

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

• • •

O.A. No. 663/93

Ahmedabad this the 17th day of June, 1998

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

HON'BLE MR. V. RAMAKRISHNAN, VICE CHAIRMAN

Shri Lalsing Kalusing Rathod
12, Ord Chawl
Nr. Anil Starch Mill
Bapunagar, Ahmedabad- 380035.

Applicant

(By Advocate: Shri P.H. Pathak)

VERSUS

- 1) Union of India
through
General Manager
Ahmedabad Telecom Dist.
Ramnivas Building, Khanpur
Ahmedabad.
- 2) Executive Engineer
Ahmedabad Telecom Dist.
Ramnivas Building, Khanpur
Ahmedabad.
- 3) Assistant Engineer
Fault Control
Ahmedabad Telecom Dist.
4th Floor, Telecommunication
Building, Bhadra
Ahmedabad- 380 001.

Respondents

(By Advocate: Mrs. P. Safaya)

O R D E R

Hon'ble Mr. Justice K.M. Agarwal:

The applicant claims reinstatement in service with
consequential reliefs by asserting that termination of his
Jm

service was in violation of the mandatory provisions of the Industrial Disputes Act, 1947. Further prayer is made for consideration of his case for regular absorption as a class IV employee.

2. Briefly stated, the applicant claimed that he was employed as a casual labour by the respondents at different spells of time since 3.3.1989. Although he worked with the respondents for a period of about 5 years, his services were orally terminated w.e.f. 12.8.1993 without payment of retrenchment compensation, or notice as contemplated under section 25-F of the Industrial Disputes Act, 1947 (in short, the "Act"). It was also alleged that his claim for regular absorption was rejected by the respondents on the ground that he was not recruited before 1985. Under these circumstances, this O.A. was filed for the said reliefs.

3. The claim is resisted by the respondents.

4. After hearing the learned counsel for the parties and perusing the record, we may hold that the Telecom Department of Union of India is an industry within the meaning of section 2 (j) of the Industrial Disputes Act, 1947 as held by the Supreme Court in General Manager, Telecom v. A. Srinivasa Rao, (1997) 8 SCC 767 while applying the principles laid down in Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213. After the Telecom Department is held to be an industry, the applicant would be a workman within the meaning of section 2(s) of the Act and the dispute raised by him

Km

would be an industrial dispute within the meaning of section 2 (k) thereof. Yet, in view of the Full Bench decision of the Tribunal in A. Padmavally & Others V. C.P.W.D. & Telecom, Full Bench judgements of Central Administrative Tribunals (1989-1991), Vol.II, page 334 that the expression service matters covers not only matters provided for in the service rules, but also matters provided for in other laws and **statutes**, including the I.D. Act, we proceed to examine the merits of the applicant's claim in this O.A.

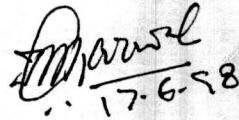
5. Section 25- F, read with section 25-B of the Act provides that no workman employed in any industry, who has been in continuous service for 240 days under an employer shall be retrenched by the employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice (Emphasis supplied). As no notice or retrenchment compensation was given, we have to see if the applicant was entitled to such notice or compensation. The decision rests on the answer to the question if he was in continuous service for a period of 240 days.

6. No doubt that the applicant has claimed that he was in service of the respondents for a period of about 5 years at different spells of time, he **has** failed to establish that at any given time, he was in continuous

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service for a period of 240 days. The Respondents have denied the claim and the three documents relied on by the applicants and consolidatedly filed as Annexure A-1 belie the contention. The first document would show that he worked as casual labour either for half days for certain periods not exceeding 3, 166 or 129 half days; or for full days not exceeding 8, 78 or 48 days at a time. The other two documents would show that he was employed as part time labour and that too not for continuous period. He was, therefore, not entitled to any benefit under section 25-F of the Act.

7. The applicant has not disclosed as to how on the facts brought on record, he was entitled to be regularised in service.
8. For the foregoing reasons, we find no merit in this O.A. Accordingly, it is hereby dismissed, but without any order as to costs.


