

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE Revised No. 496 of 1990 (L)

O.A. 11 of 89 (L)

Name of the parties

Union of India

Applicant.

Versus.

English Press

Respondents.

Part A.B.C.

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bench copy B1 - B25

checked
23/6/11

Partified that no further action is required to be taken and the case is fit
for consignment to the record room (D)

26/12/1

Dg

Review Appl. No 496/90(L)

in
O.A. No. 11 of 1989 (L)

A.C.M. (Review) A.No.

496/90(L), has been filed
in O.A. 11/89(L), on
16/8/90.

The case bearing
O.A. was decided
by Hon. Bench of
Hon. Mr. Justice K. Nandy
V.C. and Hon. Mr.

K. Obayya, A.M. on
dated 2/5/90.
The Author of the
Judgement is Hon.
Mr. Justice K. Nandy
V.C.

S.P.O.

524
16/8

Put up before
the Hon'ble members
of the concerned
Bench, in rotation
of order, in chambers

SL

Received copy of
dated 25/6/91 on
dated 5/7/91

MS Singh
5/7/91

A2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Review Appln. No. 496 of 1990 (L)

Union of India & Others..... Applicants

Versus

Jagdish Prasad Respondent

In

Registration O.A. No. 11/89 (L)

Jagdish Prasad Vs Union of India & Others

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice K. Nath, V.C.)

Original Application No. 11/89 Jagdish Prasad Versus Union of India & Others was decided by this Bench by judgement dated 2.5.90 whereby the order dated 30.6.88 of the termination of services of Jagdish Prasad was set aside and he was held to have continued in service throughout. An order of reinstatement and payment of back wages was passed and the Union of India and Others were given liberty to take action against Jagdish Prasad in accordance with law and, if necessary, after observance of the principles of natural justice.

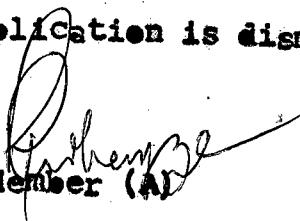
2. Jagdish Prasad was a Casual Labour and sought the benefit of Section 25-F of the Industrial Disputes Act and of the principles of natural justice. Relevant facts found in this regard were recorded and the case was allowed.

3. In this application for review, it is stated that since the applicant was a Casual Labour, the question of reinstatement would not arise as

RB

that would depend upon the availability of work. It was said that the principles of natural justice do not apply because Jagdish Prasad had no right to retain the post. It was lastly said that the Postal Department is not an Industry as held by Supreme Court in the case of Bangalore Water Supply and Sewerage Board Versus Union of India, whose citation is not given, below. We have carefully gone through the review application and also the contents of the judgement under review. We had recorded our view why we found the applicant to be workman and the Postal Department to be Industry, and the entitlement of protection of Section 25-F of the Industrial Disputes Act to Jagdish Prasad. These matters cannot be reagitated in a review application; they could well be a subject matter of appeal.

4. The question of a right of retaining a post is wholly irrelevant so far as the question of natural justice is concerned. The matter has been dealt with in detail in the judgement under review. We find no reason to depart from the view taken in the judgement. The Review Application is dismissed.


Member (A)


Vice Chairman

Dated the 25th June, 1991.

RKM

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 16.8.1990
Date of Receipt by Post 16.8.1990

Deputy Registrar (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

CIRCUIT BENCH AT LUCKNOW

...

Civil Misc. Application No. of 1990

On behalf of

Union of India and ors ... Applicants

In

Review petition No. 496/ of 1990 (L)

In

Registration No. 11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and ors Respondents

To

The Hon'ble Vice Chairman and His
Companion Members of the aforesaid Tribunal.

The humble application of the above named
applicant Most Respectfully States as under :

1. THAT in view of the facts and circumstances mentioned in the review petition and accompanying affidavit, it is expedient in the interest of justice that the operation of the judgment delivered by this Hon'ble Tribunal on 2-5-1990, may remain stayed during the pendency of the above review petition; otherwise the respondents-applicants shall suffer an irreparable loss.

fixed today
16/8/90

KPSW

धीमा नहीं/NOT INSURED

झारौ गये डाक टिकटों का मूल्य रु० ५० पै०

Amount of stamps affixed

Rs. 5/- P.

एक रजिस्टरेड.....
ट्रैकिंग किया

क्रमांक/No.
4371

Received a Registered.....
Envelope.....
एवं दाले का नाम.....
Addressee का नाम.....

