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Testimony (No)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
Case No. 30 of 1992

DATE OF DECISION 31.1.1992

Abdul Rehman Chandbhai Habibani Petitioner

Mr. K.C. Bhatt Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Abdul Rehman Chandbhai
Habibani.

.. Applicant

Versus

Union of India & Ors.

.. Respondents

O.A. No. 30 of 1992

O R A L - J U D G M E N T

Dated : 31.1.1992

Per : Hon'ble Mr. R.C. Bhatt .. Member (J)

Heard learned advocate Mr. K.C. Bhatt for the applicant. This application is filed by the applicant under section 19 of the Administrative Tribunals Act, 1985, praying that the oral order of the respondents regarding termination of the service of the applicant be quashed and set aside. The applicant admittedly, has not produced any impugned order terminating his services and his allegation is that there is no written order passed by the respondents terminating his services. The applicant has alleged that the respondents have orally terminated his services on 3.1.1992. Learned advocate Mr. Bhatt submitted that the applicant was appointed by the written order dt. 28th August, 1990 by the respondents as an outsider to work as MMS Driver and he has been working since then. Learned

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advocate Mr. Bhatt also submitted that the respondents cannot orally terminate the services of the applicant.

2. This matter can be disposed of at the admission stage. I agree with the submission of Mr. Bhatt that a person who is appointed by a written order, cannot be orally terminated. There must be written order. Hence if the respondents have orally terminated the services of the applicant on 3rd January, 1992, that order is illegal and must be quashed and the applicant should be allowed to work. The respondents would be at liberty to terminate the services of the applicant as per the rules, by the written order. Hence, I pass the following order.

O R D E R

The oral order of terminating services of the applicant dt. 3rd January, 1992 if, passed, by the respondents and if there is no written order passed terminating the services of the applicant, the same is quashed and set aside and the applicant be reinstated in service. The respondents will be at liberty to pass written order terminating the services of the applicant as per rules. Application is disposed of with the above direction.

Niraj
(R C Bhatt)
Member (J)

NO
TELETRANSMISSION

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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 278/89

~~SECRET~~

DATE OF DECISION 01-10-1991

Shri Ziaddin Sarfuddin Shaikh Petitioner

Mr. H.S. Shah Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P.M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohammed : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial Member

*Rendered by U.A.
ice merit & Adm.
ice and assent
C/S
3/11/92*

Ziaddin Sarfuddin Shaikh,
House No. 3283, Mangal Parakh-no Khancho,
Shahpur, Momanwad,
Ahmedabad.

: Applicant

(Advocate: Mr.H.S.Shah)

Versus

1. Union of India
Through:
The Secretary, Ministry of
Communications, Dak Bhavan,
Sansad Road, New Delhi.
2. The Post Master General
Gujarat Circle, Ashram Road,
Near All India Radio,
Ahmedabad-380 009.
3. The Assistant Superintendent
of Post Offices,
Office of the Assistant Superintendent
of Post Offices,
Opp. Dinhbai Towers,
Shantisadan Estate No.10,
Mirzapur, Ahmedabad-380 001.
4. The Senior Post Master,
Memnagar, Ahmedabad-380 052.

: Respondents

(Advocate: E.A.Samuel for
Mr. P.M.Raval)

JUDGMENT

O.A./278/89

Date: 01.10.1991

Per: Hon'ble Mr. B.C. Bhatt.

Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant, an Extra Departmental candidate, against the respondents Postal Department seeking the relief that the respondents' order of termination of services of the applicant vide Annexure A/6 dated 4.7.1989 be quashed and set aside as the same is illegal, unjust and arbitrary and that the respondents be directed to reinstate the applicant with continuity of service, and also prayed that the respondents be directed to regularise the service of the applicant.

2. It is alleged in the application that the applicant is an employee of the respondents' authorities discharging his duties as Extra Departmental candidate continuously as Packer, Stamp Vendor, Chowkidar, etc. for years together. The applicant in para VI.1 of the application has given the details of his continuous service in different capacities as Packer, Stamp Vendor, Chowkidar, etc. from September, 1983 onwards. He has mentioned in this paragraph that he is continuously working as Packer from 18.6.1988 till the date of filing of this application on 11.7.1989 without any break. It is also alleged that the name of the applicant is borne on the muster roll of all the post offices. The services of the applicant as Chowkidar were terminated vide Memo dated 19.1.1988 produced at Annexure-A. The applicant has produced at Annexure A/1 the certificate from the Sub-Post Master, Memnagar dated 24.12.1988 to show that he was engaged as EDA Group 'D' official at Memnagar Post Office since 1988 on vacant post. It is the case of the applicant that though he has been continuously working on the post of EDA Packer since 18.6.1988 without any break on vacant post at Memnagar Post Office, his services have been terminated by the order dated 4.7.1989 by Assistant Superintendent of Post Office, Ahmedabad i.e. Respondent No.3 by which one Shri V.S.Joshi E.D. Stamp Vendor, Sardar Nagar Post Office is transferred as E.D.Packer, Memnagar Post Office in vacant post. It is alleged by the applicant that this action in pursuance of the impugned order dated 4.7.89 Annexure A/6 by respondent No.3 is in violation of Section 25F of the Industrial Disputes Act. It is alleged by the applicant that the action on the part of the respondents is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. The applicant has produced at Annexure A/2 to A/5 the copies of Memorandum and instructions issued from time to time by the Govt. of India, Ministry

