

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

.....

Original Application No. 166 of 1991

Union of India through
Principal, Regional Telecom
Training Centre, Lucknow Applicant

Versus

Nagendra Singh & another Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

1. Union of India which was opposite party before the Central Government Industrial Tribunal, Kanpur has challenged the award dated 27.11.1990 passed by it and thereby answering the reference in favour of respondent to this application who was workman before it. The Union of India that is applicant to this application has challenged it on the ground of jurisdiction as well as on merits. It appears that as a consequence of ~~in~~position of ban ~~to~~ appoint of casual labours by the Director General Post & Telegraphs (New Delhi) letter dated 30.3.1985 through Employment Exchange for urgent work , labourers were engaged from open market ~~for~~ for specific work on adhoc basis. The respondent was said to have been engaged on 12.6.1985. The respondent was engaged under the Principal Training Centre for specific installation work. As there remained no further need to continue the respondent's his service too were dispensed with after giving one month's notice on ~~to~~ 1.8.1987, after receipt of D.G.P.T. letter dated 22.4.1987. According to the applicant although

provisions of Industrial Disputes Act do not apply, they were prepared to pay retrenchment compensation to respondent who declined to accept the same. In view of directives given by Supreme Court vide its judgement dated 27.10.1987 in respect of Post and Telegraphs Employees the arrears of wages were given to respondent and so far as other direction viz absorption of casual labour is concerned the government regularised the casual labour who completed seven years of service on 31.3.1987. In the list of persons so regularised, the name of which was given by respondent is said to be including the name of senior persons though same of them were initially engaged in later part in 1985, two in 1984 and one in January and other in March 1985.

2. A Dispute having been raised the same was referred to Industrial Tribunal. It took the view that as respondent worked for more than 240 days the provisions of section 25(f) of the Industrial Dispute Act will apply and in the instant case its ingredients were satisfied. In this view it held that the respondent was entitled to the relief of retrenchment as well as back wages. It also held that his service were not only utilised in installation work, ~~but~~ also in maintenance work which is perennial work. But relief of absorption was not granted, thus finding was recorded after taking into consideration the affidavit filed by Management witnessess to the effect that the applicant worked as Technical Helper (Labour) in installation as well as maintenance work of various

equipments in the training Centre.

3. Shri K.C. Shinha learned counsel for the Union of India contended that Industrial Disputes Act was not applicable in the case of applicant and the Industrial Tribunal committed error of law and jurisdiction in assuming jurisdiction and answering the reference in favour of respondent instead of rejecting. It was contended that Post and Telegraph Department is not an 'Industry' and Industrial Disputes Act does not apply to it and at the best rules applicable to the daily wages engaged for specific work which is to end within a particular period alone applies. It was contended that the same Tribunal had earlier in its award dated 13.8.88 given Industrial Disputes No. 119 of 1987 (Shri Uma Shanker Gyan Dutt Mishra Vs. The Senior Superintendent of Post Office) has held that Postal Department (in that case it was case of clerk in Return Letter Office) was not an ~~was~~ 'Industry' yet in this case it has taken an inconsistent view. In the said case the Industrial Tribunal relied on the Supreme Court decision in Bangalore water supply and sewerage Board Vs. A. Rajjappa A.I.R. 1978 S.C. page and the full Bench decision of Kerala High Court in Director of Postal Services (South) Kerala Circle Vs. Andra & another Vs. K.R.B. Maimal and another 1984 L.I.C. page 6281 which was a case of temporary clerk of Post and Telegraph Department. Learned counsel made reference to the case of Sakhety Lal Vs. Union of

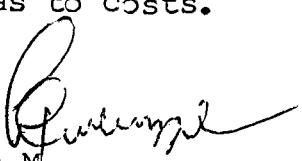
India & another O.A. No. 675 of 1987 decided by C.A.T. Allahabad Bench on 12th March 1988 in which dispute was regarding Extra Departmental Male Person. It was held Post & Telegraph Department specially the activities of delivery and collection of post can be classified as 'Industry'.

4. Learned Counsel for the respondent in support of the award proceeding on assumption that it was 'Industry' and he was workman referred to C.A.T. Patna Bench decision in O.A. No. 363 of 1989 decided on 11.4.1990 (Suresh & another Vs. Union of India & another and other connected cases) held skilled wiremen, semi skilled (Assistant Pump Operator, Assistant Wireman etc.) unskilled Helper/ Khalasi getting a particular amount viz Rs. 867.50/- were taken to be workman entitled to benefit of Industrial Disputes Act as there was no dispute between these parties in respect of this point.

5. The entire post & Telegraph Department and its activities are not 'Industry' though part of the same or same activities be particularly of Telecommunication Department could be called is 'Industry' within the meaning of Industrial Disputes Act the duties and the place of duty performed by the applicant could be termed to be 'Industry' and even if not the case of casual labour can be dealt with by tribunal before award in respect of them is under challenge. In the case of Union of India Vs. Deep Chand & another 1992 in SCC 432, The Supreme Court while rejecting the contention that the casual labour being only on casual basis and not holding any civil post and in view of termination of service Master and Servant relationship ceased

held provisions of Administrative Tribunal Act applies. In the said case casual Railway Employee engaged on daily wage basis were terminated., their claim for continuation of service and temporary status was held could be adjudicated by Central Administrative Tribunal and not High Court, Without entering into the channel through which it has came and thereafter entertained this Tribunal has jurisdiction even otherwise to adjudicate the dispute in question.

6. In this ~~view~~ case in view of the finding to the effect that he was working ~~as~~ Maintenance side also the respondent if he has completed not more than 240 days but continued for more than one year and the work is continuing, persons engaged just ~~for~~ few weeks and months are admittedly continuing but if persons who were engaged subsequent to him are continuing, the respondent shall stand reinstated with effect from the date of award and his case for regularisation is to be considered along with similar other cases and also if the same have been considered his case shall also be considered. But he would not be entitled to back wages as awarded by Industrial Tribunal on the Principle of 'No work & No pay' which had to be resorted in the case of many persons. Accordingly this application is allowed in part in as much as the relief regarding back wages is concerned the award stands quashed with a further direction regarding consideration of his case regarding regularisation as indicated above. No order as to costs.


A.M.

Lucknow, Dated : 15th March 1993
(g.s.)


V.C.