

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A. NO.** 123/93

**T.A. NO.**

**DATE OF DECISION** 5-8-94

Mr. V.B. Baria

Petitioner

Mr. P.K. Handa

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

**CORAM**

The Hon'ble Mr.

K. Ramamurthy

Member (A)

The Hon'ble Mr.

Dr. R.K. Saxena

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 Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

} No

V.B. Baria  
Apsara Talkies  
Above Pratapnagar Post  
Office, Vadodara

Applicant

Advocate Mr. P.K. Handa

Versus

1. Union of India, Secretary  
Ministry of Telecommunication  
Dak Bhavan, New Delhi through
2. The Chief General Manager (Telephones)  
Gujarat Circle, Ahmedabad.
2. Divisional Engineer (Telephones)  
Pratap Road, Raopura, Vadodara
3. Asstt. Labour Commissioner (C)  
Shram Bhavan, Khanpur,  
Ahmedabad.

Respondents

Advocate Mr. Akil Kureshi

J U D G M E N T

IN

O.A. 123 of 1993

Date: 5-8-94

Per Hon'ble Dr. R.K. Saxena

Member (J)

The applicant Shri V.B. Baria, has become a football being tossed from one side to another. He agitated the matter before the Assistant Labour Commissioner, Ahmedabad, by challenging the order dated 26-5-1984 passed by the Sub-Divisional Officer telephones but no finality could be brought ~~in~~ in his case.

2. Briefly stated the applicant was appointed as cleaner with the respondents on 21-6-1976. He appeared in the Examination of Departmental Candidates, for the post of Telephone Operator, and

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he was declared successful. He under-went training and then he was appointed as Telephone Operator, in the year 1984, and worked till the date of his reversion. The reasons of reversion was not explained to him. It is, however, explained, on behalf of the respondents, that the applicant was not declared successful in the examination. Actually he had failed but he forged the document with the connivance of office showing him to have qualified, in the examination. When this fact came to the notice of the department immediate action was taken and, he was reverted. On his reversion, he had moved the Assistant Labour Commissioner but he refused to entertain the complaint on the ground that the jurisdiction of the service matters lay with the Central Admn. Tribunal. He, therefore, filed O.A. 83/89, which was decided on 28-10-1991. The Tribunal held the view that it had no jurisdiction to adjudicate upon the matter and the applicant was advised to approach the Assistant Labour Commissioner. Accordingly he approached but he was given information by the Assistant Labour Commissioner, that it had no jurisdiction. Consequently, the applicant filed another O.A. 442/92, which was withdrawn on 22-1-1993, with liberty to file a fresh application and it was then that the present O.A. 123/93, was filed. The relief sought by the applicant is that this Tribunal may quash the order of Assistant Labour Commissioner (Central) Ahmedabad, and give suitable directions in the matter. The respondents contested the application on the ground that it was misconceived and untenable. It was also pointed out that the Assistant Labour Commissioner had no jurisdiction because it was the Government Department, from where the order of reversion was passed and not



an industry. It is also pointed out that it was only an individual case and was not covered by the definition of Industrial Disputes Act.

3. We have heard the learned counsel for the applicant and the respondents.

4. The first and the foremost question for determination is whether the applicant is covered by the definition of a workman and whether this dispute is an Industrial Dispute. This Tribunal in O.A. 713/93 Jadeja Mahendrasingh Bhurubha Vs. Union of India and Others, delivered on 19-7-1994, and in several other cases had held that Telecommunication Department is an industry and thus an employee who is not in supervisory or managerial category, shall be a workman, if his salary is such as is covered by the definition. In this case, the applicant is at present a Cleaner. Thus he cannot be deemed to be in supervisory category. He is, any-how, covered by the definition of workman. Thus the plea raised by the respondents that Telecommunication Department was not an industry, become irrelevant.