Addressed to

B. D. Jangchub
Post Master
Post Office
Signature of Receiving Officer

प्राप्त वाल अधिकारी द्वारा
हस्ताक्षर
Signature of Receiving Officer

(AS)

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P R A Y E R

WHEREFORE, it is, Most Respectfully
prayed that this Hon'ble Tribunal may be
pleased to stay the operation of the judgment
delivered by this Hon'ble Tribunal dated
2-5-1990, during the pendency of the review
petition in this Hon'ble Tribunal, otherwise
the respondents-applicants shall suffer
an irreparable loss.

Aug. , 1990.

K.C. Sinha
(K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE APPLICANTS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH,
CIRCUIT BENCH AT AUCKNOW

....

CIVIL MISC. APPLICATION NO. OF 1990

(Under Section 21(3) of the Administrative
Tribunals Act, 1985)

On behalf of

Union of India and ors ... Applicants

In

CIVIL MISC. APPLICATION NO. OF 1990

(U/s 22(3)(f) of the Administrative Tribunals Act)

Union of India and ors ... Applicants

vs

Jagdish Prasad ... Respondent

IN

Registration No. 11 of 1989(L)

Jagdish Prasad Applicant

vs

Union of India and ors Respondents

To,

The Hon'ble The Vice Chairman and His
companion Members of the aforesaid Hon'ble Tribunal.

The humble application of the above named
applicants Most Respectfully states as under:

1. THAT the aforesaid petition was disposed of by this Hon'ble Tribunal on 2-5-1990 and the certified copy of the judgment was delivered to the answering respondents on 16-5-1990.

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(P2)

2. THAT the aforesaid petition was disposed of by this Hon'ble Tribunal and immediately after the receipt of a copy of the judgment, the Officers of the Office of Sub Divisional Officer Telegraph Bahraich rushed to the Office of the Divisional Engineer Telegraph, Gorakhpur under whose direct control, the aforesaid Office works. In fact since due to the change of administration, the Sub Divisional Office, Bahraich has been brought under the control of Divisional Engineer, Gonda at present and as such from the Office of respondent no.2, the answering respondents were asked to seek the instructions of the Divisional Engineer, Telegraph, Gonda and as such, ~~the~~ again they have knocked the door of the Divisional Engineer Telegraph Gonda.

3. THAT after seeking the instructions from the controlling authority i.e. Director Telecommunication, Varanasi, was also consulted and on the basis of their instructions, the matter was referred by hand to the Chief General Manager, Telecom, U.P. Circle, Lucknow.

4. THAT the aforesaid process took considerable time which has delayed in moving the present review application.



5. THAT ~~the~~ it is also pertinent to mention here that the present applicants of the review application were not sleeping over the matter

V. D.

and since the delay which was beyond the control of the authorities as it was the procedural, it has occurred. As mentioned above, the delay was not deliberate and intentional, neither at any point of time the applicant-respondents were sleeping over the matter.

6. THAT in the interest of justice, the delay in filing the present a review/recall application may kindly be condoned and the review application may be treated as if, the same has been filed in time and may be decided on merit.



P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to condone the delay in filing the review petition and be further pleased to decide the matter on the basis of merit, otherwise the applicants would suffer irreparable loss.

(*K.C. SINHA*)
August , 1990. ADDL. STANDING COUNSEL
CENTRAL GOVT.

COUNSEL FOR THE APPLICANTS

PG

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADLABABAD BENCH
CIRCUIT BENCH AT LUCKNOW

...
AFFIDAVIT

On behalf of

Union of India and ors. ... Applicants

In

CIVIL MISC. APPLICATION NO. OF 1990

(Under Section 21 (3) of the Administrative
Tribunals Act, 1985)

Union of India and ors ... Applicants

IN

CIVIL MISC. APPLICATION NO. OF 1990

(Under Section 22(3)(f) of the Administrative
Tribunals' Act, 1985)

Union of India and ors ... Applicants

vs

Jagdish Prasad ... Respondent

IN

Registration No.11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and ors ... Respondents

Affidavit of

Surendra Kumar aged about 42 years, s/o
Shri Misailal. Add. S.D.O.T. Bahraich.

