

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 420/92 and OA/584/93

T.A. NO.

DATE OF DECISION 21.7.1995

Additional Postmaster General **Petitioner**

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

Versus

Shravankumar B. Sarada **Respondent**

Mr. K.K. Shah **Advocate for the Respondent (s)**



CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

OA/420/92 2

Additional Post Master General,
Gujarat Circle,
Ashram Road,
Ahmedabad

.. Applicant

(Advocate : Mr. Akil Kureshi)

Versus

Shri Shravankumar Bharatkumar Sarada,
Vatva Syndicate,
Block No.13, Room No.70,
G.I.D.C., Vatva,
Ahmedabad

.. Respondents

(Advocate : Mr. K.K. Shah)

OA/584/93

Shravankumar Bharatkumar Sarada,
Working as Dresser in the
P & T Dispensary,
Ahmedabad

.. Applicant

(Advocate : Mr. K.K. Shah)

Versus

The Chief Postmaster General,
Gujarat Circle,
Ahmedabad 380 001

.. Respondents

Date : 21.7.1995

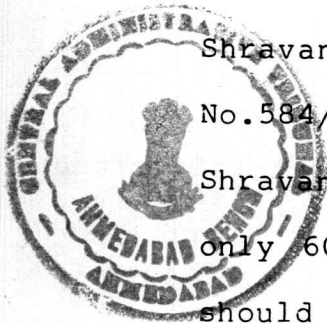
COMMON JUDGMENT (Oral)

Per : Hon'ble Mr. N.B. Patel, Vice Chairman

Both these OAs arise from the award of
Industrial Tribunal (Central), Ahmedabad in
Refence (ITC) No.46/89 and they will be disposed
of by this common judgment.

contd.. P3

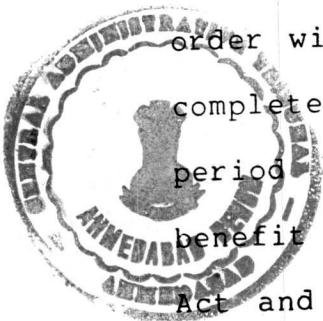
2. The Reference in question was regarding the industrial dispute raised by the applicant in OA/ 584/93, namely, Shri Shravankumar Bharatkumar Sarada in respect of the oral termination of his employment with effect from 14.5.1988. The Industrial Tribunal has declared the termination of the employment of Shri Shravankumar B. Sarada as invalid on the ground that it was in contravention of the provision of Section 25F of the Industrial Disputes Act. The Tribunal has ordered reinstatement of the Workman Shri Shravankumar B. Sarada with 60% backwages. OA No.584/93 is filed by the Workman Shri Shravankumar B. Sarada challenging the award of only 60% of backwages to him. He claims that he should have been awarded full backwages. OA No.420/92 is filed by the department challenging the award striking down the termination of the applicant and also challenging the award of backwages to the extent of 60% to him. In the present judgment, the workman will be referred to as "the applicant" and the department will be referred to as "the respondent".



3. There is no dispute about the fact that the applicant was engaged as a daily rated casual labourer (as a Dresser in the P & T Dispensary run by the Postal department) and his employment was terminated with effect from 14.5.1988 or 7.5.1988. There is no dispute about the fact that this termination was oral termination. The applicant's case was that he had completed 240 days or more of work during the one year preceding the date of the termination and, therefore, his

termination could have been brought about only by one month's notice or one month's pay in lieu of notice and by payment of retrenchment compensation to him as envisaged by Section 25F of the Industrial Disputes Act. It appears that the respondent department contested the applicability of the provision of Section 25F of Industrial Disputes Act to the facts of the case by contending that the applicant had not completed 240 days during the year preceding the date of his termination and further stating that the applicant was not in the regular employment of the department.

4. The Tribunal has struck down the termination order with a clear finding that the applicant had completed 240 days of work during the relevant period and, therefore, he was entitled to the benefit of section 25F of the Industrial Disputes Act and since no notice was given to him nor any wages were paid to him in lieu of notice nor was any compensation paid to him, the termination was void and ab initio. In OA/420/92, the department has challenged this finding also. However, the judgment of the Tribunal shows that the Tribunal had considered exhibits 17, 18 and 19 before it, namely, the muster rolls and its finding that the applicant had completed 240 days or more days of work during the relevant period is based on the said documents. Since the Tribunal's finding on this point is based on this documentary evidence and since it is not shown to us that



27

finding was perverse, there is no question of interfering ^{with} the said finding in this petition under Article 227 of the Constitution of India.

5. In his OA No.584/93 the applicant has challenged the dismissal of his claim for backwages to the extent of 40% and ⁱⁿ the cross OA filed by the department, it is contended that the applicant should not have been awarded even 60% of backwages. Even on this point, we see no case to interfere with the judgment of the Tribunal in exercise of power under Article 227 of the Constitution of India considering the fact that the Tribunal's award entitling the applicant to the extent of 40% of backwages is based on its finding that the applicant was not working on all the days of a month before his termination. We also see no reason to interfere with the judgment as prayed for by the department, because we find that the award of backwages to the applicant to the extent of 60% cannot be ^{branded as} granted perverse, unreasonable ^{or} and unjust.

