

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 713/93
T.A. NO.

DATE OF DECISION 19-7-94

Mr. Mahendra Singh Bhurubha Petitioner

Mr. P.H. Pathak Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

CORAM

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

The Hon'ble Dr. R.K. Saxena Member (J)

JUDGMENT

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

}

No

Jadeja Mahendrasingh Bhurubha
Ashapura Nivas
Hariparakash Nagar,
B/h Dal Mill, Surendranagar.

Applicant.

Advocate Mr. P.H. Pathak

Versus

1. Union of India
Notice to be served through
General Manager, Telecommunication
Department, Gujrat Circle,
Navrangpura Ahmedabad.

2. Telecom Dist. Engineer
Telecom Building
Nr. Alankar Talkies
Surendranagar.

3. Asstt. Engineer (HRD)
Telecom Dist. Surendranagar.

Respondents.

Advocate Mr. Akil Kureshi

J U D G M E N T

In

Date: 19-7-94

O.A. 713/93

Per Hon'ble Dr. R.K. Saxena

Member (J)

To challenge the order dated 10-5-1993
Annexure-A1 of the respondent no.3 ^{removing} the applicant from service, and
order dated 8-7-1993 Annexure A-7 rejecting the appeal, this
application has been filed by Shri Mahendra Singh Bhurubha Jadeja.

D

..3..

2. The brief facts of the case ~~xx~~ are that the applicant was serving under the respondents since 1981. A report about the damage of property and theft of diesel by the applicant, was lodged with the police, by the Assistant Engineer. Therefore, a case No. 57/93 was registered and the applicant was arrested by the police on 12-4-1993 and was released on 19-4-1993. The applicant submitted leave application from 11-4-1993 to 19-4-1993 on 20-4-1993 but the same was rejected. The respondent no.3 on the other hand, called for the explanation vide letter dated 22-4-1993 from the applicant about the concealment of his arrest and misleading the department. The explanation was submitted on 30-4-1993 that the arrest was made on suspicion and the applicant was not convicted. Without holding any inquiry, the respondent no.3 passed the impugned order of discontinuing the services of the applicant. The order being punitive in ^{nature} is ex facie bad in law and violative of Articles 14, 21 of the Constitution. The appellate authority also rejected the appeal without hearing the appellant. The applicant who was working for the last ten years as casual labour, could not be removed without holding Departmental inquiry.

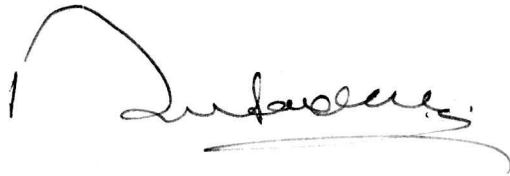
3. The respondents came with the contention that the applicant concealed the fact of arrest, misled the department by applying for leave of the period of detention, and thus misconducted himself. The information of arrest was received by the department from the police. This act of the applicant was a ground of unsuitability and, therefore, the services were discontinued. It is then urged that the applicant is not entitled to any relief.

4. It is clear from these facts that the order of termination of services of the applicant is not a simplicitor one. The background was his arrest during the investigation of a criminal case. Instead of placing the facts of arrest, the applicant concealed them and sought leave of the said period. The Department came to know of the fact of arrest from the city police. It was then that the applicant was given notice but thereafter no attempt of holding any enquiry, was made ^{and} ~~but~~ the order of discontinuance of services was passed. Thus the impugned order ~~is~~ punitive in nature.

5. The learned counsel for the respondents argued that the applicant was not a regular employee but was a casual labour, and thus holding of an enquiry was neither prescribed nor was necessary. Even if the applicant was not a regular employee, his status was that of a workman who was engaged for the last ten years. The Telecommunication Department is ^{an} undisputedly in the category of an industry. As such, whatever procedure for removal of a workman is given under the Industrial Disputes Act, 1947, should have been adopted. Even such order of discontinuance from service as the impugned order is, falls within the scope of retrenchment which has got certain conditions to be complied with. Thus the impugned order (including the order passed in appeal^h), if judged from any

angle either as a punitive one or as order of retrenchment does not satisfy the requirements given therefor. Consequently it is not sustainable under law. The result is that the application is allowed and the impugned orders of discontinuance from service and passed in appeal are quashed and set aside.

No order as to costs.



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



(K. Ramamoorthy)
Member (A)

*AS.