Central Administrative Tribunal
Ernakulam Bench

Date of decision: 09.02.1990

Present

Hon'ble Shri N.V. Krishnan, Administrative Member

And

Hon'ble Shri N. Dharmadan, Judicial Member

Original Application Nos.:483/89 & 485/89

M.C. Chandran : Applicant in OA 483/89

M.V. Vinod : Applicant in OA 485/89

Vs.

1. Union of India rep. by Secretary to Government of India, Ministry of Communications New Delhi.
2. 2. The Senior Superintendent of Post Offices, Palghat.
3. The Sub Divisional Inspector, Palghat North Sub Division, Palghat - 678 001.

Respondents in OA 483/89 and OA 485/89.

M/s MR Rajendran Nair & PV Asha : Counsel for applicants

Mr. K. Karthikeya Panicker, ACGSC : Counsel for respondents

O R D E R

Shri N.V. Krishnan, Administrative Member

These two applications which were heard together are being disposed of by this common order as the issues involved are identical.

2. The case of the applicant in OA 483/89 can be stated as follows:

2.1 The applicant was provisionally appointed on 17.7.87 as an Extra Departmental (ED) Packer in the

..2..

Edathara Post Office in the vacancy created by putting off the regular incumbent A Ramakrishnan (Annexure-I). That order also stipulated that the provisional appointment was tenable till the disciplinary proceedings against Shri Ramakrishnan were finally disposed. In case it was finally decided not to take back Shri Ramakrishnan back into service, the provisional appointment will subsist "till regular appointment is made or till 30th September, 87, whichever was earlier". He was told that his service will be governed by the ED Agents (Conduct and Service) Rules, 1964.

2.2 The appointment was accepted by the applicant on the aforesaid conditions. However, he was allowed to remain in service till 1.8.89 without specific orders, when his services were terminated under oral orders.

2.3 In the above circumstances, the applicant contends as under:

(i) The Postal Department is an industry and he is a workman as defined under the Industrial Disputes Act, 1947 (Act, for short).

(ii) He has continuous service exceeding 2 years.

and is entitled to the protection of Section 25-F of the Act. The termination of his services is retrenchment for which purpose he was neither given any notice nor pay in lieu thereof nor was he given any compensation. He, therefore, alleges violation of Section 25 F of the Act.

(iii) He has alleged that there are others junior to him who have been appointed as ED Packers. As he is not the juniormost in the category of ED Packers, it is contended, the termination of his service while retaining juniors is violative of Section 25 G of the Act.

(iv) The applicant is entitled under Section 25 H of the Act to get preference for appointment in any future vacancy, even assuming that the termination is proper.

On the above grounds, the applicant seeks a declaration that the termination of his service is null and void and to declare that he is entitled to the benefit of Section 25H of the Act and get preference for appointment in future vacancies.

3. The applicant in OA 485/89 also has a similar

case. He was also employed in the same Edathara Post Office, but as an ED Messenger. He was provisionally appointed by the Annexure-I order dated 17.7.87 of Respondent-3 in the vacancy caused by putting off the regular incumbent G. Karuppan, against whom disciplinary proceedings were initiated. It would appear that the disciplinary proceedings against the regular ED Packer and ED Messenger in these cases were inter-connected and, therefore, the fate of the provisional appointees in both these applications were also similarly related. The service of the present applicant was also terminated with effect from 1.8.89. This applicant has also raised similar, if not even identical, pleas as the applicant in the earlier case. He has also asked for similar reliefs.

4. The Respondents have filed identical replies in both the cases. Their case can be stated thus:

4.1 The applicants are not entitled to any relief at all for the important reason that being mere provisional appointees, their services could be terminated when the regular incumbebts are reinstated as a result of the final decision in the

disciplinary proceedings against them. This is a specific condition mentioned in the Annexure-I appointment order.

4.2 It is denied that the applicants are either workmen or that they are entitled to any relief under the Act.

4.3 It is also claimed that even if the ID Act applied to them, this Tribunal is not the proper forum to agitate the issues; they should have been pressed before the Industrial Tribunal.

5. We have perused the records and heard the learned counsels appearing in these cases.

6. Shri MR Rajendran Nair, the learned counsel for the applicant has relied on the few well known judgements of the Supreme Court interpreting the provisions of the ID Act relevant to the present case. He also drew out attention to OA 42/89 - R. Parameswaran Nair Vs. Superintendent of Post Offices, Alleppey - in which one of us (Shri N. Dharmadan) had delivered a judgment in favour of the applicant in that case in more or less similar circumstances, upholding his right to protection under

Section 25-F of the Act.

7. Shri K. Karthikeya Panicker, the learned Additional Central Govt. Standing Counsel, vehemently opposed the application contending that even if the Postal Department is an Industry, the applicants are not workmen. They are governed only by the Extra Departmental Agents (Conduct & Service) Rules, 1964 and the Industrial Disputes Act, 1947 will not govern this dispute relating to their services. Lastly, the applicants were not retrenched.