6. In the result, both the OAs are dismissed. However, there will be no order as to costs.

Sd/-

(K. Ramamoorthy)
Member (A)

raj

Sd/-

N.B. Patel
Vice Chairman.

Prepared by 12/27/77
Co-Ordinated by 12/27/77
True Copy
27/12/77
Section Officer (Tribunal)
Central Administrative Tribunal
Ahmedabad Bench.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 04/584/93 of
Transfer Application No. _____ of

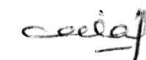
CERTIFICATE

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

Dated : 27.07.95

Countersign :


Section Officer.


Signature of the Dealing
Assistant

INDEX SHEET

041584/93

Mr. S. B. Seedorf

4-0-1, 8 0.00

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

584

of

1993

Miscellaneous Petition No:

534

of

1993

Shri

Shri Ram Kumar B. Sharda

Petitioner(s)

Versus.

UO/2088

Respondent(s).

This application has been submitted to the Tribunal by

Shri

K.K. Shah

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O. (J):

D.R. (J):

KNP24492.

MA/534/93 for condonation of delay in
filed.

8/10/93

8/10/93

Prash
8-10-93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO. 584 OF 1993

Shravankumar B. Sharda ... Applicant

V/s.

Union of India & Others ... Respondents

I N D E X

Sr.No.	Annexure No.	Particulars	Page Nos
1.	-	Memo of appli- cation	1 to 6
2.	A	Labour Court's Award	7 To 18

K. K. Shah
Advocate

Ahmedabad

Date:

1st Oct. 93

NOT/A/25

D.D. No. 620360

(KIRAN K. SHAH)
Advocate

Filed by Mr. K. K. Shah
Learned Advocate for Petitioners
with second set & 1 copies
copies copy served/not served to
other side

By *CBH*
Dy. Registrar C.A.T.(I)
Ahmedabad Bench

Court-II

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

ORIGINAL APPLICATION NO. OF 1993

Shravankumar B. Sharda ... Applicant

V/s.

Union of India & Others ... Respondents

DETAILS OF APPLICATION

Details of applicant:

Shravankumar B. Sharda
Working as Dresser in the
P & T Dispensary, Ahmedabad.

Address for service of Notice:

K.K. Shah, Advocate,
3, Achalayatan Society,
Behind Memnagar Fire Station,
Navrangpura,
Ahmedabad.

Particulars of respondent:

Union of India, notice to be
served through:

1. The Chief Postmaster General,
Gujarat Circle,
Ahmedabad - 380 001.

1. Order under challenge:

The applicant is challenging hereby the award of
the Industrial Tribunal (Central) Reference ITC No.46/89
dated 31.1.1992.

The Hon'ble Tribunal have erred by awarding 60%
of the backwages despite holding that the action of
the respondents by orally retrenching the service of
the applicant is in violation of Section 25 of the
Industrial Disputes Act, 1947 and the reasons for
denial of 40% backwages is not on any evidence pro-
duced by the Chief Postmaster General, Ahmedabad, but
merely on the logic, an juncture and surmises. The
denial of 40% backwages is incorrect and not as per
the settled law that when Section 25 F is violated

...

while reinstatement the full backwages follows unless the employer proves that the workman was gainfully employed therefore, the award of the Industrial Tribunal partly to the extent of denying 40% backwages is improper, unjust and unfair.

The Learned Presiding Officer while deciding the reference has come to the conclusion rightly that the oral termination of the applicant is in violation of Section 25F of the I.D. Act and therefore, rightly reinstatement was granted by the Learned Presiding Officer failed to grant the full backwages and that is improper unjust and against the settled law that once the retrenchment has been held illegal, the workman to be reinstated with continuity of service and full backwages. To the extent the wages are denied, the applicant is filling to present appeal against the Labour Court's award at Annexure A for full backwages.

The applicant further submits that the respondent have also preferred the original application before this Hon'ble Tribunal being aggrieved with the award of the Labour Court at Annexure-A and the said OA No. 420/90 is admitted subject to jurisdiction and is pending for hearing.

The judgement of the Labour Court at Ann. A is contrary to the various judgments of the Hon'ble Supreme Court as well as recently reported in 1989 Suppl.(2)SOC page 97 in the case of Narottam Chopra V/s. Presiding Officer, Labour Court and Others.

2. Limitation:

The applicant submits that since he was without job and even the award of the Labour Court was not implemented by the respondents he preferred representation by the respondents he preferred representation as well as gave a notice through the advocate and as a

last resort filed a contempt proceedings before the Hon'ble High Court of Gujarat, the same is pending. Before the Hon'ble High Court the respondents came with the plea that they have approached this Hon'ble Tribunal by preferring O.A against the award of the Labour Court at Annexure.A. The applicant submits that since the O.A of the respondent Union of India against the same award at Annexure A is admitted and pending. The Court's appeal arises from the same award may kindly also be admitted and to be decided with the O.A 420/92 filed by the Union of India in the interest of justice, and is requires to be considered any delay, the same may kindly be condoned. The applicant is filing a separate application for condonation of delay also.

