejected.

9. The question whether Telephone Department is an 'industry' has been answered by the Apex Court in General Manager, Telecom vs. A.Srinivasa Rao and others (1997.8 SCC 767) overruling two of its earlier decisions in Sub-Divisional Inspector of Post v. Theyyan Joseph (1996.8 SCC 489) and Bombay Telephone Canteen Employees' Assn. v. Union of India (1997.6 SCC 723 : AIR 1997 SC 2817). Once Telecom Department has been held 'industry' by Apex Court in A.Srinivasa Rao case (supra), Himanshu Kumar Vidyarthi case (supra) is not helpful to the respondents in this case. Dailywager is entitled to protection of Section 25F of I.D.Act provided he has continuously served for a requisite statutory minimum period in a year. Having done so, termination of service of such a workman without complying with Section 25F is illegal (See Rattan Singh v. Union of India and another - 1997.11 SCC 396). It is contended by the respondents that petitioner did not complete 240 days in a year. We fail to understand this contention. In the affidavit of Vinod Prakash, T.D.M. Junagadh, dated 11 November 1992, it is stated in paragraph 7 that petitioner was relieved from service with effect from 28.5.1989 and not in 1990 as suggested by the applicant. With this background, the documents filed by the respondents vide affidavit of S.P.Snehi, A.G.M. (Admn.), O/o.G.M.T.D., Junagadh dated

17-02-1998, may be examined. Counting backwards from 27-05-1989 to 20-05-1988 during the year 1989-88, the total working period comes to 240 days in a year taking into consideration the per day normal working hours of an employee. The case of petitioner, who falls under section 25B(1), he having been in continuous service for a year, as such satisfies the requirement of Sections 25B(1) and 25B(2) of the I.D.Act. (See Moti Ceramic Industries v Jivuben Rupabhai and others (2000-2(41) GLR 1558) and Wormen of American Express International Banking Corporation v Management of American Express International Banking Corporation (AIR 1986 SC 458). Therefore, the petitioner is entitled to protection of Section 25F of the I.D.Act both ways. The termination is hit by Section 25F r.w. Rule 77 of Industrial Disputes (Central) Rules. 1957, therefore, it amounts to retrenchment, being violative of these provisions.

10. Next question is to what relief the petitioner is entitled to. It is found that Telecom Department is an 'industry'. Further, the action of the respondents terminating the services of the petitioner amounts to retrenchment as having not followed the mandatory provisions of the I.D.Act, therefore, illegal and non-est. Giving consideration to all these aspects of the matter, we are of the opinion that the defence put up by the respondents has no substance and petitioner is entitled to reinstatement in service. It is now to be considered whether the petitioner is entitled to full backwages or not. Petitioner was deprived of rendering services to the respondents, although he was willing to serve, but taking into consideration that he is getting

back to service, interest of justice would be met by payment of 40% of backwages to the petitioner (See Management of M.C.D. vs. Prem Chand Gupta and another AIR 2000 SC 454, Vikramaditya Pandey v Industrial Tribunal and another 2001 AIR SCW 310 and Bank of Baroda v. Ghemarbhai Harjibhai Rabari - 2005 AIR SCW 1817). No other point was urged.

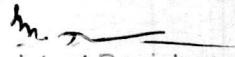
11. Consequently, Petition is allowed. Orders of Central Administrative Tribunal in Original Application No.120 of 1992/Review Application No.21 of 1998 dated 12-03-1998/25-06-1998 are set aside. Petitioner shall be deemed to be in continuous service of respondents from the date his services were terminated with 40% back wages. He shall also be entitled to the benefits he could have availed in case his services had not been terminated. Parties shall bear their own costs.

GUJARAT HIGH COURT

Sd/
(Bhawan Singh, C.J.)

Sd/
(H.K. Rathod, J.)