8. We have perused the judgment delivered in OAK-42/89 but feel that there are some aspects requiring consideration not considered therein. Therefore, we proceed to consider the important issues specially raised in this case.

9. There is no dispute about the Postal Department being an industry. The only question is whether the applicants are workmen as defined in Section 2(s) of the Act. There is only an averment in para 8 of the reply affidavit of the Respondents that the applicant is not a workman as defined in the ID Act without any effort to substantiate this contention.

10. It is useful to see the definition of the expression "Workman" in Section 2(s) of the Act. That definition is as follows:-

> "Workman" means any person (including an apprentice) employed in any industry to do any manual unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (ii) Who is employed in the police service or as an officer or other employee of a prison; or
>
> (iii) who is employed mainly in a managerial or administrative capacity; or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly or a managerial nature."

11. The learned counsel for the respondents agreed that the applicant does not belong to the excepted categories mentioned in item (i), (ii), (iii) and (iv) in the definition. When questioned, he had to admit that the applicant fell under the first limb of the aforesaid definition and could be considered to be a workman. But, if this is an industrial dispute under the second limb, the applicant can be considered to be a workman only if he had been retrenched, which, as stated earlier, has been denied by

the respondents.

12. This objection can be disposed of summarily. There is no dispute that the applicant is a worker under the first limb of the definition. It is not necessary for the disposal of this application to consider ~~x~~ whether the present matter is an industrial dispute and examine the need and scope of the second limb of the definition. We will ~~state~~ now presently that the applicant has, indeed, been retrenched.

13. Hence, we find that the applicants are 'workmen' entitled to protection under Chapter V-A of the Act, if they satisfy the other conditions laid down therein.

14. Relying on a Full Bench decision of the Hon'ble High Court of Kerala in Director of Postal Services Vs. KRS Kaimal (1984 KLT-151), the learned counsel for the respondents contends that the provisions of the Act will not apply to the present case as the applicants are governed by the Extra Departmental Agents (Conduct & Service) Rules, 1964. A similar pleas was fully considered and negatived in OA 42/89 and hence, we do not consider this matter again.

..9..

15. We may now consider whether termination of service of the applicants is 'retrenchment' as defined in Section 2(oo) of the Act. It may be mentioned straight-away that the Respondents never claimed either in their reply affidavit or in the arguments advanced at the Bar that the termination does not amount to retrenchment, as it is saved by one of the exceptions mentioned under Section 2(oo). Nevertheless, the learned counsel for the respondents feebly tried to argue that the termination is saved under exception(bb) to the definition, ie, it was as a result of the non-renewal of the contract of employment on its expiry. For, he tried to argue, the applicants were appointed for a specific period only and, therefore, the termination of service was the result of non-renewal of the contract of employment. This plea is based on an incorrect appreciation of facts. It was rightly pointed out by the applicants' counsel that the only order of appointment is Annexure-I and that order made it clear that the provisional appointment would be tenable, latest upto 30.9.97 only, unless a regular appointment was made before that date or the person who was put off

service was re-inducted before that date. The application of the exception in Clause (bb) to the definition in Section 2(oo) of the Act would have arisen if the appointment had been terminated on or before 30.9.87, as the casee may be. Even after 30th September, 87, ie, the expiry of the term of appointment under Annexure-I order, the applicant continued in service for 2 more years without any other contract. Hence, this argument does not save the termination.

16. The question as to what "retrenchment" is under that Act has been considered in a number of Supreme Court judgments (State Bank of India Vs. NS Money (AIR 1976 SC-1111), Santhosh Gupta Vs. State Bank of Patiala (AIR 1980-SC-1219), Mohan Lal Vs. Management, Bharat Electronics Ltd. (AIR 1981-SC-1253) and L. Robert D'Souza Vs. Executive Engineer, Southern Railway (AIR 1982 SC-854)). We can do no better than reproduce the declaration of the Supreme Court in the last case:

> "...if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, ie, (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the

> employer and the workman concerned contains a stipulation in that behalf; (iv) or termination of the service on the ground of continued ill-health. Once the case does not fall in any of the ~~xxxxx~~ excepted categories the termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo). It must as a corollary follow that if the name of the workman is struck off the rolls that itself would constitute retrenchment, as held by this Court in Delhi Cloth and General Mills Ltd. case."

It is only necessary to add that the excepted category covered by Clause (bb) was inserted in the definition of 'retrenchment' from 18.8.84 after the above judgment was delivered.

