

28

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 312/86.

~~XXXXXX Application XXXX~~

DATE OF DECISION: 16-9-84

Shri C. B. Kulkarni, Petitioner

Shri D. V. Gangal, Advocats for the Petitioner

Versus

Union Of India & Others, Respondent

Shri M. I. Sethna, Advocate for the Respondent(s)

CORAM :

▲ The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M. R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

22

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 312/86.

Shri C. B. Kulkarni ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri D. V. Gangal,
Counsel for the applicant.
2. Shri M. I. Sethna,
Counsel for the respondents.

JUDGEMENT

DATED : 16-9-84

¶ Per. Shri M. R. Kolhatkar, Member (A) ¶.

1. The O.A./^{is} under Section 19 of the Administrative Tribunal Act, 1985, impugning the order of termination dated 28.02.1986 of the applicant as Draughtsman Grade 'A' (mechanical). The initial relief sought by the applicant was for setting aside the termination order as illegal and to direct the respondents to absorb the applicant in the Radio Pharmaceuticals Laboratory Project (R.P.L. Project) at Vashi or at any other Centre. Subsequently, the applicant was appointed to a position in Centre of Advanced Technology (C.A.T.) with effect from 26.11.1987. Therefore, the applicant by an ammendment, has also

(24)

: 2 :

prayed for continuity of service (between 01.03.1986 to 25.11.1987), back wages, pay fixation and other consequential benefits. The claims of the applicant have been resisted by the respondents on the basic ground that the applicant was a Fixed Term Appointment (F.T.A.) employees. Such appointments are given when specific jobs are required to be completed during certain fixed period and once the jobs are completed, the appointments are terminated. The applicant was appointed in the R.P.L. Project at Vashi and when the services of the applicant, as a Draughtsman were no longer required, the same were terminated. According to Respondents the basic relief sought by the applicant, therefore, cannot be granted. So far as the relief of back wages and fixation of pay are concerned, it is contended that the same were made by way of an amendment, after a lapse of seven years and they are time barred.

2. The applicant has urged several grounds in support of his application. The first ground is that, the termination of the applicant was discriminatory in as much as ^{some} other employees of the R.P.L. Project at Vashi, were retained and also several other employees were re-employed. The respondents have stated that 8 employees who were specifically required for fabrication job and who were in the category of Trademan 'A' and 'B' and Helper, were retained in the R.P.L. Project. No employees in the Draughtsman (Mechanical) category, to which the applicant belongs, were retained. Extension was given to four employees upto December 1986 in the Draughtsman category but they belong to a different project altogether called PREFRE. Regarding other employees whose names have been

listed by the applicant, a detailed clarification has been given by the respondents in their affidavit filed on 07.02.1994. We have considered these submissions and we are of the view that there is no substance in the contention that any discrimination was practised against the applicant.

3. The next contention of the applicant is that the terms of original appointment have been violated by the respondents; in particular ^{he refers to one} condition of offer of appointment dated 28.10.1983 at exhibit 'A', d(ii) which reads as below :

"In case your above appointment gets extended for more than a year you will be on probation for a period of one year from the date of your initial appointment. During the probationary period your services are liable to be terminated without notice and without assigning any reasons therefor and you also can resign without giving notice."

4. According to the applicant, he was initially appointed from 28.11.1983 to 29.02.1984 but subsequently, his appointments have ^{been} successively extended, first upto 02/1985 and thereafter upto 02/1986 and therefore, since the appointment got extended for more than a year, he will have to be treated as on probation and therefore, his service should not have been terminated, except for his performance as a probationer being unsatisfactory but his services have not been terminated on this ground, but they have been terminated on the ground that Respondents no longer require his service. Therefore, there is a clear violation of the condition d(ii) of letter of appointment.

The respondents have denied that there was any violation of the condition. On perusal of the relevant record, we have no doubt that the applicant's appointment was a Fixed Term Contractual Appointment and the offer of appointment itself contained the clause regarding termination and therefore, there has been no violation of any terms and conditions of the appointment.

5. The applicant then relied on condition no. (h) of the appointment letter, which reads that "you are posted to work in the R.P.L. Project at Vashi, New-Bombay but the appointment carries with it the liability to serve in any other place in India for the purpose of the said project. It is the contention of the applicant that in view of this particular term, he becomes a regular employee of the respondents with a liability to serve all over India and the respondents were bound to adjust the applicant in any of their projects in other parts of India, rather than terminating his service. The respondents have stated that the liability of the applicant to serve all over India related to service only in relation to the Project and the applicant was an F.T.A. employee and the question of treating him as a Regularly Appointed Employee of the department, does not arise. We are also unable to read any such connotation in the letter of appointment of the applicant.