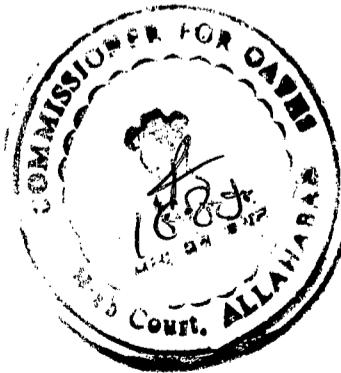
S. Kumar
(Deponent)

I, the deponent above named do hereby
solemnly affirm and state on oath as under:

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1. THAT the deponent is
and is well conversant with the facts
deposed to hereinafter.
2. THAT the aforesaid petition was disposed
of by this Hon'ble Tribunal on 2-5-1990 and the
certified copy of the judgment was delivered to
the answering respondents on 16-5-1990.
3. THAT the aforesaid petition was disposed
of by this Hon'ble Tribunal and immediately after
the receipt of a copy of the judgment, the Officers
of the Office of Sub Divisional Officer Telegraph
Babraich rushed to the Office of the Divisional
Engineer Telegraph, Gorakhpur under whose direct
control, the aforesaid Office works. In fact since
due to the change of administration, the Sub
Divisional Office, Babraich has been brought
under the control of Divisional Engineer, Gonda
at present and as such from the Office of respondent
No.2, the answering respondents were asked to
seek the instructions of the Divisional Engineer,
Telegraph, Gonda and as such, again they have
knocked the door of the Divisional Engineer
Telegraph Gonda.
4. THAT after seeking the instructions
from the controlling authority, i.e. Director



SVCO

PAI

Telecom, Varanasi, was also consulted and on the basis of their instructions, the matter was referred by hand to the Chief General Manager, Telecom. U.P. Circle, Lucknow.

5. THAT the aforesaid process took considerable time which has delayed in moving the present review application.

6. THAT it is also pertinent to mention here that the present applicants of the review application were not sleeping over the matter, and since the delay which was beyond the control of the authorities as it was the procedural, it has occurred. As mentioned above, the delay was not deliberate and intentional, neither at any point of time the applicant-respondents were sleeping over the matter.

7. THAT in the interest of justice the delay in filing the present review/recall application may kindly be condoned and the review application may be treated as if, the same has been filed in time and may be decided on merit.

8. THAT the deponent named above do hereby



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affirm on oath that the contents of para 1
of this affidavit and those of paragraphs

of this affidavit are true to my personal
knowledge, those pf paras
are based on perusal of record and those of
paras 1 to 8 are based on legal
advice, which all the deponent believes to be
true. No part of this affidavit is false and
nothing material has been concealed in it.

So help me God.

I identify the deponent Deponent
who has signed before me. Mohershah
C/o Sh. U.K. Dohar, A.G.
16-8-80
12-15 A.M. P.M. at Sarsonkahera
Shri Mohershah Gf.
who is identified to be..... U.K.Dohar
Advocate High Court, Allahabad

I have satisfied by examining
the deponent that he understands
the contents of this affidavit which
have been read out and explained
to him.



Roman
Raj Kumar Devaraj
SATHI COMMISSIONER
High Court of the
of India, Allahabad

571125
16-8-80

(AJ)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, CIRCUIT BENCH, LUCKNOW

....

CIVIL MISC. APPLICATION NO. _____ OF 1990

(Under section 22(3)(f) of Administrative
Tribunals' Act, 1985)

In behalf of

Registration No. 11 of 1989(L)
Union of India, through Secretary,
Department of Communication,
Govt. of India, New Delhi and
others ... Applicant

vs

Jagdish Prasad, son of Sri Prahlad Rai
resident of village Bhadauli, Post,
Chilwaria, district Bahraich Respondent

In
Registration No. 11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and others.... Respondents

To,

The Hon'ble The Vice Chairman and His
companion Members of the aforesaid Hon'ble Tribunal.

The humble application of the abovenamed
applicants Most Respectfully states as under:

1. THAT by means of O.A. No. 11 of 1989(L),
the applicant has challenged the order dated
30-6-1988 through which the applicant's engagement
as casual labour was disturbed. The applicant
has also sought a relief that the applicant may
be treated as a casual labour and he may be paid



[Signature]

the wages.

2. THAT the answering respondents contested the case by filing counter affidavit where, stand was taken that on the basis of over all performance of the applicant, as a casual labour, he was disengaged for further work.