17. Without much more ado, we hold that the applicants were retrenched.

18. Shri K. Karthikeya Panicker lastly contended that even if this is a retrenchment of a workman governed by the Act, in violation of the provisions of Chapter V-A of the Act, this matter should have been agitated by the applicants before the Industrial Tribunal which alone has jurisdiction in the matter. For this purpose, he relied on a decision of the Jabalpur Bench of the Central Administrative Tribunal in Komal Chand Dadu Ram Vs. Union of India (ATR 1988 (2) CAT-412). This is also an issue not considered in the earlier decision in OA 42/89, as it was not raised therein.

..14..

19. That pronouncement does not now hold the field and does not lay down the law on the subject. For, in the meanwhile, a Full Bench of the Tribunal sitting at Allahabad, considered this same issue in SK Sisodia Vs. Union of India (1988 7-ATC-852) and held that the Central Administrative Tribunal has jurisdiction in such cases. It is instructive to reproduce the salient portions of that judgment:-

> "The respondents alternatively contend that assuming that Section 25-F applies and the requirements of Section 25-F have not been complied with, the Central Administrative Tribunal has no jurisdiction under the Administrative Tribunals Act to got into that question and grant any relief to the petitioner on that basis. Any relief, alleging on non-compliance of the provisions of the Industrial Disputes Act can be claimed by the petitioner workman only before the Industrial Tribunal and not before the Central Administrative Tribunal."
>
> xxx xxx xxx xxx
>
> "Prior to the deletion of Section 2(b) of the Administrative Tribunals Act the Central Administrative Tribunal could not grant relief under Industrial Disputes Act, not because the grievance regarding termination was not a service matter but because persons governed by Industrial Disputes Act were not within the purview of the Act. In expressly making the Act applicable to persons covered by the Industrial Disputes Act and thus vesting the Central Administrative Tribunal also with the jurisdiction, power and authority to deal with these matters, the Parliament could never have intended to force the workmen to move two different Tribunals to get their grievances redressed - the Industrial Tribunals for the rights conferred and obligations imposed by the Industrial Disputes Act and the Central Administrative Tribunal for the rights conferred by other Service Rules. In leaving the choice to the workman concerned to move either of two two forums, the Industrial Tribunal or the Central Administrative Tribunal, the Parliament could never have intended to restrict the right to relief or the scope or extent of the relief that could be granted by these

forums. Merely because Industrial Tribunal has also jurisdiction, power and authority to grant the relief which a workman was entitled to under the Industrial Disputes Act, the jurisdiction, power and authority vested in the Central Administrative Tribunal by deletion of Section 2(b) of the Act does not stand abridged. In the absence of any such provision, there is no reason to hold that the Tribunal has no jurisdiction, power or authority to grant relief to a workman who answers the description of a person referred to in Section 14 of the Administrative Tribunals Act, the relief to which he is entitled to under the I.S. Act.

Further the Central Administrative Tribunal has not only the jurisdiction, power and authority of an Industrial Tribunal under the I.D. Act; it is also a substitute for the High Court. Merely because the Industrial Tribunal could be moved in the matter, the High Court which was vested with extraordinary jurisdiction under Articles 226 and 227 of the Constitution was not in any way constrained, much less barred from granting relief to the workman against termination where it found that it was ordered in violation of Section 25-F of the Industrial Disputes Act. It is another matter that ordinarily the High Court would not entertain a petition under Article 226 and exercise its extraordinary jurisdiction when the matter could be raised before the Industrial Tribunal. But that was only a matter of exercise of its discretion and not one impinging upon its jurisdiction, power and authority. In appropriate cases, the High Courts did in fact exercise their extraordinary jurisdiction to grant relief to workmen against arbitrary and illegal termination of service ordered in contravention of Section 25-F of the Industrial Disputes Act."

20. The respondents have not denied that the applicants have rendered continuous service for not less than 1 year under the respondents. Therefore, the applicants are entitled to the protection under 25-F of the Act. Admittedly, the conditions mentioned in Section 25-F of the Act have not been complied with. Therefore, we have no hesitation in holding that the

termination of the services of the applicants is ab initio invalid.

21. The applicants have claimed that they are entitled to the benefit of 25-H of the Industrial Disputes Act. They have sought a direction to the Respondents to give them preference for appointment in future vacancies of ED Packers in one case and ED Messenger in the other case. As we have already held that the termination of the services of the applicants is invalid ab initio, the provisions of Section 25-H are not attracted at present.

22. For the foregoing reasons, we allow these applications with the direction that the applicants shall be treated as being still in service from 1st August, 1989 and are entitled to back wages which shall be paid to them within a period of two months from the date of receipt of a copy of this order. We also clarify that this judgment will not stand in the way of the Respondents if they want to terminate the services of the applicants in accordance with the provisions of law, as advised. There will be no order as to costs.

9.2.90 9.2.90

(N. Dharmadan) (N.V. Krishnan)
Judicial Member Administrative Member
9th day of February, 1990.