

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 669/93 and C.A. 44/94 in O.A. 669/93
T.A. No.

DATE OF DECISION 30-11-94

Smt. Mulavi Murugan

Petitioner

Shri M.S. Trivedi

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondent

Shri B.R. Kyada

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.

V. Radhakrishnan

Member (A)

The Hon'ble

Dr. R.K. Saxena

Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Smt. Mulavi Murugan
Temp. Shed, Opp. Rly. Hospital,
Mehsana

Applicant

Advocate Shri M.S. Trivedi

versus

1. PWI (S) Mehsana Office,
Western Railway Meter Gauge,
Mehsana.
2. Asstt. Engineer,
Mehsana Western Railway Meter Gauge,
Mehsana.
3. DRM(E) Rajkot,
Divisional office,
Kothi Compound, Rajkot.

Respondents in
O.A. 669/93

4. Union of India, Through :
Shri Aga,
D.R.M.O/o, D.R.M., W.Rly.,
Kothi Compound, Rajkot.
5. Shri Gupta,
Inspector of Ways,
W.Rly.O/o, I.C.W.,
Mehsana

Respondents in
C.A. 44/94 in
O.A. 669/93

Advocate Mr. B.R. Kyada

J U D G M E N T

O.A. 669/93 &
C.A. 44/94 in
O.A. 669/93

Date: 30-11-94

Per Hon'ble Dr. R.K. Saxena : Judicial Member

The present O.A. 669/93 and C.A. 44/94 are
being disposed of by a common judgment because C.A. 44/94 is

said to have arisen on account of non-compliance of the interim order passed by the Tribunal on 01-3-1994 in O.A.669/93.

2. The facts of the case are that the applicant Smt. Mulavi Murugan was a gang-woman Mehsana and worked in that capacity for several years. She had undergone some surgical operation and thereafter the medical advice dated 27-3-1992 as given in Annexure A dated 28-5-1992, was that she was fit for B/1. It was further clarified that she was fit for job not involving heavy weight lifting. Consequently, the applicant was given alternative appointment of the post of Khalasi, vide Annexure A. The copy of the order was endorsed to P.W.I.(S) and CIOW, Mehsana.

3. The applicant contends that the respondent No.1 held out threats to her to discontinue the services of the applicant and subsequently actually terminated by oral order on 4-11-1993. Since then, she was not allowed to resume her duties, and therefore, the applicant was constrained to approach the Tribunal through this O.A.669/93. It was admitted on 12-11-1993. The respondents filed reply on 1-3-1994, and on that very day, the Tribunal passed the following order.

" Reply filed by Mr.B.R.Kyada, be taken on record. Mr.S.G.Uppal, does not want to file any rejoinder. After hearing

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Mr.S.G.Uppal and Mr.B.R.Kyada,by way of interim measure,we direct the IOW,Mehsana to assign work to the applicant if the applicant reports to him for work. Adjourned to 4-4-94."

4. The respondents,through written reply came with the case that the ^{applicant}~~respondent~~ was not working with Respondent No.1 but was working with I.O.W.Mehsana and her services were never terminated. It is also averred by the respondents that the applicant was working as gangwoman with Respondent No.1 but when she was made Khalasi on consideration for alternative appointment,she was placed under C.I.O.W.,Mehsana where duties were resumed on 30-5-1992; and this fact was admitted to the applicant herself. It is the contention of the respondents that when the applicant was working under C.I.O.W.,Mehsana,her services could not be terminated by P.W.I.-Respondent No.1.

5. It is apointed out by the respondents that the applicant is habitual in refusing the work.She was directed to work with ^{mason}~~reason~~ on 17-7-1993,but she refused. When she was attached with the painter,she declined to work with him also. Therefore,report Annexure R/1 was made against the applicant. She was given warning on 17-7-1993 and on 20-10-1993 vide Annexures R/2 and R/3. The applicant also

dissuaded other workers from doing work about which complaint Annexure A/4-was made by co-workers. It is also contended that the applicant unauthorisedly absented herself from duties w.e.f. 21-10-1993, she was therefore, warned through Annexure R/5 to join duties, else disciplinary action would be started against her. The notice was also served in the form Annexure A/6 at her residential address. Ultimately, action was initiated. The respondents vehemently contradicted the contention either of not allowing her resume^e duties or of oral termination of the services of the applicant. The applicant did not opt to file rejoinder.

6. Contempt Application No.44/94 is filed with the contention that the respondents deliberately and wilfully disobeyed the interim order passed on 1-3-1994, referred to above and also failed to comply^{with} the directions given on 26-4-1994 about resumption of duties and, therefore, it is urged that the respondents be punished for contempt of this Tribunal.

7. The contemptor/respondent Shri V.K.Gupta, Divisional Engineer filed reply and challenged the

contention raised by the applicant. According to this reply, the applicant in compliance of the interim order dated 1-3-1994, approached the respondent on 5-3-1994, and she was allowed to resume duties. Instead of joining the duties, the applicant left with her husband. Then a letter dated 21-3-1994 of Shri M.S. Trivedi, Advocate was received on 24-3-1994. It contained the copy of interim order dated 1-3-1994 and the xerox copy of letter 21-3-1994, Annexure R/1. She then approached on 16-5-1994 along with a letter dated 2-5-1994, Annexure R/2.