TRUE COPY


Assistant Registrar
High Court of Gujarat
Ahmedabad

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE PA/21/98 in 04/120/92

NAME OF PARTIES S. R. Bharai

VERSUS

4.02 for

RA/2/198

1. Judgment / Order by
 - (i) Hon'ble Mr. V. Ramakrishnan, V.C. and
 - (ii) Hon'ble Mr. P.C. Kannan, M.J.J.
2. Both the aforesaid Members are functioning in this Tribunal.
 2. Hence to be placed before the said Members i.e. Hon'ble Mr. V. Ramakrishnan, V.C. Hon'ble Mr. P.C. Kannan M(J.J.)
3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.
 3. Hence may be sent for consideration by circulation to the said Members i.e. Hon'ble Mr. _____ and Hon'ble Mr. _____
4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.
 4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any two Members of this Bench.
5. Hon'ble Mr. _____ has ceased to be Member of Tribunal but Hon'ble Mr. _____ is available in this Bench.
 5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.
6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.
 6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.
7. The case is not covered by any of the above contingencies.
 7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble Chairman.

19/6/98

22/6/98
S.P.(S)

22/6/98
DR(I)

The RA was ~~disposed~~ ^{dealt with by the Bench} by circulation
consisting of V.C. & P.C. Kannan

Dray

256

- RAST/95/98

Submitted

On scrutiny, RA is not found in order

for the following reasons:-

1. Affidavit not executed. ✓
2. copy not formed on other side. ✓
3. RA not dated.

This Submitted for information that 2 extra copies of RA have been filed in e-notifications for 80 m² may be seen.

AC
07/5/98

~~SOC~~
8/12/98

~~WITNESS~~
SRTC

Submitted

copy of e-notifications have not been complied with in time allowed. If approved, RA will be placed before the Hon'ble Bench for orders.

AC
08/6/98

S.O.T.S &
9044

WITNESS
SRTC

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL OF AHMEDABAD.

REVIEW APPLICATION NO. 21 /1998

IN

O.A. NO. 120/1992

2+2
S.R. Bharai

..Applicant.

Versus

Union of India & Ors.

..Respondents.

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<u>Otherside</u> <i>Copy served</i> <i>19/6/98.</i>	<u>SR. NO.</u>	<u>ANNEXURE</u>	<u>PARTICULARS</u>	<u>PAGE NO.</u>
	1.	-	Memo of the application	1 to 6
	2.	A	Copy of the order dated 12.3.98	7 to 13

Date :- 29/4/98
Ahmedabad.

(P.H. Pathak)
Advocate for applicant.

P.H. Pathak

copy of the application
was served on the 20th
April 1998 to the two
parties concerned served in
the office

29/4/98,
Dy. Registrar C.A.T.(D)
A.P. & B.M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL OF AHMEDABAD

REVIEW APPLICATION NO. 21 /1998

IN

O.A. NO.120/1992

APPLICANT : S.R. Bharai
S.D.T.O.
Visavadar Telegraphs Exchange
Visavadar
Junagadh.

RESPONDENTS : 1. Union of India
Notice to be served through
General Manager Telecom
Gujarat Circle
Navrangpura, Ahmedabad.

2. Divisional Engineer
Telegraphs
Junagadh Division
Junagadh.

Application to review the order dtd. 12.3.98

May it please the Hon'ble Tribunal

1. That the applicant has filed the original application challenging the termination of services of the applicant without following mandatory provisions of Section 25 of I.D. Act. No seniority list is produced before the Hon'ble Tribunal and juniors to the applicant are continued in services by the respondents. The Hon'ble Tribunal has dismissed the application vide order dtd. 12.3.98. The tribunal has treated the same as judgment, which is against the pronouncement of the Hon'ble Supreme Court of India. Copy of the order dtd. 12.3.98 is annexed and marked as Annexure-A to this application.

2. That in the said judgment the following important points of the case though argued before the Hon'ble Tribunal by the advocate of the applicant are not considered and judgment cited are not dealt with by the Hon'ble Tribunal which is mandatory in view of the judgment of the Hon'ble

High Court, in case of R.A. Patel Vs. M/s. Hina Industries reported in 1993 (1) GLR-820.

3. It was argued before the Hon'ble Tribunal that no seniority list is published or prepared by the respondents and principles of last come first go was not followed by the respondents as well as publication of seniority list is must before retrenching any employee. the contention of the Tribunal was pointed out Rule 77 of the I.D. Rules (C) also. But the said contentions are not dealt with by the Tribunal. In view of the judgment of this Tribunal, if in the present case it is the opinion of the Tribunal that publication of seniority list is not mandatory, the matter is required to be referred to the larger bench.