17.6.98

(K.M. Agarwal)
Chairman


17.6.1998

(V. Ramakrishnan)
Vice Chairman

DATE: 23/6/04

RESPECTFULLY SUBMITTED TO : HON'BLE VICE CHAIRMAN.
HON'BLE MEMBER (SPECIAL)
HON'BLE MEMBER (A) REGISTRAR
HON'BLE MEMBER ()

Certified Copy of order dated 17/6/04 in C.A.
Special C.A. No. 11208/ of 98 passed by the
Hon'ble Supreme Court / Hon'ble High Court against the
Judgment / Oral Order passed by this Tribunal in O.A. No.
663/93 placed for perusal please.

Verdicts
Dealing Clerk

S.O. (J)

D.R. (J)

Registrar

25/6 SCA-allowed

HON'BLE VICE CHAIRMAN

HON'BLE MEMBER (S) Agree

HON'BLE MEMBER (A)

HON'BLE MEMBER ()

Sr. No.

Dated :

Submitted : Hon'ble Vice Chairman &

Hon'ble Mr. A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C.Srivastava, Member (A)

Certified Copy of order dated _____ in CA/
Spl.C.A. No. _____ of _____ passed by the
Supreme Court/High Court against the Judgement/Oral Order passed by
this Tribunal in O.A. is placed for perusal please.

Dealing Assistant

S.O. (J)

D.R. (J)

Hon'ble Vice Chairman

Hon'ble Mr. A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C.Srivastava, Member (A)

DS/TIME LIMIT

Decree Despatch No.

Date

13433
21/6

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 11208 of 1998

(Under Article(s) 14, 16, 226, 227 of the Constitution of India)

1. LALSING KALUSING RATHOD

Petitioner

Vs

1. UNION OF INDIA & ORS.

Respondents

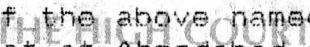
To

1. UNION OF INDIA

2. EXECUTIVE ENGINEER ATD

GENERAL MANAGER, AHMEDABAD
TELECOM DISTRICT,
RAMNIVAS BUILDING,
KHANPUR, AHMEDABAD.RAMNIVAS BUILDING,
KHANPUR,
AHMEDABAD.3. ASSISTANT ENGINEER
FAULT CONTROL, A.T.D.,
4TH FLOOR, TELECOMMUNICATION
BUILDING, BHADRA,
AHMEDABAD 380 001.4. THE MEMBER
CENTRAL ADM. TRIBUNAL,
OPP. SARDAR PATEL STADIUM,
ASHRAM ROAD, AHMEDABAD
(REF. O.A. NO.663/93).

सत्यमेव जयते

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 29/12/1998 praying to grant the prayers and etc... 

And whereas upon the Court ordered 'Rule' to issue on 17/06/1999

And Whereas Upon hearing

MR PH PATHAK for the Petitioner no. 1

MR ASIM J PANDYA for the Respondent no. 1-3

MR YN RAVANI for the Respondent no. 2

Court passed the following order :-

Received 2000
2/622/6
Dra A & DRJ

CORAM: BHAWANI SINGH, C.J. & H.K.RATHOD, J.

DATE : 17-6-2004

1. "Through this petition, the order of Central Administrative Tribunal, Ahmedabad Bench (CAT) in Original Application No.663 of 1993

Contd.....2

..... Rule is made absolute.
There shall be no order as to costs. Direct service is
permitted."

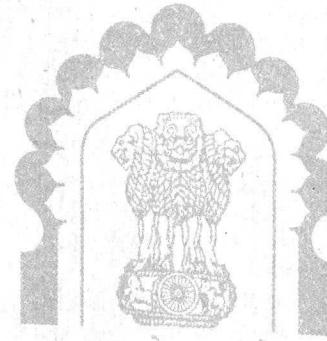
(COPY OF THE ABOVE ORAL JUDGEMENT IS ATTACHED HEREWITH)

Witness BHAWANI SINGH, Esquire Chief Justice at Ahmedabad
aforesaid this 17th day of Jun, 2004.

By the Court

For Deputy Registrar
This 21st day of Jun 2004

Note : This writ should be returned
duly certified within 2 weeks
(501) 210620



सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

..... Rule is made absolute.
There shall be no order as to costs. Direct service is
permitted."

(COPY OF THE ABOVE ORAL JUDGEMENT IS ATTACHED HEREWITH)

Witness BHAWANI SINGH, Esquire Chief Justice at Ahmedabad
aforesaid this 17th day of Jun, 2004.

