

Central Administrative Tribunal
Madras Bench

D.A.No.602/86

- 1 Shri MS Jayan
- 2 Shri PK Sukumaran ... Applicants

-Vs-

- 1 Union of India rep.by the
Secretary to Govt. of India
Ministry of Communications
New Delhi
- 2 The District Manager,Telephones,
Ernakulam, Cochin-16
- 3 The Assistant Engineer,
Cable-I,
Ernakulam, Cochin-16
- 4 The Divisional Engineer (Adm)
Office of the District Manager/Telephones,
Ernakulam Telephone District.
... Respondents

M/S MR Rajendran Nair, Mary Isabella S.D,
PV Asha and KS Ajayagosh ... Counsel for Applicants

PA Mohamed, ACGSC ... Counsel for Respondents

CORAM

Hon'ble Shri SP Mukarji, Administrative Member
and

Hon'ble Shri G Sreedharan Nair, Judicial Member

(Order pronounced by Hon'ble Shri SP Mukarji,
Administrative Member)

ORDER

The applicants who are dismissed Casual
Mazdoors in the Office of the Assistant Engineer,
Telephones, Ernakulam have moved the Tribunal
challenging the impugned orders dated 9.1.86 (Anex-8),
10.1.86 (Anex-9) terminating their services from

the section where they were working with one month's notice. They have also challenged the recruitment order dated 19.6.86 (Annexure-10) by which they have been declared to be ineligible for recruitment to Group-D Cadre because of the termination of their services due to misconduct, etc.

2 The brief facts of the case are that the applicants have been working as Casual Mazdoors since the latter half of 1981 after they had been sponsored by the Employment Exchange. On 18.11.85 they were served with a detailed memorandum for unauthorised jumpering in Cable Pillar by transferring the cable pair from a live telephone number to a disconnected telephone number. The memorandum indicated that on the basis the facts stated therein it was proposed to terminate their services with effect from 19.12.85 for dereliction of duties and they were called upon to submit explanation within three days of the receipt of the memorandum. The applicants denied the allegations and represented against the notice of termination stating that the key of the pillar is kept by the Junior Engineer and it remains open till the cable faults are rectified

and requesting that an impartial inquiry [&] to be conducted.

The Second Applicant further stated that he was absent from duty during the period in question. On 26.11.85 a cryptic order was passed informing them that their explanation was not satisfactory and their services stood terminated from 19.12.85. They represented to the District Manager urging that termination of their services amounting to retrenchment was in violation of Section 25F and 25G of the Industrial Disputes Act. Thereafter, the District Manager, Telephones cancelled the order of termination and directed the Assistant Engineer to conduct an inquiry in the matter. According to the applicants the inquiry conducted was a ^{force} _R and there was neither any report nor any finding of the Inquiry Officer, no chargesheet was issued to the applicants and no evidence was adduced against the applicants and the order was not reasoned. The penal nature of the order further came to light when they were found ineligible for regular appointment ^{because of} ~~for~~ their _R removal on the ground of misconduct etc.

3 According to the respondents, on a complaint from a subscriber while repairing a fault, it was

observed that there was some change in cable pair due to unauthorised jumpering in pillar No.70 which had been opened on 13.8.84 by the applicants between 1300 hrs and 1610 hrs. According to the ~~applicants~~ complainant ^R the phone of the complainant had become dead at 1400 hrs on 13.8.84. It was, therefore, presumed that it was the handiwork of the applicants. The Department had to refund more than one thousand rupees to the subscriber. The respondents have argued that an inquiry was conducted and the applicants were found guilty of the charges.

4 We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents fairly conceded that no charges were framed against the applicants. He also conceded that during the course of inquiry no witnesses were produced by the respondents and cross-examined by the applicants. In Surath Chandra Chakravarty Vs State of Bengal, AIR 1971 SC-752 the Supreme Court held that the whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of

giving a reasonable opportunity to put up defence. It was also observed that if a person was not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly by projecting his own imagination discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. In the instant case the perusal of the records also shows that the applicants were found guilty on the basis of circumstantial presumptions as there was no eye witness.

5 We are not able to persuade ourselves to believe as the learned counsel for the respondents expects us to do, that casual labourers are not entitled to the benefits of the principles of natural justice. There are giant monolithic departments of the government like, the Railways, Posts & Telegraphs, Telephones, etc. which engage hundreds of thousands of casual labourers. It will be a travesty of the principles of justice and fairplay if the Government as an employer disown application of the fundamental principles of fairness to such employees merely because their employment is on a casual basis. It was held by the Supreme Court

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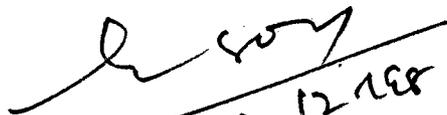
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in Robert D' Souza Vs Executive Engineer, Southern Railway, AIR 1982 SC 854 that the termination of the services of casual employees for misconduct without notice or inquiry or without observing minimum principles of natural justice is void. Further, it has been held by the High Court of Kerala in K.H. Subramanian Vs District Manager, Cochin and another (OP No.1986/82 G) that casual mazdoors of Telephone Department are workmen and if they, as in this case, have put in more than 240 days in one year they are entitled to the protection under Section 25F and 25G of the Industrial Disputes Act. Since the orders of termination in the instant case do not comply with these provisions they are even otherwise contrary to law.

6 In the consepectus of facts and circumstances we allow the application and set aside the impugned orders 9.1.86 (Annexure-VIII), 10.1.86 (Annexure-IX) and 19th June, 86 (Annexre-X) in sofaras the two applicants are concerned. We direct that they should be notionally reinstated in service with effect from the dates of their removal and paid back wages for the periods their juniors continued to be employed.

The respondents will be at liberty to proceed against the applicants, if so advised in accordance with law.

7 There will be no order as to cost.


22.12.87

(G Sreedharan Nair)
Judicial Member
22.12.87


22-11-87

(S P Mukarji)
Administrative Member
22.12.87

Index: Yes/~~No~~