

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 209 OF 1993
T.A. No.

DATE OF DECISION 25-10-1993.

The Sub Divisional Officer, Petitioner
Phones, Naranpura, Ahmedabad.

Mr. Akil Kureshi, Advocate for the Petitioner(s)

Versus

Shri Mahesh S. Rathod, Respondent

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

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 ?

The Sub Divisional Officer Phones,
Naranpura Telephone Exchange,
Naranpura, Ahmedabad.

.... Applicant

(Advocate :Mr. Akil Kureshi)

Versus

Shri Mahesh S. Rathod,
residing at Block No. 4,
Room No.8
96 Quarters,
B/H New Civil Hospital,
Ahmedabad.

.... Respondent.

ORAL ORDER

O.A.No. 209/93

Date: 25-10-1993.

Per: Hon'ble Mr. R.C. Shatt, Judicial Member.

Mr. Akil Kureshi, learned advocate for the applicant. None is present for the respondent.

2. This application under section 19 of the Administrative Tribunals Act, 1985, is filed by the Sub Divisional Officer Phones, Naranpura, Ahmedabad against the workman who is respondent in this case before us, seeking the following reliefs:

"9. Reliefs sought:

In view of the facts stated above, the applicant prays that this Hon'ble Court be pleased:

(A) to call for the record and proceedings of the Reference (ITC)No. 60 of 1991 from the Central Industrial Tribunal, Ahmedabad (Annexure A-1 hereto) and after hearing the parties be pleased to quash and set aside the impugned judgment and award (Annexure A1) dated 25.11.1992 passed by the Central Industrial Tribunal, Ahmedabad in Ref.(ITC)No. 60/91;

(B) Such other and further relief as may be deemed just and proper be granted."

3. The respondent have not filed reply and is not present at the time of hearing of this application, hence we proceed to decide this matter hearing the learned advocate Mr. Akil Kureshi for the applicant before us and going through the record of this case.

4. The Industrial Dispute between the above named parties was referred for adjudication under section 10(1) of the Industrial Disputes Act, 1947 to the Industrial Tribunal, Ahmedabad in Reference (ITC) No. 60/91. The Industrial dispute related to the question whether the action of the applicant in removing the name of the workman i.e., the respondent from the strength of office from 22nd August, 1990 was legal and justified and if not what relief the concerned workman was entitled to? The Industrial Tribunal, Ahmedabad gave an award on 25th November, 1992 allowing the Reference and holding that the action of the first party i.e., the applicant in not permitting the concerned workman i.e., respondent to join duty with effect from 18th January, 1990 was illegal and in violation of the provisions contained in Section 25 F of the I.D. Act, 1947. It was declared that the concerned workman should be deemed to have continued service and would be entitled to backwages from

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18th January, 1990 but would not be entitled to wages for the period from 1st May, 1988 to 17th January, 1990, the period during which he was admittedly sick. It is this award which is being challenged before us by the Sub Divisional Officer Telephone, Naranpura, Ahmedabad by filing this application.

5. It is alleged in the application that the impugned award is illegal and without proper application of mind, that the Tribunal ought to have appreciated that the present respondent had not completed 240 days of work in the last preceding 12 calendar month and therefore, Section 25F of I.D. Act was not applicable to the present case. There are also other grounds mentioned in the application.

6. The learned advocate Mr. Akil Kureshi for the applicant submitted before us that in the present case, the respondent had remained sick without prior intimation to the applicant ^{and} the sickness certificates produced by him were also false. He also submitted that Section 25F of I.D. Act is not applicable to the present case.

7. We have gone through the record of the Reference (ITC) No. 60/91. It is important to note at this stage that the jurisdiction of this Tribunal

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under Article 227 of the Constitution of India is very limited. The award which has been given by the Industrial Tribunal shows that it has considered the adduced evidence oral and documentary / before it. It was also found by the Tribunal in its award para-7 which is English translation of award in Gujarati furnished to us, as under:

"7. It is clear from the documents discussed in the above paragraphs that no departmental enquiry was held against the concerned workman. He was not served with any charge sheet regarding his alleged misconduct in remaining absent for a long period without getting his leave previously sanctioned. He was not served with any discharge order. The first party had expressed its regrets in reply to the written requests made by the concerned workman for permitting him to resume duty. The first party would be entitled to retrench a workman under certain circumstances under Section 25F of the I.D.Act, 1947. The employer has to follow mandatory requirements contained in this provision before retrenching any workman. The retrenchment should be fair and simple. Therefore if the retrenchment is in the nature of measure of punishment the employee cannot resort to Section 25F of the I.D.Act and in that case the employer has to initiate departmental enquiry. In the instant case no departmental enquiry was initiated against the concerned workman. It appears that he was prevented from discharging duty on the only ground that he had remained absent for a long period without getting leave previously sanctioned. Therefore this would mean that he was not permitted to join duty as a measure of punishment because of his long absence without getting the leave previously sanctioned. Thus this was in the nature of penalty imposed upon him. Therefore, the

