

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 427/96

Transfer Application No.

Date of Decision 28/6/96

Management of Telecom Deptt. G.M. Telecom, Pune Petitioner/s

Shri P.M. Pradhan

Advocate for  
the Petitioners

Versus

Shri A.D. Panhalkar

Respondent/s

Shri B.W. Vaidya

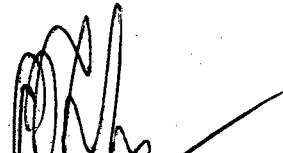
Advocate for  
the Respondents

CORAM :

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

Hon'ble Shri. P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

  
(P.P. SRIVASTAVA)

MEMBER (A)

  
(B.S. HEGDE)

MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, MUMBAI.

O.A.NO. 427/96

28<sup>th</sup> this the day of June 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)  
Hon'ble Shri P.P.Srivastava, Member (A)

Management of Telecom Department,  
through the General Manager, Telecom,  
Telephone Bhavan, Pune

By Advocate Shri P.M.Pradhan ... Applicant  
v/s.

Shri Ajay D.Panhalkar

By Advocate Shri B.W.Vaidya ... Respondent

O R D E R

(PER: Shri B.S.Hegde, Member (J))

Heard the arguments of Shri P.M.Pradhan, counsel  
for the applicant and Shri B.W.Vaidya, Counsel for  
the Respondent.

2<sup>nd</sup> The short question for considering is.  
whether this Tribunal has jurisdiction to entertain  
the OA. against the order passed by the Industrial  
Tribunal vide its order dated 16.11.1995 stating  
that the termination of the applicant in December,  
1984 is bad, illegal and void ab-initio and the  
workman to be treated as on duty ~~from~~ December, 1984  
till the date he resumes duties for all purposes and  
till he receives full pay and allowances. This  
decision of the Industrial Tribunal has been challenged  
by filing this OA. praying for quashing and setting aside  
of the order passed by the Industrial Tribunal and also  
prayed for interim order staying the operation of the  
terms and conditions of the Tribunal.

*PN*

3. Learned counsel for the applicant during the course of hearing draws our attention to the latest Supreme Court decision in JJ Sub-Divisional Inspector of Post, Vaikam & Ors. Vs. Theyyam Joseph 1996 (2) SC 457 Today, where the Apex Court held that "One of the duties of the State is to provide telecommunications services to the general public as an amenity and so is one essential part of the sovereign functions of the State as a welfare State, therefore, it cannot be treated as an industry. Accordingly, ad-interim order was passed on 25.5.1996 and notice was issued to the respondents to file their reply before admission."

4. Learned counsel for the respondent Shri Vaidya vehemently urged that the OA. is not maintainable and the Tribunal does not have the jurisdiction to entertain the present OA. because the Tribunal in the earlier OA. No.600/90 delivered on 13.12.1992 has held that P&T is an industry and reliance was placed on 'Bangalore Water Supply case' reported in AIR 1978 S.C. 548. The judgement of Bangalore Water Supply is of seven judges Bench, therefore, the two Judges Bench cannot overrule the larger Bench of the Apex Court. It is also not brought to the attention of the Tribunal the judgement of the Supreme Court in the case of Hospital Mazdoor Sabha, A.1960 SC 610 and Nagpur Municipal Corporation reported in AIR 1960 S.C. 675. It is submitted, that the real or sovereign functions of the state have been well settled and these functions cannot be extended to either directive principles and/or welfare measures. He further contended, that since the Bangalore Water Supply decision has not been over-ruled by larger Bench of the Apex Court and holds good and therefore the

subsequent decision of the Apex Court consists of two Judges Bench is to be treated as 'per incuriam' and cannot over-rule the ratio laid down by larger Bench of the Supreme Court. The said contention is not tenable.

5. The admitted facts are that the applicant was a Casual Labourer in Pune Telecom Department from February, 1984 to December, 1984 and his services have been discontinued from December, 1984. The reason for his discontinuance is that the respondent was not sponsored by Employment Exchange at the initial stage of recruitment thereby his initial recruitment was not in accordance with the rules, accordingly his services have been discontinued. The contention of the learned counsel for the respondent is that the discontinuance or removal amounts to retrenchment in view of Section 25 F of I.D. Act and the principles laid down in S.25 F of I.D. Act has not been complied with. Therefore, the termination by way of retrenchment is illegal and void and he is entitled for all consequential benefits.

6. On the other hand, the applicant contended that the latest decision of the Supreme Court is relevant to the issue and it really held that the Telecom Department is not an industry. Therefore, it is unnecessary to refer to the cases of Hospital Mazdoor Sabha as well as Bangalore Water Supply wherein the general principle is laid down is not relevant to the facts of this case. The only reason for his discontinuance is that he is not employed through Employment Exchange which is mandatory therefore

his services were discontinued and therefore it cannot be treated as retrenchment in terms of I.D. Act because he admittedly was working on daily wages, therefore, Section 25 F of the I.D. Act does not apply in the facts and circumstances of this case. In the circumstances, the decision rendered by the Industrial Court cannot be implemented in view of the latest decision of the Apex Court which is binding on all the Courts and clearly held that Post and Department of Telecom is not an industry and further observed that :-

"Having regard to the contentions, the question arises whether the appellant is an industry? India is a sovereign, socialist, secular, democratic republic has to establish an egalitarian social order under the rule of law. The welfare measures partake the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive principles of State Policy enjoin on the state diverse duties under IV of the Constitution and performance of the duties are constitutional functions. One of the duties is of the State to provide telecommunications service to the general public as an amenity, and so is the essential part of sovereign functions of the State as a welfare State. It is not therefore an industry. Whether this judgement is required to be followed by lower courts?".

7. The contention of the learned counsel for the respondent Shri Vaidya is that two judges Bench cannot over-rule the larger Bench decision of the Apex Court, does not hold good because this decision before the Apex Court is on the point whereas the Bangalore Water Supply decision is based on general proposition, even assuming without admitting that it is to be treated as 'per incuriam', it is not for this Tribunal or any other forum to state, that the decision rendered by the Apex Court is not binding on us. It is for the aggrieved party to file a review of the judgement and seek for

clarification from the Apex Court. In this connection, it is relevant to refer to the decision of the Apex Court in S.Nagaraj & Ors. vs. State of Karnataka & Anr. (1994) 26 ATC 448, it was held that:-

"If an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification of recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. Any order passed by a court of law, more so by the higher courts and especially the Supreme Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority however high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding."

In view of the aforesaid observations, it is crystal clear, that even assuming without admitting that we do not have jurisdiction and even if the decision of the Supreme Court is per incuriam, it is not for this Tribunal to give its finding. If at all the respondents are aggrieved by the aforesaid order of the Apex Court, it is for them to take up the matter before the Apex Court by filing a review petition seeking modification of the aforesaid order.

8. In the result, we are of the view, that since the Apex Court order is binding on all the courts and it cannot be ignored by any lower authority, and since the Telecom Department has been declared by the Apex Court is not an industry, the question of enforcing the decision of Industrial Court does not arise. Accordingly, we hereby quash and set aside the order of the Industrial Court dated 16.11.1995 and allow the OA. with no order as to costs.

(P.P.SRIVASTAVA)  
MEMBER (A)

*BB*  
(B.S.HEGDE)  
MEMBER (S)