3. Jurisdiction:

The applicant submits that as per the Administrative Tribunals Act, 1985, the jurisdiction against the Labour Court does not lie by way of an appeal to this Hon'ble Tribunal, since the respondents have filed O.A before this Hon'ble Tribunal and the same has been admitted subject to jurisdiction the applicant is also preferring the present application to be decided with the respondents original application instead of inviting conflicting decision about the said award.

4. Facts of the case:

4.1 The applicant submits that the applicant was working as a Dresser under the respondent and was orally terminated. Being aggrieved with the said action the applicant approached the Industrial Forum and his case was placed before the conciliation and ultimately a reference was made to the Industrial Tribunal and after examining the pleadings and evidence the Hon'ble

Tribunal was pleased to come to the conclusion that the oral termination of the applicant by the respondents was illegal and in violation of Section 25F of the Industrial Disputes Act, 1947.

4.2 The respondents were directed to reinstate the applicant with 60% backwages, but was denied the 40% backwages without any proof of he being gainfully employed anywhere else and the conclusion of awarding 60% backwages only and denying 40% was logically and without any evidence.

4.3 The applicant submits that the effect of quashing and setting aside the illegal termination gives right to reinstate with continuity of service and all consequential benefits including full backwages, there is a catina of decision on this issue and the recent decision of the Hon'ble Supreme Court as reported in 1989 Suppl.(2) SCC Page 97 in the case of Narottam Chopra, the Hon'ble Supreme Court was pleased to pass the following order while disposed of the Special Leave Petition.

5. GROUNDNS

(A) The Learned Presiding Officer erred by not awarding the full backwages without any evidence and just on hypothetcial and logcial view was taken, this is against the well settled law and therefore the full backwages is requires to be granted by an appropriate order or direction over and above to the award passed by the Hon'ble Labour Court.

(b) The award of the Labour Court is not in conformity with the judgement of the Hon'ble Supreme Court as reported in 1989 Suppl.(2) SCC Page 97 and many other judgements, which willbe relied at the time of hearing of this application.

(C) The Learned Presiding Officer failed to appreciate that once the oral termination/retranchment has been considered as illegal and in contravention of Rule 25 F of the I.D. Act, 1947 and consequence will be the applicant would be reinstated with full backwages and consequential benefits and therefore the award Annexure - A requires to be modified by granting the full backwages with reinstatement and continuity of service.

6. Details of remedies exhausted:

The applicant declares that there is no remedy available.

7. Matters not previously filed or pending with any Other Court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which, this application has been made, before any court of law or any other authority or any other bench of this Tribunal and or any such application, writ petition or suit is pending before any of them.

8. Relief Sought:

(A) This Hon'ble Tribunal may be pleased to issue a writ of certiorari or any other writ or directives or passed an appropriate order by holding that the Learned Presiding Officer has erred by not granting the full backwages while holding oral termination of the applicant in violation of Section 25 F of the I.D. Act in absence of any proof produced by the respondents by the applicant being gainfully employed elsewhere. The respondents may be directed to pay the full backwages with interest annum from the date of oral termination.

- (B) This application may kindly be allowed with costs.
- (C) Any other order or direction as may be deemed fit in the interest of justice may be passed.
9. Interim order if any prayed for:
- (A) Pending hearing and final disposal of this application, the respondents may be directed to deposit the difference of backwages before this Hon'ble Tribunal or as deemed fit by this Hon'ble Tribunal in the interest of justice.
- (B) Any other order or direction as may be deemed fit in the interest of justice may be passed.
10. Particulars of Bank Draft in respect of the Application fees:
- (1) Name of the Bank on which Drawn:
- (2) Demand Draft No: *MDT/A/38*
620360
11. List of enclosures: Details shown in Index.

VERIFICATION

I, Shri Shravankumar B. Sharda, aged adult, working as Dresser, P&T Dispensary, Usmanpura, Ahmedabad residing at Ahmedabad do hereby state that what is stated in para 1 to 4 and 6 to 11 is true to the best of my knowledge and belief and what is stated in paragraph 5 are legal grounds are on the advice of my Advocate and the same is accepted by me as correct. I, further, declare that I have not suppressed any material fact.

G. B. Sharda
(SHRAVANKUMAR B. SHARDA)

Identified by me:

Shah

K.K. SHAH, ADVOCATE

Place: Ahmedabad

Date : *1st* day of October, 1993.

(7)

BEFORE SHRI R.S. SHUKLA, CENTRAL INDUSTRIAL TRIBUNAL,
GUJARAT, AHMEDABAD.

Ref: I.T.C. No. 46 / 89

Additional P.M.G.,
Gujarat Circle, Ashram Road,
Ahmedabad

First Party
(Respondents)

V/S

Shri Shrivankumar Bharatkumar Sarda,
Vatva Syndicate Block No. B Room No. 70
G.I.D.C., Vatva, Ahmedabad

Second Party
(Applicants)

Regarding - whether the impugned action of P.M.G.,
Gujarat Circle, Ahmedabad of removing Shri S.B. Sarda from
service on 14-5-88 is justified or not

On behalf of 1st Party - Shri Bhargav Joshi
On behalf of 2nd Party - Shri B.B. Thesisia

JUDGEMENT

1. On the basis of order under L-40012/46/88 D-2(8)
dated 6-6-89 from Desk Officer, Ministry of Labour the
dispute between the Additional Postmaster General and
one Shri S.B. Sarda, who was removed from service from
14-5-88 has been entrusted to our Central Industrial
Tribunal under the provision of Section 10(1) of the
Industrial Dispute Act, to decide whether the action of

Contd.....(2).

removal from service is in order or otherwise.