By the Court

For Deputy Registrar

This 21st day of Jun 2004

Note : This writ should be returned
duly certified within 2 weeks
(501) 210620



THE HIGH COURT
OF GUJARAT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11208 of 1998

Date of Decision: 17-06-2004

LALSING KALUSING RATHOD
Versus
UNION OF INDIA

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice
The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting? *NO*

For the Employee : MR P.H. PATHAK

For the Government of India : MR ASIM J PANDYA
MR Y.N. RAVANI

PER: BHAVANI SINGH, CHIEF JUSTICE (ORAL):-

1. Through this petition, the order of Central Administrative Tribunal, Ahmedabad Bench (CAT) in Original Application No. 663 of 1993 dated June 17, 1998 has been challenged.

2. The grievance of the petitioner is that he worked for 240 days, therefore, termination of his service is contrary to Section 25-F of the Industrial Disputes Act.

Whether Reporters of Local Papers may be allowed to see the Judgment? *YES*

1947, as such, reinstatement with continuous service is liable to be ordered. However, CAT held that the petitioner failed to establish that at any given time he was in continuous service for the period of 240 days. Consequently, the application has been dismissed.

3. Through this petition, submissions raised before the CAT have been reiterated. Learned counsel for the parties heard, case file perused. Perusal of particulars of presence of petitioner prepared by the Department of Telecommunications demonstrate that petitioner has worked for 298 days from August 12, 1993 to September 1992 preceding the date of termination, namely, August 12, 1993. Shri Asim J.Pandya, learned counsel for the respondents, contends that the petitioner was part-time worker, therefore, he did not work for 240 days. We do not appreciate this submission, since there is no difference between a part-time worker and full-time worker under Section 2(s) of the Industrial Disputes Act, 1947. Second submission, is that petitioner was engaged against the vacancy of D.L.Chavda, therefore, his case falls under Section 2(oo)(bb), meaning thereby, he was appointed by way of contract for the period D.L.Chavda remained on leave. This defence has not been clearly spelt out in the written statement, nor any other record shown to demonstrate this plea. He has been engaged against regular vacancy and worked for five years. A workman, who serves for 240 days is entitled to protection under Section 25-F of the Industrial Disputes Act, 1947. The petitioner also falls in the same category. He is a workman having put in 240 days

preceding the date of termination, therefore, unless provisions of Section 25-F are followed, the termination is liable to be set aside. Undisputedly, Section 25-F has not been followed in this case, therefore, termination is set aside.

4. Next question is whether the petitioner is entitled to backwages. Shri Asim J. Pandya submits that backwages may not be awarded, since the petitioner may not have remained without work during this period, and payment of backwages by public body may not be proper. Shri P.H. Pathak claims full or atleast some part of the backwages. We decline the payment of backwages since we are ordering immediate reinstatement, since retrenchment of petitioner has been set aside, he shall be deemed to be in continuous service from the date of termination. Petitioner to report for duty on June 21, 2004, and the respondents to allow him to join. Rule is made absolute. There shall be no order as to costs. Direct service is permitted.

sd-

(BHAWANI SINGH)
CHIEF JUSTICE

sd-
(H.K. RATHOD)
JUDGE

[Esndevu]
ps

*2/2004
2/6/2004*

TRUE COPY

Assistant Registrar
The 16 day of June 2004

TRUE COPY

[Signature]
P.S. TO THE HON'BLE JUDGE
HIGH COURT OF GUJARAT

By order of the Court

[Signature] 21/6/04
Deputy Registrar

[Signature]
A. Patel
16/6/04

CENTRAL ADMINISTRATIVE TRIBUNAL, DEPT. I

Application No.

CA/663/93

of 19

Transfer Application No.

Old Writ. Pet. 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: 26/6/98

Countersigned.

8/6/98

Section Officer/Court Officer.

Signature of the Dealing
Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE CA 663/93

NAME OF PARTIES Mr. L. K. Rattoo

VERSUS

6-27 89

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Submitted :

C.A.T./Judicial Section.

Original Petition No 663
of 1993

Miscellaneous Petition No _____
of _____

Shri T. K. Rathod Petitioner(s)

versus

U.O.I. Sols.

Respondent (s)

This application has been submitted to the Tribunal by
Shri P. H. Patel AdV.

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 application 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 asked
to rectify the same within 14 days/draft letter is placed below
for signature.