6. The next contention of the applicant is that the R.P.L. Project of the Department of Atomic Energy should be considered to be as an Industry, because it

fulfils the test laid down by the Hon'ble Supreme Court in the case of State Of Bombay V/s. Hospital Mazdoor Sabha (AIR 1960 S.C. 611). This case laid down that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking, vide para 17. It further laid down that the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of Section 2 (j) but activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures are not exempted from the operation of the Act which in substance is a very important beneficial measure itself, at para 14. It is stated in para 6 of the judgement that retrenchment without complying with Section 25 F(b) is invalid and inoperative. The applicant also relies on the case of State Bank V/s. N.S. Money (AIR 1976 SC 1111). This again is a case on the point of retrenchment and in particular, Section 2(oo) and Section 25 F of the Industrial Disputes Act. It states that whatever the reasons every termination spells retrenchment, at para 9 of the judgement. The applicant has not relied on the latest judgement of the Supreme Court in the Bangalore Water Supply case. The respondents have stated in their rejoinder that Bhaba Atomic Research Centre is a Research & Development Organisation and does not come under the purview of Workmen's Compensation Act. It was rightly pointed out by the Counsel for the Applicant that the reference to Workmen's Compensation Act is misconceived. This is no doubt true. However, at the

argument stage, the counsel for the respondents contended that B.A.R.C. is not an Industry and the termination of the applicant cannot be considered to be retrenchment. In this connection, he draws our attention to the Judgement of Calcutta Bench of Central Administrative Tribunal in Jayabati Roy & Another V/s. Union Of India & Others vide 1989 (1) SLR 537. In this case, the Division Bench of the Tribunal, after taking notice of several cases, including Madras Gymkhana Club Employees' Union case, had held that Atomic Minerals Division of the Department Of Atomic Energy is not an Industry as contemplated in the Industrial Disputes Act, 1947. We would ^{also} like to refer to the decision of the Ahmedabad Bench of the Tribunal, to which one of us was a party, in Union Of India V/s. Mavji Velji in O.A. No. 37/1989 delivered on 17.08.1993. That judgement, after referring to a series of case laws, including Bangalore Water Supply case, State Of Punjab V/s. Kuldip Singh (1987 LAB IC 873), Director Of Postal Service V/s. K.R.B. Kaimal (1983 LAB IC 628) and another Ahmedabad Bench case in T.A. No. 240/97 ^{which} held that ISRO is not an Industry and concluded that the Fishery Survey Of India was not an Industry. We are therefore unable to persuade ourselves that we can proceed on the basis that B.A.R.C. is an Industry. Therefore, the question of applicability of Industrial Disputes Act and any illegal retrenchment does not arise. The reliance ^{by the applicant} on State Of Bombay V/s. Hospital Mazdoor Union case and on the State Bank V/s. N. S. Money's case is clearly misplaced.

7. The applicant then relied on the Supreme Court Judgement in Central Inland Water Transport Corpn. Ltd. V/s. Brojo Nath (AIR 1986 SC 1571) for the proposition that the term¹ in the contract of the applicant providing for fixed term appointment, is an unconscionable term of contract and against public policy and should be held as void under Section 23 of the Contract Act. In our view, the reliance on Central Inland Water Transport Corpn. Ltd. case, which is a landmark case in the service jurisprudence, is entirely misplaced because that case related to permanent employees. In that case, ^{the validity of relevant} rule 9(i) conferring upon the Corporation, the power to terminate the service of a permanent employee by giving him three months' notice in writing or in lieu thereof to pay him the equivalent of three months' basic pay and dearness allowance^{was in issue.} This rule was struck down as unconscionable because it conferred an arbitrary power upon the Corporation in relation to permanent employees. Such is not the case so far^{as} the applicant is concerned.

8. The basic stand of the respondents that the applicant was appointed on a Fixed Term Appointment basis and therefore, he has no vested right to continue in the employment of the respondents, after the work relating to the project is over, appears to be borne out by the recent judgement of the Hon'ble Supreme Court in the case of Institute Of Management Development V/s. Pushpa Srivastava (AIR 1992 SC 2070). The Hon'ble Supreme Court laid down in that case that where the appointment is purely on adhoc basis and is contractual and by efflux of time, the appointment

comes to an end, the person holding such post can have no right to continue in the post. This is so even if the person is continued from time to time on 'ad hoc' basis for more than a year. He cannot claim regularisation in service on the basis that he was appointed on ad hoc basis for more than a year. The ratio of J & K Public Service Commission V/s. Dr. Narinder Mohan & Others vide 1993(iv) SVLR (L) is also to the same effect. The Division Bench of this Bench in O.A. No. 69/89 R. Ramchandran V/s. Union Of India decided on 05.08.1994 has also followed these Judgements in regard to the issue of regularisation of period of ad hoc appointment.

9. We therefore do not find any substance in the various contentions raised by the applicant and we accordingly dispose of the O.A. by passing the following order :

Order :

O.A. is dismissed with no order as to costs.

M R Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

B. S. Hegde

(B. S. HEGDE)

MEMBER (J).

os*