

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

354

1991

DATE OF DECISION 30.8.1991

S.Venugopal Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India, rep. by Secy., Respondent (s)
Ministry of Comms., New Delhi & 2 others

Mr.George Joseph Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal? *NO*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant, a retrenched Chowkidar in the office of the Assistant, Engineer, Telecom Store Depot, Ernakulam has prayed that the order dated 19.2.1991 issued by the third respondent, Assistant Engineer informing him that the General Manager, Telecommunications, Ernakulam has vide his letter dated 1.2.1991 ~~has~~ rejected his representation for re-engagement and regularisation on the ground that his initial recruitment was after 30.3.1985, may be set aside, and that the respondents be directed

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to reinstate the applicant with backwages and to regularise his service.

2. The facts which are not in dispute can be briefly stated as follows. The applicant was working in the office of the third respondent as part-time Chowkidar from 21.7.1986 till 5.10.1989. From 21.9.1989 to 5.10.1989 he was doing the additional work of part-time Sweeper cum-Scavenger at the rate of 2 hours per day at the office of the Assistant Engineer, Telecommunications P.C.M. (Instn. & Mtce.). Thus from 21.9.1989 to 5.10.1989, he was working for 7 hours a day. While he was thus working his services were verbally terminated on 5.10.1989. Though the applicant approached the respondents for re-engagement he did not get the relief. Therefore, on 22.11.1990 he made a representation to the second respondent stating that, on account of the abrupt termination of his services with effect from 5.10.1989 he has been deprived of his livelihood. It was also pointed out that, as he had been working in the office of the Assistant Engineer, Telecommunications Stores Depot. as a part-time Chowkidar ^{from} 1700hrs. to 2200hrs. daily for more than 3 years the termination of his services without even a notice is opposed to principles of natural justice. It was further pointed out that the vacancy caused by his retrenchment remains unfilled. It was in response to this representation that he received the impugned communication at Annexure-V. The applicant has stated in the application

that several Casual Mazdoors engaged after 30.3.1985 are still continuing in the department and some of them have been regularised in Group 'D' posts. He has quoted one instance of one Shri V.H.Joy who has since been appointed to that post recently. It has also been averred that in OA 621/88 this Tribunal has declared that the termination of the services of the applicant who had been working on a casual basis from 19.4.85 to 24.6.87 was illegal and unjustified and directed his re-engagement and regularisation. The applicant therefore prays that the impugned order at Annexure-A5 may be set aside and the respondents may be directed to reinstate him with backwages and with continuity of service and to regularise him in service. The third respondent in the reply statement filed by him has admitted that the applicant was working as part-time Chowkidar under him from 21.7.1986, that from 21.9.1989 to 5.10.1989 he was regularly working at the rate of 7 hrs. per day and that, on 5.10.1989 his services were terminated without any written order. This action is sought to be justified on the ground that the applicant being a person recruited after 30.3.1985, his initial recruitment was irregular, and that, therefore, he could not be continued in service.

3. The applicant has filed a rejoinder in which he has stated that the Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) had issued the order No.49014/4/90-Estt(C) dated 28.10.1990

8th April, 1991 declaring that those casual mazdoors who commenced their service prior to 7.6.1988 could be regularised even without being sponsored by the Employment Exchange. A copy of the above said Office Memorandum was also enclosed by the applicant as Annexure-VI.

4. We have heard the arguments of the counsel on either side and have carefully gone through the documents produced.

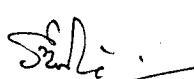
5. It is a fact beyond dispute that from 21.7.1986 till 5.10.1989 the applicant was continuously working as a part-time chowkidar in the office of the third respondent. It is further admitted that from 21.9.1989 to 5.10.1989 in addition to the 5 hours the applicant was working as part-time sweeper-cum-scavenger per 2 hours a day. The respondents have not denied the case of the applicant that his services were terminated on 5.10.1989 verbally without issuing a notice to him. It is by now settled that the Telecom Department is an industry, and that part-time casual mazdoors are workmen. According to Section 25-F of the Industrial Disputes Act, a workmen who has been in continuous employment for one year cannot be retrenched without being served with a notice of one month or paying notice pay in lieu of notice in addition to retrenchment compensation. It is a fact beyond dispute that the services of the applicant have been dispensed with without complying with the above requirements of the Section 25-F of the Industrial Disputes Act. Therefore,

we have no hesitation to hold that the termination of the services of the applicant with effect from 5.10.1989 amounts to illegal retrenchment, and that the applicant is entitled to be declared to have continued in service. The fact that the initial engagement of the applicant otherwise than through Employment Exchange was after 30.3.1985 does not disentitle the applicant ^{from} to the benefits he is entitled to under the Industrial Disputes Act which is a special law in derogation of general law. Any administrative instruction prohibiting engagement of casual mazdoors after 30.3.1985 otherwise than through Employment Exchange cannot take away the rights vested in the applicant under the Industrial Disputes Act. There is a catena of rulings of the Hon'ble Supreme Court and various High Courts, that Casual Mazdoors being persons belonging to the weaker section of the society, it is unfair to adopt a policy of hire and fire or to keep them as casual mazdoors for ever without regularising them in vacancies in which they can be regularly absorbed. The Supreme Court has also directed various departments to consider the case of regularisation of such casual workers who has been in continuous service for considerably long time in Group 'D' vacancies. In these circumstances the respondents have gone wrong in terminating the service of the applicant depriving him of his means of livelihood.

6. In the conspectus of facts and circumstances, we quash the impugned communication at Annexure-V and direct the respondents to reinstate the applicant forthwith with full backwages and continuity of service and to consider his case for absorption in any Group 'D' post if he is otherwise not unsuitable for ~~appointment for~~ absorption in such post in accordance with his turn considering his length of service. The applicant should be taken back to service forthwith and backwages should be paid to him within a period of 2 months from the date of communication of this order. There is no order as to costs.


(A.V. HARIIDASAN)
JUDICIAL MEMBER

30/8/91


(S.P. MUKERJI)
VICE CHAIRMAN

30.8.1991