

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO. 462/92

~~**TOXNOX**~~

DATE OF DECISION 21.6.99

Sureshchandra Jaguprasad Verma Petitioner

Mr. R.V. Sampat, Advocate for the Petitioner [x]
Versus

The Union of India & Ors. Respondents

Mr. B.N. Doctor, Advocate for the Respondent [s]

CORAM

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

The Hon'ble Mr. A.S. Sanghavi, Judicial Member.

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? ~
- 2, To be referred to the Reporter or not ? ~
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? ~

Sureshchandra Jaguprasad Verma
Aged about 26 years, Occ: service,
(casual labourer-TS terminated)
Address: C/o R.V.Sampat, Advocate,
Sampat Advocates, 2nd floor,
Shriji Towers, M.G.Road,
Junagadh.

..... Applicant.

(Advocate: Mr.R.V. Sampat)

VERSUS

1. The Union of India, through
The Under Secretary to
Government of India,
Ministry of Telecommunication,
Secretariat Office, New Delhi.
2. The Chief General Manager
(Telecom), Gujarat Circle,
Ahmedabad.
3. The Telecom District Engineer
(Admn.) Office of the T.D.M.
Ghenda Agad Road, Junagadh.

(Advocate : Mr.B.N. Doctor)

ORAL ORDER

O.A.No. 462 OF 1992.

Date: 21.6.1999.

Per: Hon'ble Mr. V.Ramakrishnan, Vice Chairman.

We have heard Mr.Sampat for the applicant and Mr.Doctor for the respondents.

2. The applicant^e casual labourer was conferred with temporary status and was working under the Telecom Department. He was posted to work as a Night Watchman during the relevant period when a theft took place and certain materials namely; iron wire of 300 LBS/PM total 87 bundles approximate weight of 4350 Kgs. was stolen from the premises on 29.2.92. The department then issued an order dated 11.8.92 terminating the service of the applicant with effect from 17th August,1992 giving him wages for 17 days from 1.8.92 to 17.8.92 and one month's pay as notice. The applicant has challenged this order contending that besides being in violation of the provisions of the Industrial Disputes Act and principle of natural justice, the ~~terminative~~ ^{discriminatory} order is not in conformity with para 9 of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Telecom Department, copy of which is at Annexure A.6.

3. Mr.Sampat for the applicant submits that the para 9 of the relevant scheme at Annexure A-6 reads as follows:

"9. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encashment of leave on termination of services."

He says that it is not in dispute that the applicant was conferred with temporary status and the impugned order itself makes it clear that his termination is not a termination simpliciter but on account of negligence. In such a situation an enquiry ought to have been held and he should have been given full opportunity to state his case. Mr. Sampat goes on to submit that no charge sheet was served on the applicant nor even a show cause notice was served on him. The reply statement along with the annexures encloses a copy of a statement given by the applicant admitting that he had slept from 1-30 AM till he was woken up by the next employee as per the shift but Mr. Sampat refers to the rejoinder statement contending that such a statement was written down and signed by the applicant and at the behest of the management. He further says that there is no reference at all to ^{an enquiry} ~~the theft~~ and the applicant could not be held responsible and as such there is a clear violation of the provisions of Clause 9 of the scheme.

4. Mr. Doctor for the Department contends that Clause 9 no doubt refers to an enquiry and that it stipulates that the alleged misconduct should be proved. He says that the enquiry referred to therefore can not be construed as an enquiry in terms of the provisions of the CCS (CCA) Rules and there is no requirement to serve a charge sheet or to issue a show cause notice, but the opportunity should be given to the applicant to state his case. In the present case it is a fact that theft of substantial quantity of iron wire had taken place from the premises where the applicant was detained for duty as a night watchman. Immediately after the theft came to the notice of the Department, he was summoned and he had given a statement where he had admitted that he had slept from 1-30 AM till 8-00 AM next day. Mr. Doctor does not agree such a statement was given on the basis of any force and the

applicant himself has given the statement. In view of the clear admission that he was negligent in his duty as a night watchman, the charge against him automatically stood proved. Mr. Doctor says that the requirement of the rules has been complied with.

5. So far as the ground ^{pertaining to} of the provision of the scheme adduced by the applicant in support of his O.A, we find force in the submission of Mr. Doctor. Clause 9 of the scheme requires that an opportunity should be given to the casual labourers with temporary status when there is an allegation of misconduct and that his service can be dispensed with only when the same is proved. The enquiry was conducted immediately after the theft had taken place where the applicant was associated and he had given a statement which he has signed. There is nothing to show that such a statement was given on the basis of any force. Once he had admitted that he had slept, then charge of negligence stood proved when his duties were to function as a night watchman. So far as this ground is concerned, the same fails.

6. Mr. Sampat also had relied on the direction of the Supreme Court in the case of Union of India & Ors. V/s. Mohd. Ramzan Khan, 1991(1) 1 SLR page 159 particularly to para 18 thereof which reads as follows:

We may make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report

would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

This observation of the Supreme Court is in the context of holding a regular enquiry under the CCS(CCA^s) Rule and on completion of the ^{enquiry} a copy of the enquiry officers report should be made available to the Government servant and his reply thereon taken into account before the disciplinary authority passes final order. So far as the present case is concerned, the question of a formal enquiry under CCS(CCA) Rules and the order of the disciplinary authority do not arise. In the context of the submission of the applicant which according to the respondents amounted to an admission there was no need for examining further witnesses and there was no question of giving a detailed enquiry report. This decision is therefore of no assistance to the applicant in the present case.

7. In the O.A, however, the applicant had contended that Telecom Department being admittedly an industry and coming under the provisions of I.D Act the requirements of Section 25F have not been complied with. Mr.Sampat had brought out earlier that even though one months notice had been given to the applicant, he is entitled to retrenchment compensation in terms of the provisions of Clause (b) of Section 25F and according to him, this requirement has not been followed.


8. As regards this contention there is a decision of the Division Bench of this Tribunal that this Tribunal has no jurisdiction to entertain matters pertaining to ID Act. The decision of this Tribunal was taken in the later part of last year and based on the observation of the Hon'ble Supreme Court


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in Krishna Prasad Gupta's case, 1995(32) ATC 211. We do not therefore propose to go into the contention regarding violation of the provision of Section 25 F of the ID Act. It is open to the applicant to agitate the same before appropriate forum. He may inter alia bring to the notice ^{Real} as the matter was pending before this Tribunal from 1992 onwards the applicant can ~~only~~ take recourse to his remedies before the appropriate forum only now and not earlier.

9. As regards the contention regarding violation of the provisions of the scheme, we hold that the applicant has not been able to establish the same.

10. With the above observation, the O.A is finally disposed of. No order as to costs.


(A.S. Sanghavi)
Member(J)


(V. Ramakrishnan)
Vice Chairman

Vtc.