4. That the above contention of the applicant is not dealt with by the Hon'ble Tribunal. Moreover the contention of the respondents about short duty operator paid on hourly basis was also pointed out to the Hon'ble Tribunal that the same is not maintainable. That looking to the hours mentioned in the documents, it amounts that the employee has worked full time for whole year. The said arguments of the advocate of the applicant are not reflected in the order by the Tribunal.

5. That Six judgment cited by the advocate of the applicant are simply noted in the order and not considered by the Tribunal. That issue before the Tribunal was also the retrenchment of the applicant. The applicant failed to understand that the judgment cited regarding interpretation of retrenchment are left out without consideration by the

Tribunal. That the Hon'ble High Court has clearly decided that whatever judgment cited before the court, should be dealt with by the concerned court. Therefore also the order of the Tribunal is required to be reviewed.

6. That the applicant has clearly requested to the Hon'ble Tribunal to direct the respondents to produce muster roles and pay register before the Tribunal but the same are not produced before the Tribunal. therefore it was argued before the Tribunal that adverse inference should be drawn against the respondents and in favour of the applicant. The said contentions are also not reflected in the order of the Tribunal. In the rejoinder the specific contentions are taken before the Tribunal about production of above documents along with gradation list and it was argued by the advocate of the applicant. But unfortunately the said arguments are not considered by the Tribunal.

7. That there is nothing on the record, in support of the reply filed by the respondents, saying that the applicant is not appointed regularly. It was specifically pointed out by the advocate of the applicant that appointment of the applicant was after following due procedure of the law i.e. inviting names through Employment Exchange etc. Yet the oral statement made by the respondents is taken into consideration that the applicant was short duty operator and not regularly appointed.

8. That the applicant failed to appreciate how the judgment cited by the respondents applied in the present case because so far Telecom Department is concerned, the latest

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judgment of the Supreme Court (copy of which is supplied to the Tribunal) cover that the Telecom Department is an industry. Therefore, there is no question to exclude the respondents department from purview of industry. If the Hon'ble Tribunal has taken pain to quote the portion of the judgment cited by the respondents it was necessary to deal with the judgment which is directly on the point regarding retrenchment pointed out by the advocate of the applicant.

9. That in para 6 date of appointment of the applicant is wrongly mentioned which is also required to be corrected. That the documents which are in the custody of the respondents and which were specifically asked for by the applicant, in case of drawing the adverse inference it can be drawn only in favour of the applicant and against the respondents. The burden to produce the documents which are in the custody of the department and which are mandatory to be maintained, can not be shifted on the applicant. Therefore *prima facie* order of the Tribunal is erroneous and required to be reviewed.

10. The Hon'ble Tribunal has treated the reply of the department as gospel true. The advocate of the applicant has pointed out that the hours of work pointed out by the respondents required to be divided by 8 then the total number of days will be available i.e. more than 240 days in last 12 months. As an example it was pointed out to the Tribunal that in the year 1988 the total hours are 2308 divided by 8 come to 288 days and similar is the position in 1989 which comes to more than 85 days in 5 months. These days are without including the weekly off which are required to be calculated for counting 240 days in light of the judgment of the Hon'ble Supreme Court in R.B. Singh

Vs. Reserve Bank of India case. That the said arguments are not reflected in the order of the Tribunal which is an apparent error on the face of the order. The Hon'ble Tribunal has merely quoted the arguments of the respondents has not giving finding on the above contentions which were argued before the Hon'ble Tribunal and therefore the order of the Tribunal is required to be reviewed in the interest of the justice.

11. It seems to the applicant that the above error is due to delay in dictating the order and as the order was not dictated in the open court, the above contentions raised by the advocate are not reflected in the order.

12. That on receipt of copy of the order of the Tribunal by the advocate it is found *prima facie* that the Tribunal has committed error in disposing the application as the important points argued before the Tribunal by the Advocate are not considered and therefore as per the advise of the Advocate the present application is filed before the Hon'ble Tribunal.