3. THAT it appears that on 2-5-90 when the case was taken up, no proper assistance was rendered by the counsel for the respondents and the Tribunal has decided the case in favour of the applicant through which the application was allowed and a direction was given by this Tribunal by means of a judgment dated 2-5-1990 that the Opposite party shall reinstate the applicant within a period of one month and he shall also be paid back wages from the date of the termination order within three months from the date of receipt of a copy of the judgment.

4. THAT it was admitted case of the party that no appointment letter was ever issued in favour of the applicant for engaging him as a casual labour and as such the question of reinstatement of a casual labour does not arise. In fact the casual labourers are engaged on the availability of casual nature of work with the Department in view of the exigencies of work, but, they do not hold any civil post, neither they are governed with any certain rules.

K. D. D. D.



(ALS)

5. THAT the Hon'ble Tribunal has also admitted on page 3 of the judgment that the applicant do not hold civil post.

6. THAT the application of principle of natural justice arises only when the person has got right to retain the post, but, in the case of the casual labour, their engagement depends upon the availability of work and in case there is no work, they cannot have any right to retain the same post.

7. THAT the Tribunal has decided the issue on the application of the industrial law i.e. Industrial Disputes Act, 1947, where, as the fact reamin that the organisation which is Divisional Officer, Telegraph Bahraich, where the applicant was working, is not an industry and the applicant cannot be dealt with the provisions of section 25(F) of the Industrial Disputes Act.

8. THAT for engagement of the casual labour, the satisfaction of the appropriate authority is also a paramount factor and in case the said authorities dis-satisfied, the dis-engagement of such a casual labourer automatically follows and there is no question of violation of principle of natural justice.

9.8 THAT the Hon'ble Supreme Court has already given an essential indulgence in the case of Bangalore Water Supply and Sewage Board vs. Union of India, where it has been held that the Posts and Telegraphs Department is not an industry.

Kashish



10. THAT in fact at the time of arguments as stated earlier, no effective assistance could be rendered by the counsel for the respondents, by mistake as he could not notice the aforesaid case and as such, the said finding has come.

11. THAT the answering respondents are filing the review application with the following grounds:

GROUND S

(a) BECAUSE the protection of provisions of Chapter V-A cannot be extended to casual labour who are of proved culpable character, having sneaked into this unscreened entry-point of a Government Department for which no police verification of antecedents is taken due to the very nature of intermittent work taken from the casuals. The culpable characters cannot be intended by law to be protected by the munificent provisions of Chapter-V-A of the Industrial Disputes Act;

(b) BECAUSE Article 16 has no relevance in the case as the applicant is not a holder of a post in a Government Department;

(c) BECAUSE any reference to, or invocation of Article 14 of the Constitution as a liability of the O.P. casts a call to sovereign functions of Govt. Departments. This is beyond the scope of I.D. Act which is the prime statute applied in present case;

(d) BECAUSE even the rules of natural justice cannot be invoked in a contractual relationship which is implied in engagement of casual labour for

K. S. D.

incidental work in the Department of Telecom. The judgment of acts of either party to the implied contract, in a case like this, has to base upon the terms of the contract, and obligation thereto;

(e) BECAUSE the Department of Telecom employes staff for covering all posts it sanctions under regulations for installation, maintenance and administration of communication lines and gadgets from which consumer terminations are taken out and given to the subscribers. It is a vast field covering over millions of line mileage of wires over head or underground or wireless communication. Every inch of this net work is covered by regular staff manning this or that post. Casual labourer are taken in for assistance of technical staff when unexpectedly terminations in communications occurred due to natural calamities or other man-wrought havoc; or a new consumer applies for a termination. This unforeseeably oscillating work, moving over locales of all the millions of circuit-mileage is not of an established character, and is partly seasonal and partly intermittent. For this reason regulations for contracting local labourer force to assist the concerned technical staff provides for only an engagement contract on daily basis. It is implied in this engagement on contract that discovering entry of undesirable element as casual labour no second day of engagement be contracted. Such residual circumspection in managerial prerogative

Ansari

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is absolute and inalienable except by a specific law to be taken away;

(f) BECAUSE despite intermittance and shifting locale pertaining to engagement of casual labour to assist the technical staff of Telecom Department on site, fast expansion of consumerist terminations i.e. new telephone, Telex, PBX connections applied for has made it possible for many casual labour to continue at one locale for long uninterrupted durations whereby they earn rights of seniority by flux of time to offer candidature for regular employment for which regulations have been framed. At the time of eventual regularisation each is subjected to police and health verification requisite for Govt. employment. Even thereafter under Art. 311(2)(b) the undesirables can be weeded out any time without show cause. Presumably this prerogative is inherent in the engaging staff, of casual labour and at best can be looked into for sufficient justification by the Hon'ble Court but cannot be questioned;