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first party ought to have initiated departmental enquiry against him. He ought to have given an opportunity to defend himself. He ought to have given an opportunity to prove his illness. It was submitted that the wife of the concerned workmen had initiated more maintenance proceedings in some Court and that the concerned workman has admitted that he used to go to the Court in that case at least once in a month. Therefore it was submitted that he was able to go to the Court and consequently he could have resumed duties. There is no merit in this submission. When Court issues summons the party has got to go to the Court. If he had not gone to the Court the matter would have been decided ~~not~~ ex parte against him and thus in that case he would have been saddled with the financial liability to pay maintenance to his wife. He was suffering from mental disease, and so his conduct in going to the Court cannot be equated with the applicant to discharge of duty. Mere presence in the Court would not amount fit to discharge of duty. A person may not be in a position to discharge duty which would not mean that he is not in a position merely to remain present. As already said by me the concerned workman had worked for more than 240 days in the years from 1.4.82 to 30.4.88 and so the first party could not have stopped him from discharging duty without complying with the mandatory requirements contained in Section 25F of the I.D.Act. The first party could have held departmental enquiry and discharged or dismissed him on the ground of absence amounting to misconduct. That was not done by the first party. Hence it appears that the first party has orally terminated the services. Notice of termination of service was not served upon the concerned workman. Notice pay was also not given to him. Gratuity amount was also not paid to him. The retrenchment compensation was also not paid to him. These are all the mandatory

requirements required to be followed by the employer at the time of effecting simple termination of service. Thus in the instant case, the first party must be held to have violated the mandatory requirements contained in Section 25F of the I.D. Act and so the resultant effect is that the concerned workman must be deemed to have continued in service at least with effect from 18.1.90, the date on which he had submitted the request in writing to permit him to join duty. Therefore, he would be entitled to back wages from that date. He would not be entitled to wages from 1.5.88 to 17.1.90."

8. Examining the definition of Section 2(oo) of I.D. Act, 1947 it is clear that the retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment indicated by way of disciplinary action except mentioned in clause (a), (b), (bb) and (c) of Section 2(oo). Admittedly in this case the respondent was not allowed to resume the duty. In the instant case, it has been argued before us that the respondent had not given any previous intimation about his sickness and his sickness certificates were also false. The Industrial Tribunal has examined the evidence at length and it has held that the genuineness of the certificates cannot be questioned. The present applicant had not produced any evidence creating the doubt about the certificates. The Tribunal has held that the first party would be entitled to retrench workman under

certain circumstances under section 25F of I.D.Act, 1947.

It is held that if the retrenchment is in the nature of measure of punishment, the employer can not resort to Section 25F of the I.D.Act and in that case the employer can initiate departmental enquiry. The learned advocate Mr. Akil Kureishi submitted that in the instant case, the termination of the respondent could be justified as it covers the exception namely Section 2(oo)(c) of the I.D.Act. There is no evidence to show that the present respondent was terminated from service on the ground of continued ill-health. On the contrary, the present respondent was not allowed to resume the duty.

9. Mr. Akil Kureishi submitted that Section 25F of I.D.Act would not apply. ~~but~~ The principle question is whether the impugned action is violative of principles of natural justice. The cardinal point that has to be born in mind in every case is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. Article 21 of the Constitution guarantees right to life which includes right to livelihood, the deprivation there of must be in accordance with just and fair procedure prescribed by law conformable to Article 14 and 21 so as to be just, fair and reasonable and not ~~fengi~~ful, oppressive or at vagary. The principle

of natural justice is an integral part of the guarantee of equality assured by Article 14. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of natural justice. Article 14 strikes at arbitrary action. In Robert D'Souza V/s. Executive Engineer, Southern Railway and Another, (1982) 1 SCC, 645, it was held that striking of name from the rolls for unauthorised absence from duty amounted to termination of service. In Delhi Cloth and General Mills Ltd. V/s. Shambhu Nath Mukerjee and Ors. (1978) 1 SCR 591, it was held that striking of the name of the workmen for absence of leave itself amounted to retrenchment. Therefore, before taking any action putting an end to the tenure of an employee/workman, fairplay requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice.

10. Thus, the question which is germane to the enquiry of this case was, whether the action of applicant in the present application to prevent this respondent from resuming the duty was legal? The Tribunal has believed the case of the respondent that he was sick for the period mentioned by him that he had produced the

case. We find no error of Law having been committed by
was illegal in the above circumstances and facts of the
respondent to join duty with effect from 18th January, 1990
on the part of the present applicant in not permitting the
agreement with the Industrial Tribunal that the action
about his claim for that period. We are in complete
applicant employer and not made by the respondent workman
that question because this is an application made by the
1988 to 17th January, 1990 and therefore, we do not go into
has not awarded any wages to the respondent from 1st May,
the grounds mentioned in the application. The Tribunal
awarded very carefully and we find no substance in any of
11. We have examined the record of the case and the
no enquiry was held.

case no such opportunity was given to the respondent and
reasonable opportunity to put forth his case. In this
it by the procedure of a departmental enquiry, giving him
ground of unauthorised absence, they could have only done
terminate the services of the present respondent on the
January, 1990 and if at all the applicant wanted to
applicant from resuming his duty with effect from 18th
the present applicant could not have terminated the
sicknes certificate which were genuine and therefore,

the Tribunal in reaching the conclusion nor the Tribunal has adopted any illegal procedure which resulted in the miscarriage of justice. In the result, we pass the following order.

O R D E R

Application is dismissed. No order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

R.Bhatt

(R.C.Bhatt)
Member (J)

vtc.

2 for parties
+ 1 o/c
+ 5 reporters & ps
⑧ copies
OK
4-11-93
3 copies
OK

⑦ copies for reporters
OK
21.3.93
6
20/3

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Application No. OA/209/93 of 199

Transfer Application No. _____ Old Writ Pet. NO. _____

C E R T I F I C A T E

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

Dated : 01/12/93 *5 copies to be kept & P.I.P. is pending*
Counter dated *3-12-93*
Pr. J. and

~~Section Officer/Court Officer~~

MM
Sign. of the dealing Assistant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT NEW DELHI

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NAMES OF THE

**NAME OF THE
PARTIES.....** S.D.O. Phomes..... Hennangpura, A. baid,.....

VERSUS

Mr. M. S. Rathod,.....

PART A B & C