

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 5th NOVEMBER 1986

Present : Ch. Ramakrishna Rao - Member (J)
Sri P. Srinivasan - Member (A)

Application No. 1649 of 1986 (T)

R. Francis
Skilled Worker
Foremens Training Institute, Bangalore - Applicant
(Sri M. Raghavendra Achar, Advocate)

1. The Director of Technical Education,
Vignana Bhavan, New Delhi
2. The Director
Farmers Training Institute
Bangalore - Respondents
(Sri M.S.Padmarajaiah, C.G.S.C.)

The application has come up for hearing before the Tribunal to-day, Hon'ble Shri Ch. Ramakrishna Rao, Member (J) made the following

O R D E R

This application was initially filed as writ petition no. 7637/84 in the High Court of Karnataka and transferred to this Tribunal under Sec 29 of the Administrative Tribunals Act 1985. The facts giving raise to the application are briefly as follows.

2. The applicant was appointed as a class IV employee in the establishment of respondent 2 referred to as the 'Institute'. A vacancy of Skilled Worker arose in the Institute. As the applicant possessed higher qualifications than that required for the post, he also applied for the post of Skilled Worker (SW).

.. The applicant

Ch. Ramakrishna Rao

The applicant was selected for the post and an offer of appointment was sent to him by the Institute on 6.5.1983. It was clearly stated inter alia in the order that the post was temporary though likely to continue indefinitely; that he will be on probation for a period of 2 years from the date of appointment which may be curtailed or extended at the discretion of the appointing authority. A memorandum dated 10.5.1983 was issued by the Director of the Institute appointing the applicant as SW on the terms embodied in the offer of appointment. On 28.4.1984 i.e. even before completion of one year from the date of appointment as SW his services were terminated vide Office Order dated 28.4.84 (OO) and he was posted as Workshop Attendant which post he was holding prior to his appointment as SW. This OO is under challenge in this application.

3. The first contention of Sri M.R. Achar, learned counsel for the applicant is that his client being ex-Secretary of the Employees Association of the Institute fighting the cause of the employees, the officers of the Institute had a grouse against him and the OO was passed against him with a view to penalising him. Shri M.S.Padmarajaiah, C.G.S.C. appearing for the respondents submits that the allegation is couched in general terms and that plea of malafides is made against the respondents it is incumbent on the applicant to spell out the details of the strained relations between the applicant and such officers, and in the absence thereof the plea of malafides must fail.

4. After giving careful thought to the ~~allegations~~ ^{matter,} ~~allegations~~ we are satisfied that in this case the applicant does not come up with sufficient material to prove the allegation of malafides on the part of the respondents or any other officer which culminated in the passing of the OO. We therefore reject this contention.

...5. Shri Achar

AmBans

5. Shri Achar next contends that the reversion of his client from the post of SW to the post of Workshop Attendant was due to the fact that he possessed higher qualifications than those prescribed for the post of SW. There is nothing on record to show that the OO was motivated by the consideration adverted to by the counsel and we therefore reject this contention.

6. The last contention of Shri Achari is that the services of the applicant were terminated without applying the provisions of Section 25-F (a) & (b) of the Industrial Disputes Act, 1947 (ACT). This Section relates to conditions precedent to retrenchment of workmen and in so far as it is material, it reads thus :

"25-F. Conditions precedent to retrenchment of workmen.--
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: "*****" (a)
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay "for every completed year of continuous service" (b) or any part thereof in excess of six months;....."

From the provisions of the Section extracted above it is evident that they have application only in the case of workmen employed in any industry who is in continuous service of not less than one year. In the present case the applicant was appointed as SW on 10.5.1983 and reverted on 28.4.1984, before completion of one year. Thus he does not fulfill the basic requirements of the Act. This apart, the case of the applicant cannot be treated as a case of retrenchment of a workman in as much as he was working earlier in the Institute as Workshop Attendant and was promoted from the post on a purely temporary basis to the post of SW from which he was reverted to the post he was holding before appointment as SW. The terms and conditions governing the

...appointment

Chakraborty


appointment of the applicant as SW, as already noticed, makes it abundantly clear that his appointment was purely temporary and it does not confer any right on him.


7. Reliance has been placed by Shri Achar on a decision of the Supreme Court AIR 1983 Supreme Court 1320. On a perusal of the judgement we find that it is not applicable to the present case since the facts in the case before the Supreme Court and in the case before us are not similar. This is clear from the following paragraphs in the judgement of the Supreme Court in the decision cited supra

"..... 3. Admittedly the employees were probationers at the time of discharge from service. There is no dispute that as a condition precedent to discharge the requirements of Section 25-F of the Disputes Act had not been complied with. If the discharge of the employees would amount to retrenchment, appellant's counsel does not dispute that the order of discharge would be bad for non-compliance of Section 25-F of the Disputes Act. The only question for consideration in these appeals, therefore, is whether the discharge of the employees from service amount to retrenchment."

Thus compliance with the provisions of Section 25-F of the Industrial Disputes Act was not in dispute in the case before the Supreme Court. In the present case, however, the provisions of Section 25-F, as already pointed out, have not been complied with in as much as the applicant had put in less than one year's continuous service. Further, in the case before the Supreme Court the applicant was retrenched whereas in the present case the applicant was reverted from the post ~~to the post~~ to which he was promoted on a purely temporary basis to the post he was holding before his promotion. We are therefore satisfied that the decision relied upon by Shri Achar has no relevance to the present case.

8. In the result the application is dismissed. No order as to costs.


(Ch Ramakrishna Rao)
Member (J)


(P. Srinivasan)
Member (A)

Registered.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Review
APPLICATION No. 11/87
in Application No. 1649/86 (T)
(WP.NO.)