13. In the above circumstances of the case the applicant pray that:-

- A) The order of the Hon'ble Tribunal dtd. 12.3.98 may kindly be reviewed in interest of justice and the order of termination of service may cost and set aside by the Hon'ble Tribunal.
- B) Be pleased to grant all the prayer brought for in the original application.
- C) Any other relief to which the Hon'ble Tribunal deems fit and proper in the interest of the justice together with interest.

Date: 29/4/98
Ahmedabad


P.H. PATHAK
Advocate for Applicant

AFFIDAVIT

I, Mr. S.R. Bharai, applicant have gone through the contentions of the review application and say that the same are true to the best of my knowledge and information and I believe the same is to be true.

Solemnly affirmed and affirm
before me

Date: 29/4/96.

Ahmedabad

P. N. Pathan
Notary

S. R. Bharai
Deponent
S.R. Bharai


P. N. Pathan
Notary

"A" 7

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 120/92

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman
The Hon'ble Mr. P.C. Kannan Member (J)

Sejabhai R. Bharai
S.D.T.O.
Visavadar Telegraphs Exchange
Visavadar
Junagadh Applicant

(Advocate: Mr. P.H. Pathak)

Versus

1. Union of India
(Notice to be served
through: The General
Manager, Telecom
Gujarat Circle
Navrangpura
Ahmedabad.
2. Divisional Engg.
Telegraphs
Junagadh Division
Junagadh Respondents

(Advocate: Mrs. P. Safaya)

JUDGMENT

O.A./120/92

Dated: 12.3.98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicant has filed the above OA under Section 19 of the Administrative Tribunals Act, 1985 and claimed the following reliefs:-

- A) declare that the oral order of the termination of the applicant passed by respondent No.2 herein is

illegal, discriminatory and arbitrary;

- B) direct the respondents, their officers, agents and servants to re-absorb the applicant in the service as his services were not terminated;
- C) direct the respondents, their officers, agents and servants to pay to the applicant full backwages including allowances and all other attendant benefits;
- D) pass such other and further orders as may be deemed fit by this Hon'ble Bench of the Tribunal.

The case of the applicant is that he was engaged by the respondents as Telephone Operator from 20.11.83 at Porbandar under the Divisional Engineer, Telecom, Junagadh Division, Junagadh. The applicant subsequently was relieved from Porbandar office and directed to report duty at Manavadar Exchange as Short Duty Telephone Operator vide copy of the letter dated 17.1.85 (Annexure A-2). The applicant had further stated that he was subsequently transferred from Manavadar Exchange to Visavadar Exchange on 19.7.86 vide Annexure A-3. In the year 1990 on account of automation of Bantwa Exchange, the operators working in Bantwa Exchange were declared surplus and they were transferred to Visavadar Exchange where the applicant was working. On this absorption of Bantwa Exchange Operators, the applicant was relieved from his service. The applicant subsequently sub-

mitted a representation on 10.1.90 to the Divisional Engineer requesting him for absorption (Annexure A-4). The applicant subsequently on 27.3.91 filed the above application before this Tribunal claiming for re-absorption and quashing the oral order of termination of service of the applicant. The applicant also filed a condonation application for delay in filing the present application which was condoned by this Tribunal by the order dated 14.10.96 while admitting the OA.

2. The respondents in their reply have stated that the applicant was asked to work as Short Duty Telephone Operator with effect from 26.2.84 and he was transferred to different places wherever there was a shortfall in the strength of telephone operators due to leave vacancy to work as Short Duty Telephone Operator on hourly basis. Due to automation of many manual exchanges of Junagadh District, there was surplus of telephone Operators. Hence the waiting lists of untrained and short duty operators were cancelled and as such the termination of the service of the applicant as Short Duty Telephone Operator became inevitable. The respondents subsequently filed affidavit reiterating the position and also stated that the applicant being untrained and Short Duty Operator was not holding any post and cannot be absorbed in service and that the applicant was never appointed as regular Telephone Operator and therefore he had no lien over the post nor any justification in claiming absorption in service. A statement showing number of hours the applicant worked during the period 1984-89 was

also filed. The statement clearly indicated that the applicant was working only as a Short Duty Telephone Operator on hourly rates at there rate of Rs.2.70 per hour and was paid wages accordingly.