ASSTT. N. Patel
10/11/93

S.O.(J)

Osba
11-11-93

D.R.(J)

Parikh
11-11-93

Court-II

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO. 663 OF 1993

Lalsing K. Rathod

..applicant

vs

Union of India & ors.

..respondents

I N D E X

<u>Sr. No.</u>	<u>Annx.</u>	<u>Particulars</u>	<u>Page</u>
1.	-	Memo of the application	1 to 10
2.	'A'	Copy of the certificates issued by the respondent authorities	11-13

-0-0-0-0-

Date :

Ahmedabad



 P. H. Pathak
 Advocate for the applicant

 Filled by Mr. P. H. Pathak
 Learned Advocate for Petitioners
 with second set Ex. 2 spares
 copies copy served/not served to
 other side

 Dy. Registrar C.A.T.(O)
 Ahmedabad Branch
 11/11/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO.

OF 1993

I. Applicant : Lalsing Kalusing Rathod

12, Ordin Chawl

Nr. Anil Starch Mill

Bapunagar, Ahmedabad-380035

II. Respondents

: 1) Union of India

Notice to be served through
General Manager

Ahmedabad Telecom Dist.

Ramnivas Building, Khanpur
Ahmedabad

2) Executive Engineer

Ahmedabad Telecom Dist.

Ramnivas Building, Khanpur
Ahmedabad

3) Assistant Engineer

Fault Control

Ahmedabad Telecom Dist.

4th Floor, Telecommunication
Building, Bhadra

Ahmedabad-380001

III. Order under challenge : Termination of service of the applicant by the respondent No. 3 without assigning any reason and without considering the case of the applicant for regular absorption and termination is ex facie bad in law as is in flagrant violation of principle of natural justice and fair play.

IV. Jurisdiction & V. & Limitation : The applicant declare that the subject matter of this application is within the jurisdiction of this Tribunal and limitation prescribed under sec. 21 of the Administrative Tribunal Act.

VI. Facts of the case :

1. The present case is required to be filed by the applicant who is class IV employee working under the respondents since 1989. That under the guise of Part-time employee, he is deprived of the benefits and status available to the regular employee of the respondents. That since 1989 onwards, the applicant has completed 240 days of service each year yet the case of the applicant is not considered by the respondents for regular absorption and on the contrary, services of the applicant are terminated by the respondent No. 3 without following the due procedure of law. The above action on the part of the respondents to exploit the employees for years and when their turn come for regular absorption, to terminate the service, is ex facie arbitrary, illegal, unconstitutional and violative of Art. 14 & 16 of the Constitution of India.

2. It is submitted that the applicant has initially joined the service of the respondent department from 3.3.89. That the applicant was employed as Part-time employee and he was performing the duty of Peon and class IV employee as casual labourer. That initially the applicant was working at the office of Asstt Engineer VFT for 4 hours. That thereafter there was need of the class IV employee and therefore the applicant was

continued in the same office under Asstt Engineer Fault Control. That for a long spell, the applicant has worked in both these offices. That during this period the applicant was performing the duty of Peon and Helper to the Technician in the Fault Control Office. That at the time of termination, the applicant was working under the Asstt Engineer Fault Control and he was paid Rs 800/- per month. That since 1989 till the date of termination, the applicant has worked continuously and satisfactorily. Copy of the certificate issued by the respondent authorities are annexed and marked as Annexure 'A' collectively to this application.

3. It is submitted that from the above certificate issued by the respondent authorities, it is clear that the applicant has worked satisfactorily for about 5 years. That there is no complaint about performance of duty of the applicant. That the applicant is required to be regularised in the respondent department as per the various circulars issued by the Ministry concerned and the judgement of the Hon'ble Supreme Court in case of casual labourers. That the applicant was treated by the respondents as casual labourer. That on inquiring about regular absorption of the applicant, the respondent No. 3 has informed the applicant that as the applicant is not recruitee prior to March '85 and therefore his case cannot be considered for regular absorption. That such a stand adopted by the respondents for non regularising the service of the applicant after even his completion of 5 years of service is *ex facie* arbitrary, illegal and unconstitutional. That the applicant is possessing all the required qualifications for regular absorption as class IV employee of the respondent department. It is further submitted that the applicant was working ^{vacant} on the post which was available with the respondent department. That the applicant is now age barred for any other Govt. employment and therefore it is necessary to direct the

respondents to regularise the service of the applicant as class IV employee as per the various instructions issued by the respondent department for absorption of part time casual labourer for regular absorption.