The reference pertains to the point raised by Shri Shrivankumar B. Sarda, who is hereinafter referred to "concerned workman", against the order, dated 14-5-88 issued by the Additional Post Master General, Gujarat Circle removing him from the service with effect from 14th May, 1988 and demanding to cancel the said order and to reinstate him on duty. In this reference the concerned workman has submitted his statement of demands vide Exhibit 2. In the said statement of demands he has stated that he joined as a Dresser on daily wages from 3-5-1987 in the office of the first party. He has completed 240 days in each year. It is further stated that he was removed from service on 14-5-88 by oral order. The said order is illegal, unreasonable and unjust as the same is passed by the first party in violation of the principle of natural justice. The concerned workman has further stated in his statement of demand that he has continuously worked for more than 240 days from 3-5-87 to 14-5-88, eventhough the first party has not given any notice nor retrenchment compensation. Therefore, impugned order of his removal from service is in contravention of provisions of Section 25F of I.D. Act.

2. Neither the concerned workman has committed any offence nor he has been served with any show-cause notice. The concerned workman was serving as a Dresser in the dispensary run by the first party at Lal Darwaja.

Contd.....(3).

The post of Dresser is a permanent post and he had worked as a permanent Dresser. He was being given the highest salary. The concerned workman has been removed and Shri J.V. Parmar has been posted as a Dresser by first party. The said Shri Parmar used to work as Nursing Orderly prior to his post on this post. But said Shri Parmar was transferred from the said post and posted at the place of the concerned workman as Dresser. In the vacant post of Shri Parmar, Shri P.B. Solanki has been brought and the resultant vacant post of Shri P.B. Solanki at Maninagar has been kept vacant till this date. The first party has 3 dispensaries at Ahmedabad and the applicants were being transferred by turn. The concerned workman could not secure job anywhere after his removal from the service. He has made many efforts to get the job but he has not got job anywhere.

3. The first party has been served with the notice and in pursuance of this notice he has submitted a written statement vide Exhibit 5. According to the submission of the first party the concerned workman's demand for reinstatement cannot be considered as it is illegal and unjust. The concerned workman has not worked continuously for 240 days in any year. His service cannot be treated as continuous. He was placed as an outsider Dresser on the vacant post. He was taken on work on leave vacancy. He was being paid salary and allowances according to the minimum scale prescribed in the Minimum Wages Act. He was placed

Contd.....(4).

in the pay-scale of Rs. 800-1150. The duties of the concerned workman were decided in accordance with any employee proceeding on leave and these duties were so decided for the period till such employee returned to duty. He is not a regular employee of the first party. As the concerned workman was not the regular employee of the Department and hence the Conduct Rules relating to the departmental workers or any other Rules were not applicable to him. These (Conduct) rules are applicable to the regular employees of the Central Government. These Rules cannot be made applicable to the concerned workman. Under these circumstances the question of serving him a notice does not arise. The concerned workman has not completed 240 days in any year. The concerned workman cannot be reinstated on the post of Dresser as there is no such vacant post. In para 7 of Exhibit 5 it is contended that the concerned workman was not being paid less salary. He was paid salary and allowances payable in the pay-scale of Dresser. Shri J.V. Parmar was transferred; and therefore, there is no vacant post of Dresser at that time. The concerned workman was informed about it. No outsider has been posted in his place. P&T Dispensary ^{is} situated at Lal Darwaja. The concerned workman will be kept as DRESSER IN case any vacancy may arise in future. It is necessary for the concerned workman to remain in touch with Medical Officer. Two workers cannot be engaged on one post. The concerned workman cannot be employed when a regularly recruited employee is on the said post.

Contd.....(5).

4. The learned Advocate of the second party, Shri B.B. Thesia and the Government Pleader, Shri Bhargav Joshi on behalf of the first party were heard.

5. The following issues are raised in this reference for consideration:-

- (1) Whether the impugned order, dated 14-5-88 removing the concerned workman, Shri Sharda from the service is legal, just and proper ?
- (2) Whether the workman is entitled for reinstatement with back wages ?
- (3) What should be the final order ?

6. My findings on the above issues are as under for the following reasons:-

- (1) No.
- (2) Yes. The concerned workman is entitled for reinstatement with 60 % back wages.
- (3) As per the final order.

REASONS

7. The documents have been produced by both the sides and the deposition of Shri Sharda is recorded vide Exhibit 9. The first party has examined the Assistant Post Master, Shri Mafatlal Mohanlal

Contd.....(6)..

Ravalvide Exhibit 16. The first party has produced certain documentary evidence by Exhibits including Attendance Register vide Exhibits 17, 18 and 19.