5. So far as the question whether the reversion of the applicant is an industrial dispute is concerned, we will have to see the definition of the term which is defined under section 2 (k) and means any dispute or difference between — the employers and employers or between employers and workmen or between workmen and workmen which is connected with the

employment or non-employment or the terms of employment or with the conditions of labour of any person. There was controversy about the interpretation of the term used "any Person" in the definition given above. There were three views: "dispute between the employer and single workman could not be an industrial dispute; it could be an industrial dispute; and it cannot perceive an industrial dispute but may become if it is taken up by a Trade Union or by number of workmen."

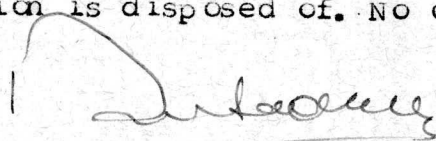
6. In deciding the case Western India Match Company Vs. Western India Match Company Workers Union 1970 II LLJ 256, the Supreme Court took the view of including even a single person if a dispute had direct or substantial interest in respect of employment or non-employment of labour. After introduction of section 2-A controversy was to some extent diluted. Thus it may not be correct to say that individual matters cannot be agitated before the Industrial Tribunal, Labour Court, or other agency established under Industrial Disputes Act.

7. When we look to the facts of this case, there is no denial even from the side of the respondents that the applicant was reverted from the post of Telephone Operator. Whatever the reason of reversion and the version of which side was correct, will have to be examined. There being two versions of reversion being not denied, there becomes a dispute and <sup>an</sup> industrial dispute under the provisions of Industrial Disputes Act. The object and creation of office of conciliation officer under the Industrial Disputes Act

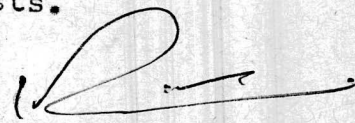
is that he may first try to settle the dispute and if he fails in his attempts, the reference may be made so that the dispute may be resolved and there may not be industrial unrest. Looking from this angle, the stand taken by the Assistant Labour Commissioner that he has got no jurisdiction is not understandable. It appears that he has misread section 28 of Administrative Tribunals Act 1985 which excludes the jurisdiction of other Courts except Supreme Court, and Industrial Court, Labour Court and other authority constituted under the Industrial Disputes Act 1947 or any corresponding law for the time being in force, in the matters of service jurisdiction <sup>of</sup> which has been entrusted to the Administrative Tribunals. It may <sup>be</sup> made clear that the jurisdiction of Industrial Tribunal, Labour Court and other Agency created under the provisions of Industrial Disputes Act was never taken <sup>away</sup>. The Assistant Labour Commissioner had no ground to refuse <sup>to</sup> entertain the application on the pretext that the jurisdiction was vested in this Tribunal. It might have been a different matter if it was the interpretation of the Assistant Labour Commissioner of his own. But in this case, there appears insistence because when this Tribunal directed the applicant to approach the Assistant Labour Commissioner <sup>and approached, he</sup> ~~he could not~~ gave the same reply. It is not that the Assistant Labour Commissioner has got a discretion either to entertain or to return the complaint. If any complaint is made he has to entertain and to consider <sup>it</sup> on merits. The order of this Tribunal passed on 28-10-1991 was not taken in right perspective, by the Assistant Labour Commissioner. It is for these reasons that the applicant has been running from pillar to post.



8. On consideration of these facts, we come to the conclusion that the dispute which has been ~~xxx~~ raised by the applicant is squarely within the jurisdiction of Assistant Labour Commissioner, as a Conciliation Officer. He is, therefore, directed to entertain the complaint, of course, excluding the period which was spent by the applicant <sup>to</sup> ~~from~~ approaching this Tribunal thrice and the Assistant Labour Commissioner twice and to refer the matter to the appropriate Government, within two months from the date of receipt of the complaint. The applicant shall move the Assistant Labour Commissioner, afresh giving all the details within a fortnight from the date of this order. The appropriate Government, shall consider the matter and, take decision within a month. This time schedule is needed because the matter is pending since 1984 and no solution could be found out within these 10 years. With these directions the application is disposed of. No order as to costs.



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



(K. Ramamoorthy)  
Member (A)