(g) BECAUSE the privilege of receiving show cause, of an employee/labourer is based on the employer-employee relationship defineable or inferrable from the service contract. Where no employment of any stable character has been offered the contract cannot be interpreted to require a show cause. The offer of employment to a Telecom casual labour is only incidental to a very specific, small incident of repairing an unwanted

Koduru

(P.M.)

termination caused or installing a new termination. Each engagement at the longest cannot be beyond the period of particular incident for which engagement of labourer was done;

(h) BECAUSE the engagement of applicant on last work-order being preceded by 240 work days spread over preceding 12 months would not give him protection of the Industrial Disputes Act for the simple reason that he is not the subject of any industrial dispute. His is an individual case of hire and fire based on his misconduct which cannot be a common factor for a dispute between employer and employee;

(i) BECAUSE the jurisdiction of the Hon'ble Tribunal does not extend to adjudicating upon provisions of the Industrial Disputes Act. The Hon'ble Tribunal would adjudicate by the same nature of over riding powers as used by the O.P. i.e. managerial prerogative implied in Art. 311(2)(b) of the Constitution. In other words the Hon'ble Tribunal could adjudicate by looking into the justification of terminating action;

(j) BECAUSE in absence of contract of service of stable kind and for indefinite period for the applicant, it is incorrect to deem him in continuous employment. An incidental, casual employment has no presumption of continued employment more so because the Department has not saved but has employed another hand to complete the incidental work from which the applicant was dropped. *Kosher*

(A29)

(k) BECAUSE there being no lien to employment as casual there is no question of restitution of lien;

(l) BECAUSE for the Telecom Department collectively it is uniquely important to safeguard the credit of services by dropping out entrants of culpable character, especially when the culpable individual is not yet a regular employee and merely on an implied contract of day by day engagement;

(m) BECAUSE within the ambit of laws in effect or force, the Department of Telecom has correctly discharged its functions and it is not open to the judicial forum to cast upon it the crippling load of culpable individuals without indicating a positive alternative for dealing with such culpable entrants of casual character when neither Industrial Employment (Standing Order) Act 1946 nor CCS(CCA) Rules, 1965 have been rightly extended to the casuals as their joining is merely incidental to an emergent fringe work not regular enough for the industry to call for creation of establishment;

(n) BECAUSE since the Telegraph Department is not an industry as such, Industrial Disputes Act, 1947, shall not be applicable.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to accept the aforesaid ~~as~~ application and the judgment dated 2-5-1990 delivered by this Hon'ble Tribunal may kindly be reviewed/recalled and

KPS.

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the matter may be decided after hearing
both the parties again, otherwise the
applicant would suffer irreparable loss.

KCS
August , 1990. (K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE APPLICANT.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH,

CIRCUIT BENCH AT LUCKNOW

Affidavit

On behalf of

Union of India and ors ... Applicants

In

CIVIL MISC. APPLICATION NO. OF 1990

Union of India and ors ... Applicants

vs

Jagdish Prasad ... Respondents

In

Registration No. 11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and ors Respondents

Affidavit of

✓ *Sivendra Kumar* aged about 41 years, s/o
✓ *Shri Muni Lal* Add. S.D.O.T Barabanki
SYCB
(Deponent)

I, the deponent abovenamed do hereby
solemnly affirm and state on oath as under:

1. THAT the deponent is
and is well conversant with the facts
deposed to hereinafter.
2. THAT by means of O.A. No. 11 of 1989(L),
the petitioner has challenged the order dated
30-6-1988 through which, he was engaged as casual
Labour was disturbed. The petitioner has also
sought a relief that he may be treated as a



S.Y.C.B.

casual labour and he may be paid the wages.

3. THAT the answering respondents contested the case by filing counter affidavit where, stand was taken that on the basis of over all performance of the applicant, as a casual labour, he was disengaged for further work.

4. THAT it appears that on 2-5-1990 when the case was taken up, no proper assistance was rendered by the counsel for the respondents and the Tribunal has decided the case in favour of the applicant through which the application was allowed and a direction was given by this Tribunal by means of a judgment dated 2-5-1990 that the Opposite parties shall reinstate the applicant within a period of one month and he shall also be paid back wages from the date of the termination order within three months from the date of receipt of a copy of the judgment.