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 13-4-87

APPLICANT

R. Francis

TO

- (1) Sri R. Francis,
Skilled worker,
Foreman's Training Institute
Bangalore.
- (2) The Director of Technical Education,
Vignana Bhavan,
New Delhi.
- (3) The Director,
Foreman Training Institute,
Bangalore.

Vs

RESPONDENTS

Director of Technical Education & enr.

- (4) Sh. N. Raghavendrachar, Advocate
No. 1074 & 1075,
Banashankari II stage,
Sreenivasnagar II phase,
Bangalore.
- (5) Sh. N. S. Padmarajah,
Sr. Central Govt. Standing Counsel,
High Court Buildings,
Bangalore-1.

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 11/87

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on
13-3-87.

ENCL: As above.

B. V. Venkataswami
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE EIGHTEENTH DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri P.Srinivasan Member(A)

REVIEW APPLICATION No.11/87

R.Francis,
Skilled Worker,
Foremans Training Institute,
Bangalore

...

APPLICANT

(Shri M.Raghavendrachar, ... Advocate)

V.

The Director of Technical Education,
Vignana Bhavan, New Delhi.

The Director,
Foreman Training Institute,
Bangalore.

RESPONDENTS

This Review application has come up for admission
before the Tribunal to-day, Hon'ble Shri Ch.Ramakrishna Rao,
Member(J) made the following :

ORDER

In this Review application the applicant wants us to
review our order dated 5.11.1986 rendered in Application No.1649/
86. In that order we had rejected the contention urged by the
applicant that the order dated 28.4.1984 terminating his services
as skilled worker and posting him as Workshop Attendant in the
same office was in violation of Section 25-F of the Industrial
Disputes Act. Since that section applied only to workmen who
had been in continuous service for a year, it was of no avail to
the applicant who had not worked continuously for one year.
Further we were of the view that when a person already working in
an organisation is appointed to a higher post in the same organi-
sation and after some time his services in the higher post are
terminated and he is reverted to his old post it would not be a



case of retrenchment and, therefore, Section 25-F of the Industrial Disputes Act was not applicable to the instant case.

2. Shri M. Raghavendrachar points out that the first ground on which we rejected the original application was based on an incorrect reading of Sec. 25-F, Industrial Disputes Act since in the definition of continuous service in Section 25-B of the said Act a workman not employed below the ground in a mine is deemed to have worked for a period of one year if he had been in continuous service for 240 days in the 12 months immediately before the date with reference to which calculation is to be made. The applicant had fulfilled this condition and should, therefore, be deemed to have been in continuous service for a period of one year. Shri Achar, therefore, contends that we were in error in holding that Section 25-F was not applicable to the facts of this case and that therefore we should review our order.

3. On the second point considered by us viz., that the case of the applicant was not one of retrenchment, Shri Achar took pains to explain to us that the applicant who was already working as Workshop Attendant in the organisation of the Respondents was sponsored as a departmental candidate for appointment as skilled worker and he was selected for that post and not promoted to it. But, before he could complete probation in the higher post, his service was terminated and he had to assume charge of the old post. This was a case of termination of service in the higher post and not a reversion to a lower post and it should have been regarded as retrenchment. Therefore on this ground also we should review our earlier order.

4. We have considered the contention of Shri Achar carefully. We must at the outset point out that in review we are not and cannot act as a court of appeal against our own order.

Even assuming that we went wrong in holding that the applicant had not put in continuous service of one year in the post of skilled worker before his services in that post was terminated, the second point still remains where we have taken a view that this was not a case of retrenchment. In doing so, we saw no distinction, for the present purpose between promotion to a higher post and selection through departmental channels to a higher post. The applicant having been sponsored through his department for a higher post in the same department, the Rules providing for such sponsorship and recruitment of departmental candidates, we felt that it was no different from the case of a person promoted from a lower to higher post within the same department. In any case the view that we have taken viz., that the applicant was first promoted to the post of skilled worker and later reverted to his old post and that he had not been "retrenched" from the higher post in the process, proceeded on interpretation of the term "retrenchment" appearing in the Industrial Disputes Act. ^{with} Substituting a different interpretation is not within the scope of a review of its own decision by the same authority.

5. In these circumstances, we reject ~~the~~ this review application at the admission stage itself.



sd/-

MEMBER(J) 18.3.87

sd/-

MEMBER(A) 18/3/87

AN.

- True copy -

R.V. Venkatesh Reddy
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
13/4

R. FRANCIS

... PETITIONER(S)

VS

DIRECTOR OF TECH. EDN. & ANR.

... RESPONDENT(S)

Sir,

I am directed to inform you that the petition above mentioned
filed in the Supreme Court was dismissed
by the Court on 31/03/95

Yours faithfully

For Registrar

COPY TO
MR. V. SHEKHAR (Adv)

Circulated

*So/le
6/2/95
Sri B*



Section XIA
SUPREME COURT OF INDIA
NEW DELHI.
DATED:- 08/06/95

From:-

The Registrar
Supreme Court of India.
NEW DELHI.

To
The Registrar
High Court of

Central Administrative Tribunal
Bangalore Bench: Bangalore

Recd. by post
R
24/7/95

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL No .6797

188

(Petition under Article 136(1) of the constitution of India from
the Judgment and Order dated 8/12/86 ? 12/2/86? 5/11/86?

of the High court of Judicature at Central Administrative Tribunal

Bangalore Bench at Bangalore in C.A.No 1649/86

Enter in SLP Register,
Main Register, add to
file & note. With a copy
of SLP order.
Recd. by post
all this should
aspert. 1/30/95 for 193.

2/8/95

(1/11/95)