4. It is submitted that the termination of service of the applicant by the respondent No. 3 is ex facie arbitrary, illegal and in flagrant violation of the provisions of Industrial Dispute Act, 1947. That the respondent department falls within the purview of industry as defined under sec. 2(j) of the I.D. Act and the applicant is workman as per sec. 2(s) of the Industrial Dispute Act. That all the tripple tests decided by the Hon'ble Supreme Court in case of Bangalore Water Supply Corp. are fulfilled by the respondents to come within the purview of industry. That the applicant is working with the respondents and the activity of providing telephone connection and its maintenance is systematic activity. That the applicant is performing the duty of Peon and Helper to the Wireman etc. and for performance of the duty the respondents are paying the salary to the applicant. Therefore, the second ingredient about employer-employee relationship is also fulfilled by the respondent department. Thirdly, by maintenance and operation of the Telephone Exchange etc. the respondent deptt is providing service to large no. of citizens i.e. public at large. Therefore, all three requirements of 'industry' are fulfilled by the respondents. It is pertinent to note that the respondents are not qualifying themselves for a legal or a sovereign function and particularly the nature of work which was performed by the applicant about Peon and Helper has nothing to do with any Governmental function which may fall within the exception of the industry.

Therefore, the respondents are duty bound to follow the mandatory provisions of Industrial Dispute Act before affecting the termination of service of the applicant.

5. It is further submitted that at the time of terminating the service of the applicant, the applicant was not paid any retrenchment compensation, notice or notice pay.

The respondent No.3 has informed the applicant not to come on service from 12.8.93. That a slip was given by the respondents about informing the applicant not to come on duty. That the respondents have not given any notice as provided under sec. 25-F of the Industrial Dispute Act, 1947.

That the applicant is not paid retrenchment compensation or notice pay whatsoever. Moreover, no reason whatsoever is assigned by the respondents for justifying the termination of service of the applicant. Therefore, looking to the above circumstances of the case, the order of termination by the respondent No.3 is being in flagrant violation of mandatory provisions of sec. 25-F of the Industrial Dispute Act, is void ab initio and therefore the applicant is required to be deemed to be in continuous service with all consequential benefits.

6. It is submitted that ^{if} there is any justification available to the respondents, it is the duty of the respondents to follow the procedure of law. That the respondents are under obligation to publish the seniority list of part-time employees from where they intend to affect the retrenchment. That being a State authority, it is the duty of the respondents to see that whether it is possible to accommodate the applicant and continue him in service or not because to keep an employee idle is not in the interest of even administration, as held by the Hon'ble Supreme Court in the case of respondent

department itself. That before effecting retrenchment, the seniority list is required to be published before 7 days. That here, the respondents are not maintaining any seniority list and therefore adopting pick and choose policy at the whim of the concerned officer. That there is no certainty and surety of employment of the casual labourer and class IV employee. That rule 77 is held to be mandatory and violation of the provisions of rule 77 of I.D. Rules render the termination as illegal and therefore also the applicant is required to be reinstated in service with all consequential benefits.

7. It is further submitted that so far the respondents department is concerned, it is an industrial establishment and therefore it is the duty of the respondents to obtain prior permission of the appropriate Govt. before affecting the retrenchment of the workmen. That the Fault Repairing Section are looking after repairing of the line and telephones. That the old and faulty telephones are also repaired in the Fault Repairing Section of the respondent department. That the respondents are duty bound to give three months notice to the applicant as provided under sec. 25-N of the Industrial Dispute Act. In the present case, the respondents have not given any notice whatsoever or obtained any prior permission from the competent authority to terminate the service of the applicant and therefore also the said action on the part of the respondents is ex facie bad in law and required to be quashed and set aside and the applicant is required to be directed to be reinstated in service with all consequential benefits.