8. In this reference it is the case of workman in his statement of claim, Exhibit 2, that the first party has appointed him as a Dresser upon a condition of payment of regular pay-scale on 7-5-87 and he has completed 240 days in each year. The concerned workman, Shri sharada was removed from the service on 14-5-88 by oral order without assigning any reason by the Medical Officer of the first party. The concerned workman has stated in his deposition at Exhibit 9 that he joined as a Dresser in the Department on 2nd May, 1987. It was stated that the first party asked him to work at P&T Dispensary at Lal Darwaja. In the chief examination of Shri Sharada he has further stated that he has worked up to 13-5-88. His service was continuous; and thereafter he was discharged from 13-5-88. The concerned workman has further stated in his deposition that he is not served with any notice nor he is paid any retrenchment compensation or notice pay and his monthly pay was Rs. 1200/- per month. The work which he used to perform as a Dresser is continued even today. He has further deposed in his chief-examination that Shri J.V. Parmar was working vice him as a Nursing Orderly. In the cross-examination of Shri Sarda, he has deposed that he was working with the first party with effect from 3rd May, 1987. Shri Sarda has admitted

Contd.....(7).

in the cross-examination that he was paid on daily wage basis. Shri Sarda has categorically denied that he was working as an outsider. Shri Sarda has further confessed in his cross-examination that his name was not sponsored by the employment exchange. Shri Sarda has denied the suggestion made in the cross-examination that he was working on the post of Shri Parmar. Shri Sarda has further stated in his cross-examination that he was appointed vide Shri Rambhai. At the end of his cross-examination he has further stated that he is unemployed at present and inspite of his efforts he could not get any service. Considering the deposition of the workmen, Shri Sarda it appears that he was working in the office of first party at P. & T. Department with effect from 2-5-87 as a Dresser. He has worked continuously with effect from 2-5-87 to 13-5-88. He was drawing Rs. 1200/- per month as salary. Shri J.V. Parmar was appointed on the post on which Shri Sarda was working. Shri Parmar was working as Nursing Orderly on lease.



9. The first party has examined Shri M.M. Raval who is working as Assistant General Post Master vide Exhibit 16 on 1-11-90. Prior to that he was working as Assistant Director (Savings Bank). Shri Raval has stated in his Chief-examination that the workman Shri Sarda was working as a Dresser as casual worker. On promotion of an employee, the concerned workman was appointed as a Casual worker on his place. Thereafter,

Contd.....(8).

Shri Parmar who was working as permanent employee applied for his posting as a Dresser in the said Dispensary wherein the concerned workman was casually working as a Dresser; and thereupon Shri Parmar was appointed as Dresser in the place of concerned workman. In between the concerned workman was kept as an outsider.

10. The first party's witness Shri Mafatlal Raval in his cross-examination has admitted that Shri Sarda was appointed as outsider with effect from 3-5-1987, but he was not given any order in writing. Shri Raval further admitted that the concerned workman has to work for a short-time during 3-5-1987 to 14-5-88. This witness further admits that no written order was issued to Shri Sarda before his appointment. Shri Raval has further admitted in his deposition that there is no difference in duties of Shri Sarda and Shri Parmar. At the last he has admitted that Shri J.V. Parmar was paid in the grade of Rs. 800/-. In the last paragraph of his cross-examination he has admitted that there are 3 Branches of dispensary in Ahmedabad and an employee working in these dispensaries can be transferred from one to another. He has further stated that he had no knowledge about the fact who that ~~his~~ working as a Dresser in other two dispensaries. It is also not know to him at present as to whether they are permanent or temporary.

11. The deposition of the first party's witness declares that concerned workman, Shri Sarda has worked in the dispensary at Lal Darwaja from 3-5-87 to 14-5-88. In other words he has performed duties of Dresser of permanent basis during the aforesaid period. It can be said from the above deposition that concerned workman, Shri Sarda has worked for more than 240 days from 14-5-88; and therefore, if he is to be discharged the first appty was required to issue notice under the provision of Section 25(F) of the I.D. Act or to pay notice pay which was not paid.

12. The first party has produced documentary evidence vide Exhibit 17, 18 and 19 which are abstracts of attendance registers. My attention is drawn by the learned Advocate, Shri Thesisia for the concerned workman, Shri Sarda that Shri Sarda's name appears in Exhibit 19 and his continuous presence has been noted in this register. It is not compulsory that his name should be sponsored by through Employment exchange. Considering the above documentary evidence of attendance registers, it can be clearly said that the concerned workman, Shri Sarda was working continuously for more than 240 days in a year. Under the above circumstances, the concerned workman Shri Sarda was performing duties of a permanent nature on a permanent post of Dresser and he was paid dailway wages on regular basis. Taking into

Contd.....(10).

account the nature of work, the post of a Dresser in Dispensary of the first Party is of permanent nature. The patients must be coming every day and so far as the question of patient is concerned the dressing is often required to be performed at the dispensary of the first party. (Before removing the concerned permanent workman from the permanent post of Dresser, either first party should have abolished the post or should have allowed the workman to continue for such a long period on the basis of administrative orders ~~that~~ considering that he has completed 240 days. Comparing the attendance registers at Exhibits 17, 18 and 19 in light of the deposition of the concerned workman, it is clearly established that Shri Sarda has worked in all the three Dispensaries wherever he was sent and placed by the first party. The concerned workman has completed 240 days in a year. Under the premises and considering the evidence ~~produced~~ produced before me I have come to the conclusion that the concerned workman, Shri Sarda was performing duties as a Dresser on permanent basis. In my opinion the impugned action of terminating the services of the workman by verbal order is not legal and just and the impugned action can be treated as illegal. The first party has argued that the concerned workman's name was not sponsored by the Employment Exchange. This argument is not reasonable as the concerned workman was appointed legally and he has continuously worked up to 13-5-88.