3. We have heard Shri P.H. Pathak for the applicant and Mrs. P. Safaya for the respondents.

4. Mr. Pathak contended that the applicant was engaged on a monthly salary and had worked continuously without any break under the respondents and also completed 240 days of service in a year on full time basis and therefore entitled to the protection of the Industrial Disputes Act, 1947. As the applicant was protected under the provisions of the Industrial Disputes Act, the oral order of termination of the applicant without offering retrenchment compensation by the respondents is illegal, arbitrary and discriminatory and against the provisions of the Industrial Disputes Act. As the respondents did not follow the mandatory provisions of the Industrial Disputes Act, 1947, the termination of service is void ab initio and the applicant is entitled to be considered as continuous in service with all consequential benefits. Mr. Pathak relied in this connection on the following decisions on the Supreme Court/High Court:-

- (1) State Bank of India Vs. N.S. Money
AIR 1976 SC 1111

(1)

(2) L. Robert D'Souza Vs. Exe.Engineer, S.Rly.
AIR 1982 SC 854

(3) H.D. Singh Vs. Reserve Bank of India
AIR 1986 SC 132

(4) Punjab Land Dev. & Reclamation Corp. Ltd. Vs.
Presiding Officer, Labour Court
AIR 1990 (3) SCC 682

(5) D.K. Yadav Vs. I.M.A. Industries Ltd.
(1993) 3 SCC 259

(6) Sarabhai Chemicals Vs. Subhash N. Pandya
1984 (1) GLR 329

We have perused the judgments. These judgments relate to the interpretation and scope of retrenchment in terms of the provisions of Section 25 F, 25 FF and 25 FFF of the Industrial Disputes Act, 1947.

5. Mrs. P. Safaya, Counsel for the respondents contended that the applicant was only working as Short Duty Telephone Operator on hourly basis whenever and where there was shortage of regular Telephone Operator on hourly basis. The applicant was never appointed as regular Telephone Operator and therefore the question of completion of 240 days in a year of service will not arise. She also referred to the judgment of the Supreme Court in the case of Himanshu Kr. Vidyarthi Vs. State of Bihar (reported in 1997) 4 SCC 391). In this case, the Supreme Court had observed that every Department of the Government cannot be treated as industry and that when the appointments are regulated by the

statutory rules, the concept of industry to that extent stands excluded. In this connection, some of the observations of the Supreme Court vide Para 3 of the judgment reads as follows:-

"The main grievance of the petitioners before us is that termination of their services is in violation of Section 25-F of the Industrial Disputes Act 1947. The question for consideration, therefore, is: Whether the petitioners can be said to have been 'retrenched' within the meaning of Section 25-F of the Industrial Disputes Act ? Every department of the Government cannot be treated to be "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment" therefore, cannot be stretched to such an extent as to cover these employees".

6. We have perused the records. While the applicant in his main application claimed that he was appointed as a Telephone Operator with effect from 30.11.93, the respondents in their reply categorically denied the allegation and stated that the applicant was

appointed as Shsort Duty Operator on hourly basis with effect from 26.2.84 (vide Para 5 of the reply). The applicant also denied that he was engaged on hourly basis and categorically stated that he was paid salary at the end of each month and that he worked continuously without any break. (Para 2 of the rejoinder). However, he did not produce the evidence to show that he was engaged on regular basis and worked continuously without any break. At the time of hearing, the Department placed for our perusal, the relevant records and also filed an affidavit. The records filed on behalf of the REspondents indicated that the applicant was engaged as Short Duty Operator on hourly basis only. It also refers to the details of the hours of work per month of the applicant in the period 1984-89. The respondents also in the affidavit indicated that the applicant had never completed 240 days in a year on full time basis. In the light of the above, the statement of the applicant with regard to his appointment was incorrect.

7. In the light of the above, we are of the view that the applicant is not entitled to the protection under the provisions of the Industrial Disputes Act, 1947. the application therefore fails and is dismissed. No costs.

Sd/-
(P.C. Kannan)
Member (J)

Sd/-
(V. Ramakrishnan)
Vice Chairman

True copy
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Adr