of Personnel and Training and also Ministry of Commercial Department of Posts, etc. It is the case of the applicant that as the applicant has rendered more than 240 days service immediately preceding the date of his termination and as the respondents is an 'Industry' and the applicant is a 'Workman', the impugned order Annexure A/6 be quashed and set aside as the applicant is sought to be retrenched in complete violation of Section 25F of the ID Act. He has referred to several decisions of the Hon'ble Supreme Court, High Court and this Tribunal on this point in his application.

3. The applicant has further alleged in his application that the respondents have continued in service those persons who have not completed 240 days as not EDAs and those who were also/nominated from the Employment Exchange and the names of such six persons are given in para 8 of the application. The applicant, therefore, alleges that the action of the respondents is violative of Articles 14 and 16 of the Constitution in as much as the respondents have retained the juniors to him. It is alleged by the applicant that he is registered with the Employment Exchange for years together. It is alleged by the applicant that he is continuously working as E.D. Packer in Ahmedabad from 18.6.1988 but the respondents have failed to issue necessary orders of appointment as per the method of recruitment of EDA prescribed in E.D.A. Rules and the respondents have failed to issue regular orders of appointment to the applicant as E.D.Packer.

4. The respondents have filed reply contending that the application involves disputed question of facts, that this Tribunal has no jurisdiction to entertain the application and that the applicant has not exhausted

the remedies available under I.D.Act. It is denied by the respondents that the provisions of I.D.Act are applicable to the applicant. It is contended that the applicant has already been discontinued, that he was engaged as daily rated substitute in place of regular persons who went on leave. It is contended that the applicant was engaged as outsider Extra Departmental Packer at Memnagar Post Office w.e.f. 18.6.1988. It is contended that therefore, the termination of the service of the applicant does not arise as he was not appointed but he was engaged as an outsider on daily wages. It is denied by the respondents that the applicant has completed 240 days continuous service and denied that there is violation of Articles 14 and 16 of the Constitution of India as alleged. It is contended that the persons whose names are mentioned by the applicant in para 8 are not in service except one Mr.P.M.Dave who is working since 28.4.1984.

5. The applicant has filed rejoinder controverting the averments made by the respondents in the reply.

6. The main defense of the respondents as found in their reply is that the applicant was engaged as a daily rated substitute in place of regular person who went on leave and he was engaged as outsider Extra Departmental Packer at Ahmedabad Post Office with effect from 18.6.1988 while according to the applicant, he is working as a Packer at Memnagar Post Office on vacant post as Extra Departmental Agent. Therefore, the question which requires to be considered is whether the applicant is working as Substitute of E.D.A. as contended by the respondents because if he is merely a substitute appointed by E.D.A. then the applicant would not be entitled to the protection under the provisions of I.D.Act. The applicant in support of his case that he is working since 18.6.1988 on vacant post as E.D.A. Group

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'D' official, has produced the certificate Annexure A/1 from the Sub-Post Master, Memnagar P.O. Ahmedabad. It is important to note that the respondents have not disputed this certificate. Reading this certificate, it is very clear that the applicant is engaged as E.D.A. Group 'D' official at Memnagar Post Office since 18.6.1988 on vacant post. No documentary evidence is produced by the respondents to show that the applicant is appointed as a substitute nor the above document at Annexure A/1 is disputed. Therefore, relying on this document A/1, we have no doubt in our mind that the applicant is working as Packer in Memnagar Post Office since 18.6.1988 on vacant post as E.D.A. Group 'D' official. There is no reliable evidence produced by the respondents in support of their contention that the applicant is a substitute or an outsider E.D. Packer. Moreover, the applicant has mentioned in his application para-1 that his name is borne on the muster-roll of all the Post Offices. In the rejoinder also the applicant has mentioned that the muster roll which is prepared by the respondent authority is in the custody of respondent No.4 which clearly shows that the applicant has worked as a E.D. Packer in Post Office of Memnagar since 18.6.1988 till 12.7.1989 as an E.D. Packer and not as a casual labour from outsider E.D. Packer. The respondents have not produced the muster roll in support of their contention taken in the reply that the applicant was engaged as an outsider E.D. Packer. We, therefore, reject the contention taken by the respondents that the applicant is a substitute. We hold that the applicant has been working as E.D. Group 'D' Packer in the Memnagar Post Office since 18.6.1988.