5. THAT it was admitted case of the party that no appointment letter was ever issued in favour of the applicant for engaging him as a casual labour and as such, the question of reinstatement of a casual labour does not arise. In fact the casual labourers are engaged on the availability of casual nature of work with the Department in view of the exigencies of work, but, they do not hold any civil post, neither they are governed with any certain rules.



DRG

(A23)

:: 3 ::

6. THAT the Hon'ble Tribunal has also admitted on page 3 of the judgment that the applicant do not hold civil post.

7. THAT the application of principle of natural justice arises only when the person has got right to retain the post, but, in the case of the casual labour, their engagement depends upon the availability of work and in case there is no work, they cannot have any right to retain the same post.

8. THAT the Tribunal has decided the issue on the application of the industrial law i.e. Industrial Disputes Act, 1947, where, as the fact remain that the organisation which is Divisional Officer, Telegraph Bahraich, where the applicant was working, is not an industry and the applicant cannot be dealt with the provisions of section 25(F) of the Industrial Disputes Act.

9. THAT for engagement of the casual labour, the satisfaction of the appropriate authority is also a paramount factor and in case the said authorities dis-satisfied, the dis-engagement of such a casual labourer automatically follows and there is no question of violation of principle of natural justice.

10. THAT the Hon'ble Supreme Court has already given an essential indulgence in the case of



DR. C. M.

Bangalore Water Supply and Sewage Board vs. Union of India, where it has been held that the Posts and Telegraphs Department is not an industry.

11. THAT in fact at the time of arguments as stated earlier, no effective assistance could be rendered by the counsel for the respondents, by mistake as he could not notice the aforesaid case and as such, the said finding has come.

12. THAT in view of the facts stated in the accompanying application and affidavit, it is expedient in the interest of justice that the review/recall application of the answering respondents may kindly be allowed, otherwise the answering respondents shall suffer irreparable loss.

THAT the deponent above named solemnly affirm and state that the contents of para 1 of this affidavit and those of paragraphs are true to my personal knowledge; those of paras are based on perusal of record and those of paras 1 to 12 are based on legal advice, which all I believe to be true. No part of this affidavit is false and nothing material has been concealed in it.

So help me God.

Deponent:

SYED

Respondent

Reet an
No. 5 A.D.

A.D.

IN THIS CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH AT LUCKNOW

O.A. NO. 11/89 (L)

Jagdish Prasad Applicant.
Versus
Union of India & Others Respondents.

Hon. Justice Mr. K. Nath, V.C.
Hon. Mr. K. Obayya, A.M.

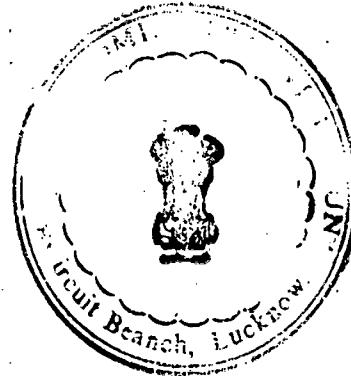
(By Hon. Justice Mr. K. Nath, V.C.)

This application under section 19 of the Administrative Tribunals Act, 1985, is for quashing the order dated 30.6.1988 Annexure-4 (erroneously typed as Annexure-3 in the relief clause) whereby the applicant's service were terminated.

The applicant was working as a casual labour with the opposite parties when by the impugned order, he was removed from service. The order mentions *inter-alia* that large number of complaints had been received against the applicant from different officials for applicant's misbehaviour, negligence and intention to slow down government work, that his work and conduct was not satisfactory and therefore he was removed from service with immediate effect.

Two of the points taken in this petition rest on the provisions of 25-F of the Industrial Disputes Act and principles of natural justice.

The duration of work of the applicant is set out in Para-6(iii) of the application and it is stated that the applicant had completed more than 240 days as regular employee work man in one calendar year prior to the impugned order of termination. Of the various periods set out in the application, the last period is from 10.9.1986 to 18.6.1988.



