

# CENTRAL ADMINISTRATIVE TRIBUNAL

## AHMEDABAD BENCH

**O.A. NO. 42 OF 1993.**

~~**Tax NO.**~~

DATE OF DECISION 11-5-94

Abdul Rehman Chandubhai Habibani, Petitioner

Mr. K.C. Bhatt,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondents

Mr. Akil Kureshi,

Advocate for the Respondent (s)

**CORAM**

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble ~~Mr.~~ Dr. R.K. Saxena, 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 ?

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Abdul Rehman Chandbhai Habibani,  
Driver, Mail Motor Service,  
Head Post Office, Bhavnagar.  
Residing at Alka Road,  
Jinvalo Khancho,  
Bhavnagar.

..... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus.

1. Union of India through  
The Director-General  
Department of Posts  
Ministry of Communication  
Parliament Street,  
New Delhi.
2. The Postmaster General,  
Rajkot Region, Rajkot.
3. The Sr. Supdt. of Post Offices,  
Bhavnagar Division,  
Bhavnagar.
4. The Senior Postmaster,  
Bhavnagar.

..... Respondents

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A. No. 42 OF 1993

Date: 11-5-94

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt, learned advocate for the  
applicant and Mr. Akil Kureshi, learned advocate for  
the respondents.

2. The applicant was appointed as driver in Mail  
Motor Service, SPO Bhavnagar with effect from 28.8.90,  
Annexure A-1. The applicant was then working as driver  
until he was terminated from service on 3-1-1992. No  
written orders of termination or reason was given for

..... 3/-

termination. The applicant approached SSP Bhavnagar as appellate authority, who orally rejected the request. The applicant approached the Tribunal against the oral termination and the Tribunal quashed the oral termination as illegal, Annexure A-4. The applicant was reinstated on 21-2-1992 forenoon and on the same date he was given written order of termination, Annexure A-10. The applicant has challenged this order as unconstitutional, against the principles of natural justice and against provisions of Section 25F of Industrial Disputes Act, hence he claimed the following reliefs.

- "i) The impugned order No.B2/29/ACH/92 dated 21-2-92 from Senior Postmaster Bhavnagar regarding termination of services of the applicant be quashed and set aside.
- ii) The impugned appellate order No.B2/23/Driver dated 31-3-1992 from the Sr.Suptd. of Post Offices, Bhavnagar be quashed and set aside.
- iii) The Respondent authority be directed to re-instate the applicant in service with full back wages, treating him as continued in service from 21-2-1992 the date of termination of service.
- iv) The respondent authority be directed to regularise the services of the applicant as he is continuously working on clear vacant post from 28-8-1990.
- v) The respondent authority be directed to pay the cost of this application as the applicant is a very low paid servant and the termination of services without any fault of the applicant and the termination is illegal and bad in law.

vi) Any other suitable relief may be granted."

3. The respondents have filed reply. They have stated that the applicant was engaged as purely temporary and provisional arrangement as outsider driver mail motor service in Bhavnagar SPO. He was engaged on daily wages basis and worked as outsider driver from 29-8-90 to 31-12-90, 1-1-91 to 12-5-91, 20-5-91 to 3-1-92. He was relieved with effect from 3-1-1992 as it was not necessary to continue him. The respondents have stated that applicant had given his willingness to work in the post which was liable to be terminated at any time without assigning any reason and he would have no claim for regular appointment and there was no work, his services would be terminated. This arrangement was made to <sup>maintain</sup> ~~grant~~ essential ~~service~~ of postal service, he was not appointed on regular basis but on daily wages on purely temporary basis and liable to be terminated at any time without assigning any reason. They have denied that the applicant contention that he had worked for 542 days. Their contention is that he worked for 486 days from 29-8-1990 intermittently.

4. The applicant has filed rejoinder. The applicant has stated that there is no dispute that he was engaged by the SSP Bhavnagar by his order dated 28-8-1990 and

he was relieved on 3-1-1992. After being reinstated as per direction of the CAT Ahmedabad on 21-2-1992 his services were terminated by written orders on the same day. The respondents have admitted that applicant had worked for 486 days and in 1991 he had actually worked for 361 days. The applicant has also challenged the contention that he was not working against sanctioned post. The Postmaster Bhavnagar had clearly certified that applicant's pay was drawn on vacant post.

5. The main question is whether the respondents were entitled to remove the applicant as per impugned order Annexure A-10. The learned advocate for the applicant has relied on the following decisions supporting his contention that removal without following procedure by the I.D. Act is irregular and void.