Therefore, impugned action of terminating his services by a verbal order, dated 13-5-88 is illegal, unjust and unreasonable.

The first party has contented that the name of the workman is not recommended from the Employment Exchange. This submission cannot be accepted because the concerned workman was appointed legally.

13. Shri Bhargav Joshi on behalf of the first party argued that the concerned workman, Shri Sarda was engaged as a casual worker on a vacant post for sometime. He has not worked continuously. I do not agree that the argument of Shri Joshi as taking into account the Attendance Registers Exhibits 17, 18 and 19 and the deposition of the concerned workman it is clear that there was a permanent vacancy in the dispensary of first party. The vacancy was of a permanent nature and Shri Sarda used to perform duties of permanent nature and he is entitled to work on that post. No other allegation is raised by the first party against the concerned workman. No evidence is produced on record to indicate that his performance of work was bad. Considering all these facts I have come to the conclusion that the concerned workman used to carry out his duties as Dresser. The workman continued the work on permanent basis. He was discharged by verbal order, dated 13-5-1988 issued by the first party. The impugned action is unjust, unreasonable and illegal.

Under the above circumstances the concerned workman, Shri Sarda should be reinstated on his original post with back wages. In his deposition, concerned

Contd... (12) ..

workman Shri Sarda has clearly said that from the date, he has been discharged from the service, till this date he has not served anywhere nor he has not got any remuneration by working elsewhere. Therefore, considering above circumstances, the ^{first} party should be ordered that he should pay 60 % of the amount to the second party. The concerned worker used to perform the duties as a Dresser but that he has remained absent for some days, he has not performed the duties and therefore instead of 100 %, payment of 60 % back-wages seems to be justified and reasonable; and therefore, I pass the orders as under:-

ORDER

14.

The reference is partly allowed. The first party is hereby directed to reinstate the concerned workman Shri S.B. Sarda on his original post.

The first party is, therefore, directed to reinstate the concerned workman the second party with continuity in service and pay 60 % of back wages to the second party within 30 days from receipt of this order. First party Additional Postmaster General should bear of their own ^{expenses} and pay Rs. 150/- to the second party the concerned workman, as a cost towards this reference.

Sd/-
N.N. Patel, Secretary

Sd/- R.S. Shukla,
Central Industrial Tribunal.

*For Copy
N.K. Shukla
Advocate*

*me
wale*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH, AHMEDABAD.

OA/584/93
 OA/ST/584/93

RA/M.A./O/A./T.A./ 534 -198 93 in

MR. Shaavan Kumar. B. Sooda Applicant (s).

MR. K.K. Shah Adv. for the
 Petitioner (s).

Versus

Addl. PostMaster General Respondent (s).

Adv. for the
 Respondent (s).

SR NO.	DATE.	ORDERS,
		Condonation of Delay.

Court-II

Advocate for Petitioners
second set & NIL
not served in
side

20

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

M.A. NO. 534 OF 1993

IN

O.A. NO. OF 1993

Shri Shrivankumar Bharatkumar Sarada, ... Applicant
20 Bharatmata Soc., B/H. Ambica Colony,
Vatva, Ahmedabad.
V/s.

Additional Post Master General, ... Respondent
Gujarat Circle, Ashram Road,
Ahmedabad.

MAY IT BEFORE THIS HON'BLE TRIBUNAL:

APPLICATION FOR CONDONATION OF DELAY.

1. The applicant hereby submits that he was illegally terminated by the respondent and he raise the dispute under the Industrial Dispute Act 1947 and ultimately a reference (ITC) No.46 of 1989 was decided in favour of the ~~respondent~~ applicant.

2. The applicant submits that the award of the Industrial Tribunal dtd. 31.1.92 was not implemented by the present respondents and the applicant was facing socio-economic death and was in hand to mouth position. As per the award of the Industrial Tribunal the applicant was to be reinstated with 60% backwages but respondents fail to implement the same. On 24.4.92 the applicant gave a notice through his advocate and also on availability of copy said award on 24.4.1992 he gave a copy to the respondents and also reported for duty on 27.4.92. The applicant again gave a notice again made a representation through Advocate on 25.6.92 wherein he has mentioned that he should be reinstated and 100% backwages to be paid to him etc.



: 2 :

3. The applicant submits that a copy of the ^{award}~~order~~ is already annexed with the original application and the above representation and order of reporting to duty will be produced if the same is disputed by the respondent or will be produced at the time of hearing of the application. X

4. The applicant submits that since the respondent failed to implement the award he preferred the contempt application before the Hon'ble High Court of Gujarat which is still pending.