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6. The respondents have also denied that the provisions of I.D.Act apply to the applicant. On this point now it is well settled in the decision of Kunjan Bhaskaran vs. Sub-Divisional Office, Telegraphs Changanassery & Ors. 1983 Lab. I.C. page 135 by the Kerala High Court that the Post and Telegraph Department is an industry under Section 2 (g) of the I.D.Act and hence even for the termination of service of the workmen of that department provisions of Section 25-F, 25-G and 25-H are required to be followed. This decision is followed by the Ahmedabad Bench of C.A.T. in the case of M.A.Bukhari vs. Union of India & Ors. in O.A. 570/88 decided on 30.11.1988 which is referred to by the applicant in his application in para 14. We hold that the applicant is a 'Workman' and the respondents is an 'Industry' under the provisions of I.D.Act. We also hold that this Tribunal has jurisdiction to entertain the application of the applicant because the challenge is made to the impugned order being incomplete violation of Section 25-F of the I.D.Act and Article 14 and 16 of the Constitution of India.

7. The respondents have also contended that the applicant has not exhausted the alternative remedy under Section 20 of the Administrative Tribunals Act and therefore, also this application is not maintainable. In A.Padamvalley and another vs. C.P.W.D. & Ors. the larger Bench of the Central Administrative Tribunal III (1990) CSJ (CAT) 384 (FB) has held that an applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedy under the Act but it is also held that the powers of the Administrative Tribunals are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon

the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries. The guideline is given by the larger Bench in paragraph 38 and 39 of the judgment in which it is held that where the competent authority ignores statutory provisions or acts in violation of Article 14 of the Constitution or where either due to admissions made or from facts apparent on the face of the record, it is clear that there is statutory violation, it is open to the Tribunal exercising power under Article 226 to set aside that the illegal order of termination and to direct reinstatement of the employee leaving it open to the authority to act in accordance with the statutory provisions and to this extent alternative remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226. We, now proceed to examine the present case in the light of the above judgment as to whether we should direct the applicant to approach the proper forum under the Industrial Disputes Act or whether this is a fit case where exercising our power under Article 226, the relief should be given. The applicant in para-1 of his application has categorically stated that he has continuously worked from 18.6.1988 till the date of this application i.e. 10.7.1989 as a Packer EDA Group 'D' at Memnagar Post Office. The impugned order Annexure A/6 is dated 4.7.1989 by which one Shri Joshi is appointed in place of the applicant. According to the applicant, his name is borne on the muster roll of the post offices also and the applicant has stated that this muster roll is in possession of respondent No.4. The respondents have made a bare denial that the applicant has not worked for 240 days as alleged by him. The applicant

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has positively mentioned the period in his application from 18.6.1988 which is supported by even the certificate Annexure A/1 and has further mentioned in his application that he has worked for more than 240 days preceding the date of termination. The period from 18.6.1988 till the date of the impugned order Annexure A/6 is more than 240 days and there is no reason not to rely on the applicant's version in the application supported by the certificate Annexure A/1. The respondents' bare denial cannot be accepted because the respondent No.4 is in possession of the muster roll where the applicant's presence is noted. The respondents have not tried to produce that documentary evidence to controvert the applicant's version. Therefore, we are satisfied that the applicant has worked for more than 240 days prior to the date of the impugned order. Section 25(B) of the I.D.Act says that the workmen shall be deemed to be in continuous service under an employment for a period of one year if the Workmen during a period of 12 calander months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 240 days. The applicant has worked for 240 days in 12 calander months with the respondents preceding the date of the impugned order. He is a workman and the respondents is an industry and therefore the provisions of Section 25-F of the I.D.Act would be attracted. It is not in dispute that there is no retrenchment notice given to the applicant prior to his termination nor any retrenchment compensation has been given nor any notice in the prescribed manner served on the appropriate Govt. Therefore, the impugned order Annexure A/6 amounts to the retrenchment of the present applicant in clear violation of Section 25-F of the I.D.Act and as per the guideline given in para-38 and

and 39 of A. Padamavally's case (supra), this is a fit case in which in exercising of our power under Article 226 of the Constitution, the impugned order requires to be quashed and this is a fit case in which we should not direct the applicant to go to the Industrial Tribunal to exhaust the remedy available under the Industrial Disputes Act. Moreover, the application has already been admitted and it would not be proper at this stage to direct the applicant to approach the Industrial Tribunal or the Labour Tribunal when we find that the action on the part of the respondents is in violation of the statutory provisions Section 25-F of the I.D.A. Act. We, therefore, hold that the action on the part of the respondents is illegal, and bad in law and the impugned order at Annexure A/6 so far it is against the applicant deserves to be set aside. The applicant would be entitled to be reinstated in service with full backwages.

8. So far as the relief of the applicant to direct the respondents to regularise his service is concerned, we only direct the respondents to consider the case of the applicant for regularisation if he is eligible and qualified to this post according to the rules of the respondents.

9. In the result we pass the following order:

The application is partly allowed. The impugned order of the respondents Annexure A/6 dated 4.7.89 the effect of which amounts to the termination of the services of the applicant is set aside and the respondents are directed to reinstate the applicant in service with full backwages within a period of four months from the receipt of this order. The respondents may also consider the case of the applicant for regularisation if he is eligible and qualified for the said post as per the rules. We pass no orders as to costs. The application is disposed of.

Sd/

(R.C. Bhatt)
Member (J)

Sd/

(P.S. Habeeb Mohammed)
Member (A)