IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 674/93 and 675/93 and 676/93

DATE OF DECISION 17-1-1994

Mr. G.R. Dabhi
Mr. H.B. Baraiya
Mr. A.B. Baraiya
Petitioner

Mr. D.K. Mehta Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

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

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

1. Girdharbhai R. Dabhi
Street No.3, Shaktinagar,
Krushnanagar, Jamnagar. Applicant.
(O.A. 674/93)

2. Hasmukhbahi Bachibhai Baraiya
Yadav Nivas, Behind Id Masjid
Subhaspara 2, Jamnagar. Applicant
(O.A. 675/93)

3. Ashokbhai B. Baraiya
Yadav Nivas, Behind Id Masjid,
Subhashpara 2, Jamnagar. Applicant
(O.A. 676/93)

Advocate Shri D.K. Mehta

Versus

1. The Union of India
(Notice to be served through
Director General, Posts & Telegraphs Dept.,
Ministry of Communication, New Delhi.

2. Telecom District Engineer,
Jamnagar.

3. Sub-Divisional Officer (Phones II)
Jamnagar. Respondents.

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

in

O.A. 674/93 & O.A. 675/93 & O.A. 676/93 Date: 17-1-94.

Per Hon'ble Shri N.B. Patel Vice Chairman.

We propose to dispose of the aforesaid three cases by this common judgement as the applicants in the

respective cases pose the same challenge to the validity of the oral orders of termination of their casual employment. In O.A. 674/93 and O.A. 675/93 the oral termination orders are dated 15-9-1987, whereas in O.A. 676/93 the oral termination order is dated 31-7-1987. All the three applicants were engaged as casual labourers in the Telecommunications Department. It is their case that each of them had completed more than 240 days of service in the Calendar year preceding the date of their respective termination, and yet their employment is terminated orally without giving them any notice or notice pay and without paying them any retrenchment compensation as required by Section 25 F of the Industrial Disputes Act. The applicants, therefore, pray that the termination of their employment be quashed as being void and it may be declared that they continue in service. They also pray for being awarded full back-wages from the date of their termination till the date of their reinstatement and all other consequential benefits.

2. It is pertinent to note here that, though in the first two cases the date of termination is 15-9-1987 and in the third case it is 31-7-1987, all the three applicants have approached this Tribunal about six years after the date of the termination of their employment i.e. on 22-11-1993. This being so, the applicants have also filed M.As. for condonation of delay and, in the three cases, we have condoned the delay

..4...

by passing order today since Mr. Mehta, learned Advocate for the three applicants, has given up the applicants' claim for back-wages till the date of their reinstatement, if ordered by us. Apart from this statement made by Mr. Mehta, the applicants have also made a clear averment to this effect in the Miscellaneous Applications filed by them.

3. In all the three Original Applications, the respondents have filed written statements today wherein the averments in the applications that the applicants had completed more than 240 days of employment during the Calendar year preceding the date of the termination of their employment and that their termination was not brought about by notice as envisaged by Section 25 F of the Industrial Dsiputes Act or payment of wages for the notice-period in lieu of notice and that they were not paid any retrenchment compensation have not been specifically denied, but it is stated that the averment that the applicants had put in more than 240 days of employment during the relevant period is not admitted. Since the respondents have not admitted the applicants' averments that they had worked for more than 240 days in the Calendar year preceding the date of their termination, the applicants have produced, in all the three cases, certificates issued by responsible officers of the Telecommunications Department clearly showing that all the three applicants had worked for more than 240 days in the relevant year.

It must, therefore, be held that all the three applicants had worked for more than 240 days during the relevant year and also that their employment has been terminated orally, which is in complete contravention of the provisions of Section 25 F of the Industrial Disputes Act. One of the contentions raised in the written replies was that, even assuming that the applicants had worked for more than 240 days during the relevant period, since they had not put in continuous service of one year immediately preceding the date of the termination orders, it was not necessary to give them any notice or notice pay or to pay them any retrenchment compensation as envisaged by Section 25 F of the Industrial Disputes Act. This contention is only to be mentioned for its refutation, since the decision of the Supreme Court in AIR 1981 SC 422 is a complete answer to this contention.

4. It must follow from what is held above that the impunged orders by which the employment of the three applicants is terminated are in violation of Section 25 F of the Industrial Disputes Act and are, therefore, liable to be declared as null, void and of no effect. As a consequence of this, the respondents will have to be directed to reinstate the applicants on the same terms as before and the applicants must also be awarded all consequential benefits of the above declaration except back-wages till their reinstatement.

5. In the result, therefore, all the three applications

are allowed. The oral termination of the employment of the applicants is declared as null and void and the applicants are ordered to be reinstated by the respondents, within 7 days from today, with continuity of service and all other consequential benefits (including regularisation of service, if due) except back-wages till the expiry of 7 days from today or actual reinstatement, whichever is earlier. In other words, even if the applicants are not actually reinstated in service within 7 days from today, the respondents will start paying them wages on the expiry of the aforesaid stipulated period. The applicants to report for duty within the aforesaid period of seven days from today.

Sd/-
(K.Ramamoorthy)
Member (A)

Sd/-
(N.B.Patel)
Vice Chairman

Prepared by : B.T.Shah 21.1.94
Compared by :
TRUE COPY
21/1/94
Section Officer (J),
Central Administrative Tribunal
Ahmedabad Bench.

Date	Office Report	ORDER
15.7.94		M.A.261/94 IN O.A.676/93 Mr.Akil Kureshi states that after the filing of this M.A., the judgment in question is complied with and hence, the M.A. has become infructuous. M.A. stands disposed of accordingly No order as to costs. (V.Radhakrishnan) Member (A) (N.B.Patel) Vice Chairman sch

M.A/260/94 in OA/675/93

Date	Office Report	ORDER
9-5-1994		At the joint request of Mr. Mehta and Mr. Kureshi, adjourned to 17-6-94. (K. Ramamoorthy) Member(A) (N.B. Patel) Vice-Chairman 'pkk'
17-6-94		Reply filed by Mr. Mehta taken on record. At his request adjourned to 30-6-94. (N.B. Patel) Vice-Chairman.
30.6.94.		Leave note filed by Mr.D.K.Mehta. Adjourned to 15.7.1994. (K.Ramamoorthy) Member (A) (N.B.Patel) Vice Chairman ait.

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