After issuance of the notice in contempt proceedings in M.C.A.No.1956/92 the respondents preferred the O.A.No.420/92. The said original application is pending before this Hon'ble Tribunal arising out of the award in reference No.46/89 and the present original application for 100% backwages instead of 60% when the retrenchment is held illegal is a cross application of the same award. After the availability of the copy of award within 6 months the applicant has informed the respondent authority to reinstate him and implement the award again also inform by representation and since there is no reply and when 60% of backwages which is also awarded by the Industrial Tribunal is not yet paid the present application arise from the same award may kindly be admitted and from the date of availability of award i.e. 24.4.92 within 6 months the representation was preferred and then after within 1 year after excluding 6 months as per Section 20 the application is filed and therefore there is no delay however the time limit if considered from the date of actual award i.e. 31.1.92 the delay of 1 month is there and the same may kindly be condoned for the following Adhoc reasons that the applicant is a Class IV/employee

: 3 :

and was remain out of job even after the award and despite notice through Advocate and representation and ultimately after filing the contempt petition he has taken on duty and still he has not received the amount of 60% backwages not only that being a ad-hoc Class-IV employee he is not having any knowledge of limitation for filing this application and therefore even if any delay of 1 month is concluded by this Hon'ble Tribunal the same requires to be condoned from the above facts and circumstances explained.

PRAYER

- A. This Hon'ble Tribunal may be pleased to held that there is no delay and if the limitation considered from the date of the award dtd. 31.1.92 in that even the delay of 1 months may kindly be condoned in the interest of justice and when the application from the same award of the respondents is pending before this Hon'ble Tribunal.
- B. This application may be allow.
- C. Any other order or direction as may be deem fit in the facts and the circumstances of the case may kindly be passed.

: 4 :

AFFIDAVIT

I, Shri Shrivankumar B. Sarda, aged adult, residing at 20 Bharatmata Society, B/H. Ambica Colony, Vatva, Ahmedabad, working as Tracer do hereby states that what is stated in the application in para 1 to 4 is true to the best of my knowledge and belief and I am not suppressed any material fact and the contents of the application is explained to me in Hindi by my Advocate.

Solemnly affirmed on
6th day of ~~July~~ ^{August}, 1993.



S.B. Sharda
(Shrivankumar B. Sarada)

Identified by me:

K. K. Shah
(K. K. SHAH)
Advocate.

S NO 5290/ 1993
SOLEMNLY AFFIRMED
BEFORE ME

V. J. Desai
NOTARY
D/ 6.8.1993



Submitted.

Application is found to be in order. May
be listed before Hon'ble Bench for necessary order.

cancel
the
out/10/93

Chafin
6-10-93

sqcs)

sqcs) Dean
6-10-93

✓
 Reply/Rejoinder/written submission
 filed by Mr. Akshil Kureshi
 learned advocate for petitioner/
 Respondent with second set.
 Copy served/~~not~~ served & other side

By Chhipa
 By Registrar C.A.T. (I)
 Ahmedabad Bench

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH

ORIGINAL APPLICATION NO. 584 OF 1993

Shri S.B. Sarda

.. Applicant

V/s.

The Union of India & Ors.

.. Respondents

Written reply on behalf of
the respondents

I, H.G. Chhipa, working
 as APMC (Staff) with respondent No.
1 herein, do hereby state in reply to the above
 application as under:

1. That I have perused the relevant papers and files pertaining to the above matter and I am conversant with the facts of the case and I am authorised to file this reply on behalf of respondents.
2. At the outset I say and submit that the application is misconceived, untenable and requires to be rejected.
3. At the outset I say and submit that no part of the application shall be deemed to have been

Presented by:
~~From:~~

Mr Akshil Kureshi

Ad

2+022

Received for
 K.K. Shah
 by clerk Ad
 20-1-94

II

DCR 14

admitted by the respondents unless specifically stated so herein. All the statements, averments and allegations contained in the application shall be deemed to have been denied by respondents unless specifically admitted by me herein.

4. It is submitted that the application is directed against the judgment of the Industrial Tribunal to the extent it allows only 60% of the backwages to the applicant. It is submitted that payment of backwages is a discretionary matter. It is further submitted that the respondents have already filed an application being Original Application No.420 of 1992 before this Hon'ble Tribunal challenging the entire award of the Industrial Tribunal and the application therefore, is required to be rejected.

5. It is further submitted that in any view of the matter the question of awarding backwages is a discretionary matter and the applicant has not been able to show any error of jurisdiction or even error of law apparent on the face of the record, committed by the Industrial Tribunal. The award of the Industrial Tribunal therefore, cannot be disturbed by granting further backwages to the applicant. The applicant's claim for the said portion of backwages is wholly unjust and is required to be rejected.

6. The applicant had filed an application in the Industrial Tribunal at Ahmedabad, being application No.46/89 challenging the termination of his services from 14.5.1988 as outsider Dresser working at the P.&T Dispensary, Laldarwaja, Ahmedabad, in leave vacancies. The judgment of the Industrial Tribunal, Ahmedabad, in the said case was pronounced with a direction to reinstate the applicant and to pay 60% of the backwages due to him. Being aggrieved by the said judgment the respondent-Department has filed an application being Original Application No.420/92 before this Hon'ble Tribunal and it is admitted by this Hon'ble Tribunal and is pending for final decision. This Hon'ble Tribunal has not granted any interim stay against the said judgment of the Industrial Tribunal. Therefore, in partial compliance of the judgment the applicant is reinstated in service from 29.12.1992 A/N. However, payment of backwages is kept pending for the outcome of the Original Application filed by the respondent-Department. In the meantime, the applicant has also filed a contempt petition being Misc. Civil Application No.1056 of 1992 which is pending before the Hon'ble Gujarat High Court. Since the respondent-Department has already filed an application and it is pending before this Hon'ble Tribunal the present application which is a cross O.A. deserves to be rejected.