- (i) ATC 1987(5) page 228, Supreme Court of India W.P.373/86, 302/86 decided on 27.10.1987. Labour Law Absorption-Dailwages rated casual labour in P & T Department.
- (ii) ATR Feb.91 Part-2 page 221, B.S. Chopra & Ors. V/s. U.O.I. & Ors. . . .
- (iii) ATR March 91 part-3 page 267 CAT Ahmedabad O.A. 287/88 decided on 18-4-90.
- (iv) ATC 1987(5) page 180, para-6 CAT Ahmedabad.
- (v) CAT Ahmedabad OA 278/89 decided on 1.10.91.
- (vi) CAT Ahmedabad ATC Dec.90 part-12.
- (vii) ATJ 1988(1) page 408 Supreme Court of India C.A.No.1509(NL) of 1987 decided on 16-12-1987.
- (viii) ~~ATC~~ 1987(5) page 435 S.C.W.P.No.1670/86 decided on 4-12-1987 para-5.

(ix) ATC 1989(9) page 357 CAT Madras. O.A.Nos.  
759, 669 and 670 of 1987 decided on 12.7.88.

There is no dispute regarding the fact that the applicant had worked continuously for more than 240 days under the respondents. The respondents have admitted that the applicant had worked for the following period before he was terminated.

1990	29.8.1990	to	31.12.1990	-	125 days
1991	01.1.1991	to	12.05.1991	-	132 days
1991	20.5.1991	to	03.01.1992	-	229 days
					-----
Total :					486 days
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5. Mr. Akil Kureshi for the respondents argued that the Postal Department does not come within the definition of Industry as such the applicant can not claim protection under I.D.Act. This Bench of the Tribunal had held in its judgment in O.A.570/88 decided on 30.11.1988 that the department of post falls within the definition of Industry and any person working in the said department comes within the definition of workman of the said Act. Hence in the instant case we are satisfied that applicant had worked for more than 240 days in the year prior to his termination on 21.2.1992 and respondents can not terminate his services without following the provisions of Sec. 25(F) of the Industrial Disputes Act as it would amount to <sup>retrenchment</sup> ~~reinstatement~~. There is a legal flow in the termination inasmuch as provisions of Section 25F were not followed by the


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respondents before the termination of the services of the applicant. If respondents did not want to continue the applicant by giving him regular appointment, he could be retrenched only by following the provisions of Section 25F of the I.D. Act which they have not done so. The order of the respondents in terminating the service of the applicant was bad in law and applicant is entitled to be reinstated his service with full backwages. Accordingly we pass the following order:

ORDER

The application is allowed. The impugned order passed by the respondents, Ann.A-10 is hereby quashed and set aside and subsequent order of the Sr. Supdt. of Post Offices dated 31-3-1992 is also quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the receipt of the judgment with full backwages <sup>after adjusting any amount received by him during the period from any other source for back wages</sup> which must be paid within four months from the date of the receipt of this order. The respondents are also directed to consider the request of the applicant for regularisation in the post in accordance with rules. No order as to costs.

  
(Dr. R.K. Saxena)  
Member (J)

  
(V. Radhakrishnan)  
Member (A)

S.O. (1)  
20/8/95  
(S-32/95)

Section IX  
SUPREME COURT OF INDIA  
NEW DELHI.  
DATED:- 09/05/95

From:-

The Registrar  
Supreme Court of India  
NEW DELHI.

Central Administrative Tribunal  
Ahmedabad Bench.

To

The Registrar

~~Union Court~~ Central Admn. Tribunal  
at Ahmedabad

Inward No..... 859  
Date..... 21/5/95

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL No 1854 /95

(Petition under Article 136(1) of the constitution of India from

the Judgment and Order dated 11/05/94

of the Central Admn. Tribunal, Ahmedabad.  
~~High Court of Judicature at GUJARAT~~

In O.A. 42/93

UNION OF INDIA & ORS

... PETITIONER(S)

- vs -

ABDUL REHMAN CHANDBHAI HABIBANI

... RESPONDENT(S)

Sir,

I am directed to inform you that the petition above mentioned  
filed in the Supreme Court was dismissed on merits  
by the Court on 13/01/95

Yours faithfully

*[Signature]*

For Registrar

COPY TO  
MRS ANIL KATDIYAR (Adv)  
MR. AMLAN GHOSH (Adv)

For Personal Pile:-

Honble Vice Chairman, 7/7/95

Honble Mr. V. Radhakrishnan, member(A)

Honble Mr. K. Ramaswami, member(A)

*[Signature]*  
11/5



AHMEDABAD BENCH

Application No. 04/42/93 of 19

Transfer Application No. \_\_\_\_\_ Old w. lett. 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: 07.06.94

Countersigned :

*C*  
*Amber*  
*09.88h*  
Section officer/Court officer.

*cocclaf*  
Signature of the  
Dealing Assistant.

# INDEX SHEET

VERSUS

U.O.I. 2000.

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