A2X

In the supplementary counter affidavit dated 17.9.1989 of J.B. Singh, the chart of the days on which the applicant worked between June.87 and June.88 is annexed. A perusal of the chart leaves no manner of doubt that between July.87 and March.88 the applicant had worked for continuous period of more than 261 days, while he still continued to work, till he was terminated in June.88. This satisfies the requirements of Section 25B(2) (b) of Industrial Dispute Act. The facts of the applicant's department i.e. Postal Department, being an industry is not indisputable. As casual labour, he also satisfied the definition of the expression 'workman'. Clearly, the chapter V(A) of the Industrial Dispute Act, 1947 applies to his case and he was entitled for the protection of Section 25(F) of that Act. Before, the service of the applicant, in the circumstances, could be terminated, which includes retrenchment as defined under section 2(00) of the Act, one month's notice or full payment of wages in lieu thereof, was essential. In addition, he was also required to be paid compensation equivalent to 15 days average pay for every completed year of continuous service or part thereof. Admittedly, none of these conditions are satisfied. The termination of the applicant service, therefore is void.

It is also clear from the terms of the impugned termination order (Anexure-4) that he was removed from service because of alleged misbehaviour, misconduct, complaints, negligence and slothfulness in the work. The learned counsel for the opposite parties tried to contend that the applicant's work was found unsatisfactory. It was found to be something more, vitiated by alleged misbehaviour, negligence etc. The removal, therefore, may not be stated to be simpliciter; it is penal.



A29

There may be worth in the contention of the counsel for the opposite party that the provisions of CCS (CCA) Rules will not apply because the applicant is not a "holder of civil post." The view, that the casual labour is not holder of civil post has been taken by Full Bench of this Tribunal in the case of Rahmatullah Khan & Others Versus Union of India & others decided on 24.4.1989 by Principal Bench Delhi and published by Bahri Brothers in "Full Bench Judgement of C.A.T 1986 to 1989." Even so, there could be no doubt that the principle of natural justice, which is the golden thread in the service Jurisprudence as developed in the constitutional law arising out of Article 14 & 16 of the constitution of India, must be applied in view of the special status conferred upon him by the Industrial Disputes Act, and applicant can not be condemned in the manner in which he has been in the impugned termination order Annexure-4 without an opportunity to show cause. We are satisfied that the impugned termination order is void and illegal and not only the applicant must be reinstated but he must also get backwages.

The application is allowed. The applicant shall be deemed to have continued in service throughout the period since the alleged termination. The opposite parties shall reinstate him within a period of one month and shall also pay to him his back wages from the date of termination within 3 months from the date of receipt of a copy of this judgement. It is of course open to the opposite parties to take action against the applicant in accordance with law and, if necessary, after observance of the principles of natural justice. The parties shall bear their costs of this petition.

ADM. MEMBER.

VICE CHAIRMAN.

Dated: 2.5.1990

sd.

Attested
True COPY

C.T.C.

Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

(R29)

In the Central Administrative Tribunal Allahabad.

Registration No 11 of 19.8.94

Jagdish Prasad

Petitioners

Appellant

Applicant

VERSUS

The C. O. D. P. W.

Respondent

Opposit Party

I, in the above matter hereby appoint and retain
SHRI KRISHNA CHANDRA SINHA, Advocate High Court
to appear, act and plead for me/us in the above matter and to conduct/prosecute and defend
the same in all interlocutory or miscellaneous proceedings connected with the same or with
any decree or order passed therein, appeals and or other proceedings there from and also in
proceedings for review of judgment and for leave to appeal to Supreme Court and to obtain
return of any documents filed therein, or receive any money which may be payable to me/us.

2. I/We further authorise him to appoint and instruct any other legal practitioner
authorising him to exercise the powers and authorities hereby conferred upon the Advocate
whenever he may think fit to do so.

3. I/We hereby authorised him/them on my/our behalf to enter into a compromise in the
above matter, to execute any decree order therein, to appeal from any decree/order therein
and to appeal, to act, and to plead in such appeal or in any appeal preferred by any other
party from any decree/order therein.

4. I/We agree that if/we fail to pay the fees agreed upon or to give due instruction at
all stages he/they is are at liberty to retire from the case and recover all amounts due to
him/them and retain all my/our monies till such are paid.

5. And I/we, the understand do hereby agree to ratify and confirm all acts done by
the Advocate or his substitute in the matter as my own acts, as if done by me/us to all
intents and purposes.

Executed by me/us this 16th day of Aug 1990 at

— S. C. —
Signature

Executant/s are personally known to me he has/they have/signed before me

Satisfied as to the identity of executant/s signature/s.