7. In reply to para-1 of the application, I say that the applicant has challenged the orders of the Industrial Tribunal, Ahmedabad, allowing payment of only 60% backwages against his demand for 100% backwages.

8. In reply to para-2 of the application, I say that it is true that the applicant had made representation vide his applications dated 24.4.1992, 5.6.1992 and 25.6.1992. However, since the matter for filing an appeal was under consideration, these representations were not finally decided. Thereafter the Department has filed the Original Application No. 420 of 1992 before this Hon'ble Tribunal and it is pending for final hearing.

9. In reply to para-4 of the application, I say that the respondents have already filed an application before this Hon'ble Tribunal and it is pending for final decision.

10. In reply to para-5 of the application, I say that the grounds raised by the applicant in this paragraph are not valid and cannot be considered.

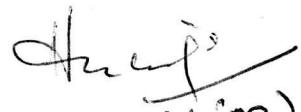
11. In reply to paras-6 and 7 of the application, I say that the respondents have no comments to offer.

12. In view of what has been stated above I say and submit that the application is totally misconceived, untenable and the applicant is not entitled to any

relief, either interim or final, as claimed by the applicant and this Hon'ble Tribunal be pleased to reject the application forthwith with costs.

Ahmedabad,

Dt 20-1-1994.



(H.G. Chhipa)
Asstt. Postmaster General (Staff)
Gujarat Circle, Ahmedabad-380001

Verification

I, H.G. Chhipa
working as A.P.M.G. (Staff)
with respondent No. ___ herein, do hereby verify and
state that what is stated above is true to my know-
ledge, information and belief and I believe the same
to be true. I have not suppressed any material facts.

Ahmedabad,

Dt 20-1-1994.


(H.G. Chhipa)
Asstt. Postmaster General (Staff)
Gujarat Circle, Ahmedabad-380001

(II)

13/12/93 F/A

✓
Reply/Reconsideration/written submissions
Filed by Atul Kureshi
less
Respon. 6
Copy 6
No. 1

27

At
6-12-93

By Regional O.A.T. (I)
Ahmedabad Bench

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

CAZC/M 5 2112

S. S. 2112 C/M

M. S. 92-63

MISC. APPLICATION NO. 534/93

IN

ORIGINAL APPLICATION NO. 584 OF 1993

Shri S.B. Sarda

Applicant

V/s.

Union of India & Ors.

Respondents

Written Reply on behalf of
the respondents.

I, H.G. Chhipa

working as APMG(S) with the respondent
No. 1 herein, do hereby state in reply to the
above application as under:

1. That I have perused the relevant papers
and files pertaining to the above appli- cation
and I am conversant with the facts of the case
and I am authorised to file this reply on behalf
of the respondents.

2. At the outset I say and submit that
the application is misconceived, untenable and
requires to be rejected.

Smth.
6-12-93

Presented by

Mr. Atul Kureshi

Ad

6/12

2+022

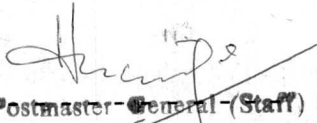
3. At the outset I say and submit that no part of the application shall be deemed to have been admitted by the respondents unless specifically stated so herein. All the statements, averments and allegations contained in the application shall be deemed to have been denied by the respondents unless specifically admitted by me herein.

4. In reply to paras-1 and 2 of the Misc. Application I say that the contents of the same are incorrect and I deny the same.

5. In reply to paras-3 and 4 of the Misc. Application, I say that the contents of the same are incorrect and I deny the same. I deny that there is no delay in filing the original application. I say that the original application is much belated and is grossly time barred and is filed by way of after-thought. I say that the applicant has not approached this Honourable Tribunal within the period of limitation prescribed nor has he set out any ground for having approached this Honourable Tribunal at such a belated stage beyond the period of limitation prescribed under I, therefore, submit that the Misc. Application is required to be rejected and the Original application is therefore, required to be disposed of accordingly.

Ahmedabad,

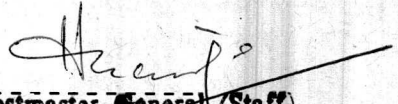
Dt. 30-11-1993.


 Asstt. Postmaster General (Staff)
 Gujarat Circle, Ahmedabad-380001

VERIFICATION

I, H.G. Chhipa, working
as APMG (S) with respondent No. 1
herein, do hereby verify and state that what
is stated above is true to my knowledge, informati
on and belief and I believe the same to be true.
I have not suppre- ssed any material facts.

Verified at Ahmedabad on 30th day
of Nov 1993.


Asstt. Postmaster General (Staff)
Gujarat Circle, Ahmedabad-38000.