8. The contemnor respondent also came with the averment that the affidavit dated 22-3-1994, Annexure A/2 is false because the applicant could not be present on the same date at Mehsana as well as Ahmedabad. Moreover, the facts of contempt application about non-resumption of duties were not mentioned in the application, Annexure A/3. The application, Annexure R/3, about leave from 19-7-1994 to 23-7-1994 given by the applicant, has also been brought on record. It is, however, urged that there was no disobedience of the orders of the Tribunal. The applicant again chose not to file any rejoinder.

9. We have heard the learned counsel for the applicant and the respondents in both the matters and have perused the record.

10. First of all, we shall take up O.A.669/93 and try to find out if any oral order of termination of services was passed by any of the authorities. It is evident from the copies of the documents filed by the applicant and from her own averment that initially she was appointed as gangwoman but on medical advice, she was made Khalasi and was posted at Mehsana itself under C.I.O.W. In para 2 at page 3 of the application, it was admitted that in pursuance of the order dated 28-5-1992 (Annexure A), she had joined at Mehsana. The applicant has not disputed the case of the respondents that the post of Khalasi on which she was posted in Mehsana, was under C.I.O.W. to whom the copy of order of appointment was endorsed. In view of this fact, the assertion of the applicant that her services were orally terminated by PWI Mehsana, tumbles down.

11. Assuming that the applicant meant C.I.O.W. in place of PWI, we shall try to find out if any oral order of termination was passed by C.I.O.W. The respondents denied either termination of services or order of non-resumption of duties. In such a situation burden heavily lay on the applicant to establish the facts. No documentary evidence is coming forward in support of it. There is

oral averment of the applicant. It does not stand to reason as to why the respondents should have sent notices R/5 and R/6 for resumption of duties by the applicant if the services were already terminated. It is categorical averment of the applicant that her services were terminated on 4-11-1993 and despite the orders passed on 1-3-1994 and 26-4-1994 by the Tribunal, she was not allowed to resume duties. The respondents produced Annexure R/3 in the file of contempt matter to show that the applicant had sought leave for five days w.e.f. 19-7-1994 to 23-7-1994. No doubt, this Annexure should also have been brought in the file of O.A.669/93 but for this lapse of procedure, this paper (Annexure R/3 of Contempt matter) can-not be overlooked. It leads to the conclusion that there was no order of termination of services against the applicant and she was very much in service. The other ground to fortify this conclusion is the assertion of the respondents to have initiated disciplinary proceedings against her for her unauthorised absence from 21-10-1993. These facts having not been controverted by the applicant, may be deemed ^{to be} correct.

12. Now the question arises, if there was no order

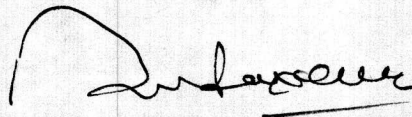
of termination of services, what were the reasons of starting this case. The answer is found in Annexure A/3 of O.A.669/93 which is a sort of representation to Chief Inspector of Works and Asstt. Engineer. In para 7 of this representation, the abrupt shifting of the applicant to the post of Khalasi on 21.10.1993 is complained against.

In para 10, it was urged that she should be allowed to work as Mali. What appears that the work other than ^{that} of Mali was not of her choice, and since the department had started issuing notices of disciplinary action, she thought to bring this case. Looking to the fact that she is an illetrate and low paid lady. We desist from fixing any penal cost against her. We, however, hold that since there was no order of termination of services of the applicant, the application being not maintainable, is rejected.

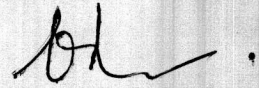
12. We now take up the Contempt Application No.44/93. It is true that Tribunal passed order on 1-3-1994, directing the I.O.W. Mehsana to assign work to the applicant, but the applicant did not give an opportunity to the respondents to make compliance. She approached I.O.W. on 5-3-1994 and immediately came back along with her husband

therefrom. The contemnor/respondents has categorically asserted that she was allowed to resume duties and before the work could be allotted, she left the place. It has not been disputed because no rejoinder is filed. There is no conclusive evidence to the effect that the applicant ever approached thereafter. What appears from the documents produced by the contemnor is that the applicant had been sending letters either directly or through her lawyer. Similar is the situation with regard to the direction given on 26-4-1994 by the Tribunal. Interesting point is that on the one hand the applicant wants action against the respondents for non-compliance of orders and non-resumption of duties but on the other hand she is also seeking leave from 19-7-1994 to 23-7-1994. If compliance was not done and the duties were not allowed to be resumed, there could be no occasion to seek leave from duties. Since this paper has not been controverted, it cannot be said that the paper, Annexure R/3 was fictitious or a forged document. Thus we come to the conclusion that even the case of contempt is not established against the respondents. ² The notices are therefore, discharged.

13. On the consideration of the facts discussed above, O.A.669/93 and C.A.44/94 are rejected. No order as to costs.



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



(V.Radhakrishnan)
Member (A)

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