8. Looking to overall circumstances of the case, the applicant is having a strong *prima facie* case. The case of the applicant is directly covered by the judgement of the Hon'ble Tribunal as well as the judgement of the Hon'ble Supreme Court. There is no justification available to the respondents not to consider the case of the applicant for regular absorption and continuing him as part-time employee till he is regularised. That the Hon'ble Supreme Court has said that it is not advisable to discontinue class IV employee and to remain him idle without any work. That the balance of convenience is also in favour of the applicant. That the applicant is facing great hardship and his family is facing starvation situation in absence of the employment. The applicant is not able to find out any job anywhere inspite of his various attempts. That there are expansion at various Exchanges namely Vastrapur, Navrangpura, Vasna etc. and there are need of large no. of class IV employees under the respondents and therefore there are possibility to accomodate the applicant immediately as class IV employee and therefore also looking to the circumstances of the case, to prevent further burden of back wages on the respondent department which ultimately goes to the public exchequer money, the interim relief prayed for in the application is required to be granted in favour of the applicant.

VII. Relief sought for :

In the abovementioned facts and circumstances of the case, the applicant pray :

- (A) The Hon'ble Tribunal be pleased to declare the impugned action on the part of the respondents terminating the service of the applicant with effect from 12.8.93, as arbitrary, illegal, unconstitutional and being violative of the mandatory provisions of Industrial Dispute Act, be pleased to quash and set aside it and

JPW
to reinstate the applicant
all consequential benefits
including
with 18% interest.

- (B) Be pleased to declare that the respondents have not followed the mandatory provisions of Industrial Dispute Act and the order of termination of service of the applicant is void ab initio and direct the respondents to grant consequential benefits to the applicant with 18% interest.
- (C) Be pleased to direct the respondents to consider the case of the applicant for regular and absorption as class IV employee till he is absorbed, he should be continued as such by the respondents and pay his salary regularly to the applicant.
- (D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

VIII. Interim Relief :

- (A) Pending admission and final disposal of the application, be pleased to direct the respondents to take the applicant immediately on duty and allow him to perform his work and pay his salary regularly.
- (B) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

IX. The applicant has not filed any other application in any other court including the Hon'ble Supreme Court of India with regard to subject matter of this application. The applicant has no other alternative remedy available except to approach this Hon'ble Tribunal by way of this application.

X. Details of Postal Order :

Postal Order No. 247878

Dated : 2/11/93

Issued by : HIGH COURT OF GUJARAT ACT
Ahmedabad
Amount of Rs 50/-

XI. An index in duplicate containing the document is produced herewith.

XII. List of enclosures as per above index.

Date : 2/11/93

Ahmedabad


(D. H. Pathak)
Advocate for the applicant

VERIFICATION

I, Shri Lalsing Kalusinh Rathod, adult, residence of Ahmedabad, do hereby verify that the contents of para 1 to 12 are true to my personal knowledge and I believe the same to be true and that I have not suppressed any material fact.

Date : 2/11/93

Ahmedabad

x G. R. Rathod

Annexure 'A' 11

DEPARTMENT OF TELECOMMUNICATIONS

From Assistant Engineer
Carrier/VFT
5th Floor, Telecom Bldg.
Bhadra, Ahmedabad-380001

To Whom it may concerned

No. A-2/C & V/90-91 Dated at Ahmedabad the 5.11.90

SUBJECT Work Certificate

Shri Lalsing K. Rathod has worked as casual labour
in this office for the following period.

Year	Half days	Full days	Period
1988-89	3	8	3.3.89 to 31.3.89
1989-90	166	78	1.4.89 to 31.3.90
1990-91	129	48	1.4.90 to 30.9.90

His work and conduct is satisfactory.

sd/-
A.E. Carrier/VFT
Ahmedabad

M. L. Rathod
M.L.R

DEPARTMENT OF TELECOMMUNICATION

Office of the
Assistant Engineer
Fault Control
Ahmedabad 380001

24th August, 1993

CERTIFICATE

This is to certify that Shri Lalsinh K. Rathod has
worked as Part Time labour for the period as under.

June 1991 to Oct 1991
April 1992 to Dec 92
Feb 93 to 11th August 1993

He bears a good moral character to the best of my
knowledge and belief. He is honest, industrious and
sincere in his work. He comes from respected noble family.
He is not related to me. I wish him every success in life.

Place : Ahmedabad

A.E. Fault Control (I)
4th Floor, Telecom Building
Bhadra, Ahmedabad-380001

Praveen

13
Annexure 'A'(3)

Department of Telecommunications

Office of the A.E.CARRIER/VFT
AHMEDABAD-380001

25th August, 1993.

CERTIFICATE

This is to certify that Shri Lalsinh K. Rathod
has worked as Part Time labour for the period as under.

Jan. '89 to July 1992

He bears a good moral character to the best of
my knowledge and belief. He is honest, industrious
and sincere in his work. He comes from respected
noble family. He is not related to me. I wish him
every success in life.

Place : Ahmedabad

A.E. Carrier/VFT
Ahmedabad 380001.

True

✓
Reply/ ~~Opposition/ Cross Application~~
filled by Akil Kureshi

(16)

✓ ~~Learned Counsel for the Respondents~~
Respondents
copy served on the other side

Dr. CPK Afridi
Dy. Registrar C.A.T. (J)
7/2/2022
A'bad Bench

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

ORIGINAL APPLICATION NO. 663 OF 1993

Shri L.K. Rathod

Applicant

v/s.

The Union of India & Ors.

Respondents

written Reply on behalf of
the respondents

I, M.M. Patel working
as A.E. Fault Control with respondent No. Ahmedabad
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 application 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.
3. At the outset I say and submit that no part of the application shall be deemed to have been admitted

Presented by

Mr. Akil Kureshi

Adv.

7/2/2022

2+022

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. I say that the applicant was engaged as daily rated mazdoor for day to day miscellaneous work of the A.E. Carr/VFT Ahmedabad from 3.3.1989 to 30.9.1990 in the vacant post of a regular employee, as shown below:

<u>Year</u>	<u>4 hrs. half day</u>	<u>8 hrs. full day</u>	<u>Period</u>
88-89	03	08	3.3.89 to 31.3.90
89-90	166	78	1.4.89 to 31.3.90
90-91	129	48	1.4.90 to 30.9.90

5. In reply to paras-2 and 3 of the application I say that from 1.6.1991 to 31.10.1991, 1.4.1992 to 31.12.1992 and 1.2.1993 to 11.8.93 daily four hours the applicant had worked under the A.E. F/C AM Office vice Shri D.L. Chavda, workman. I say that as per the recommendation of A.E.Carr/VFT AM the applicant was given work in the office and on that basis employment has been given by the A.E.F/C office. I say that the certificate issued by the AE Carr/VFT AM and the A.E. F/C AM do not give any right to the applicant to get regular employment in the Department. I say that as the applicant has worked in different offices he cannot claim regular employment in any office. I say

that the applicant has not completed five years of service because he has not performed duty continuously. He also has not completed 240 days in each year as he has worked four hours a day. Though he has worked for 134 days as full time still he is not completing 240 days of service in each year.

6. In reply to para-4 of the application, I say that the contents of the same are incorrect and I deny the same.

7. In reply to para-5 of the application, I say that the contents of the same are not correct. I say that on resumption of Shri D.L. Chavda, regular worker under A.E. F/C AM, oral notice was given to the applicant and he was informed not to come on duty with effect from 12.8.1993. I say that it was not possible to give any other alternative job for the applicant.

8. In reply to para-6 of the application, I say that the contents of the same are not admitted. So far as the seniority is concerned, I say that seniority of daily rated mazdoors who were recruited before 1985, is maintained by the Department.

9. In reply to para-7 of the application, I say that the contents of the same are incorrect and I deny the same.

10. In reply to para-8 of the application, I say that prior permission for engagement of the workman has been obtained from the competent authority till the date of resumption of the regular employee, who was on long leave. I say that the respondents are not bound to give permanent job for daily rated mazdoor. I further say that whenever additional work is to be carried out, outsider mazdoors are utilised for such work and wages are paid on completion of the work. I say that the Vastrapur, Navrangpura and Vasna Exchanges do not fall under the jurisdiction of the respondent No.3 herein. Hereto annexed and marked Annexure-R1 is a statement showing total number of days worked by the applicant. I may be mentioned that the number of days shown in the said statement should not be counted as full working days ~~as~~ but they are ~~not~~ be treated as half days only.

11. 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 prayed for by him and this Hon'ble Tribunal be pleased to reject the application forthwith with costs.

Ahmedabad,

Dt. -1-1994.


A. E. Fault Control (M)
4th Floor, New Telecom Building,
Bhadra, Ahmedabad-380001

Verification

I, Mafatlal M. Patel,
working as D. R. Panel Control,
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. -1-1994

A. E. Fault Control (I)
4th Floor, New Telecom **Buldg.**
Bhadra. Ahmedabad-380001

DEPARTMENT OF TELECOMMUNICATION
Office of The Assistant Engineer Fault Control, 4th
Floor, Telecom Bldg, Bhadra, Ahmedabad 380001.

Particulars of presence of Shri LK Rathod who has worked as Part-time labour

Month	Years						Half	Half	Half
	88-89	89-90	90-91	91-92	92-93	93-94			
1. April	-	-	15	14	12	-	30	30	27
2. May	-	-	40	26	18	12	-	31	25
3. June	--	--	-	09	21	08	30	30	26
4. July	-	-	-	08	28	14	31	31	28
5. August	-	-	02	-	25	02	31	31	11
6. September	-	-	21	-	23	-	30	30	-
7. October	-	-	23	02	-	-	31	31	-
8. November	-	-	25	-	-	-	-	30	-
9. December	-	-	24	07	-	-	-	31	-
10. January	-	-	23	01	-	-	-	-	-
11. February	-	-	17	10	-	-	-	28	-
12. March	3	08	21	-	-	-	-	31	-
Total	03	08	166	78	129	48	153	334	117

worked under A.E. WFT/Carr AM

Worked under A.E. P/C AM

A. E. Fault Control (I)
4th Floor Telecom Building
Bhadra, Ahmedabad 380001

(17)

Annex R

H
DRAFT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
ORIGINAL APPLICATION NO. 663 OF 1993

L.K. Rathod

..applicant

vs

Union of India & ors.

..respondents

REJOINDER

1. I, Shri L.K. Rathod, applicant has gone through the reply filed by the respondents and am conversant with the facts of the case and I say that contentions and submissions of the reply are far from truth and are denied by me. I deny all the contentions and submissions of the reply except those, which are specifically admitted by me in the rejoinder.

2. With reference to para 1 to 5 of the reply, it is not true that the application is misconceived and not maintainable. I do not admit the correctness of the dates mentioned by the respondents. I say that the contention of respondents that I have worked in different offices and therefore cannot claim regularisation is misconceived. It is not true that the applicant has not completed 5 years of service as not worked continuously. It is also not true that I have not completed 240 days in a year. I say that the respondents have not correctly calculated the no. of days of the applicant.

3. With reference to para 6 to 9 of the reply, I reiterate and rely what I have stated in my application para 5 to 7. It is not true that it is not possible to give alternative work to the applicant and the termination is due to resumption of service by Shri D.L. Chavda. I say that the respondents have to produce the seniority list of the daily rated mazdoors who are re-
[redacted] for 1985 also.

Copy/reconcern/written submissions
Date: 10/12/95
Advocate for petitioner
P.H. Patel
Dy. Registrar
A'Dam
[redacted]

10/12/95
[redacted]

4. With reference to para 10 & 11 of the reply, I reiterate and rely what I have stated in para 8 of the application and say that the contention of respondents that the department is not bound to absorb daily rated employees is misconceived and contrary to the direction of Hon'ble Supreme Court. I say that there is no question of any additional work but there is a ban imposed by the Ministry concerned for recruitment of regular employees and on the other hand, the workload of the department has increased time and again and therefore to meet with the burden of work, the casual labourers are engaged by the respondents. The contention of respondents about various Exchanges i.e. Vastrapur, Navrangpura etc. not falling within the jurisdiction of respondent No.3 is misconceived. I say that so far the regularisation and granting of Temporary Status etc. to the part time employees are concerned, it is now well settled principle that the period for calculating 240 days, 2 years period of Part Timer are to be treated as one year service and therefore the applicant is fulfilling the requisite number of days. The applicant is required to be absorbed by the respondents. That as stated above admittedly the applicant has completed more than 240 days of service in last 12 calendar months to get the protection of sec.25-F of the Industrial Dispute Act and therefore the termination of service of the applicant is *prima facie* bad in law and required to be set aside.

Dated 3.7.95

Ahmedabad

Mr
C. P. H. Patel (S)
PM

VERIFICATION

I, Shri L.K. Rathod, adult, residence of Ahmedabad, do hereby verify that what is stated above is true to my personal knowledge and I believe the same to be true and that I have not suppressed any material facts.

Date :- 3.2.85

Ahmedabad.

X (1921) 3 2615