(where the executant/s is/are illiterate blind or unaquainted with the language of
vakalat)

Certified that the content were explained to the executant/s in my presence
in the language known to him/them who appear/s perfectly to
understand the same and has/have signed in my presence.

Accepted

K. C. SINHA

Advocate

High Court, Allahabad

Counsel for Appellant/Respondents

No.....

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
CIRCUIT BENCH AT LUCKNOW

...

Civil Misc. Application No. of 1990

On behalf of

Union of India and ors ... Applicants
In

Review petition No. 496 of 1990 (L)

In

Registration No. 11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and ors Respondents

To

The Hon'ble Vice Chairman and His
Companion Members of the aforesaid Tribunal.

The humble application of the above named
applicant Most Respectfully States as under :

1. THAT in view of the facts and circumstances mentioned in the review petition and accompanying affidavit, it is expedient in the interest of justice that the operation of the judgment delivered by this Hon'ble Tribunal on 2-5-1990, may remain stayed during the pendency of the above review petition; otherwise the respondents-applicants shall suffer an irreparable loss.

H. G. S.

(b)

(P2)
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P R A Y E R

WHEREFORE, it is, Most Respectfully
prayed that this Hon'ble Tribunal may be
pleased to stay the operation of the judgment
delivered by this Hon'ble Tribunal dated
2-5-1990, during the pendency of the review
petition in this Hon'ble Tribunal, otherwise
the respondents-applicants shall suffer
an irreparable loss.

Aug. , 1990.

K. C. Sinha
(K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE APPLICANTS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH,

CIRCUIT BENCH AT LUCKNOW

CIVIL MISC. APPLICATION NO. OF 1990

(Under Section 21(3) of the Administrative
Tribunals Act, 1985)

On behalf of

Union of India and ors ... Applicants

In

CIVIL MISC. APPLICATION NO. OF 1990
(U/s 22(3)(f) of the Administrative Tribunals Act)

Union of India and ors ... Applicants

vs

Jagdish Prasad ... Respondent

IN

Registration No. 11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and ors ... Respondents

To,

The Hon'ble The Vice Chairman and His
companion Members of the aforesaid Hon'ble Tribunal.

The humble application of the above named
applicants Most Respectfully states as under:

1. THAT the aforesaid petition was disposed
of by this Hon'ble Tribunal on 2-5-1990 and the
certified copy of the judgment was delivered to
the answering respondents on 16-5-1990.

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(b4)

:: 2 ::

2. THAT the aforesaid petition was disposed of by this Hon'ble Tribunal and immediately after the receipt of a copy of the judgment, the Officers of the Office of Sub Divisional Officer Telegraph Bahraich rushed to the Office of the Divisional Engineer Telegraph, Gorakhpur under whose direct control, the aforesaid Office works. In fact since due to the change of administration, the Sub Divisional Office, Bahraich has been brought under the control of Divisional Engineer, Gonda at present and as such from the Office of respondent no.2, the answering respondents were asked to seek the instructions of the Divisional Engineer, Telegraph, Gonda and as such, ~~they~~ again they have knocked the door of the Divisional Engineer Telegraph Gonda.

3. THAT after seeking the instructions from the controlling authority i.e. Director Telecommunication, Varanasi, was also consulted and on the basis of their instructions, the matter was referred by hand to the Chief General Manager, Telecom, U.P. Circle, Lucknow.

4. THAT the aforesaid process took considerable time which has delayed in moving the present review application.

5. THAT ~~they~~ it is also pertinent to mention here that the present applicants of the review application were not sleeping over the matter

Mosle

(b5)

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and since the delay which was beyond the control of the authorities as it was the procedural, it has occurred. As mentioned above, the delay was not deliberate and intentional, neither at any point of time the applicant-respondents were sleeping over the matter.

6. THAT in the interest of justice, the delay in filing the present a review/ recall application may kindly be condoned and the review application may be treated as if, the same has been filed in time and may be decided on merit.

PRAYER

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to condone the delay in filing the review petition and be further pleased to decide the matter on the basis of merit, otherwise the applicants would suffer irreparable loss.

August , 1990.

Kesler
(K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.

COUNSEL FOR THE APPLICANTS

106
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADLAHABAD BENCH

CIRCUIT BENCH AT LUCKNOW

...

AFFIDAVIT

On behalf of

Union of India and ors ... Applicants

In

CIVIL MISC. APPLICATION NO. OF 1990

(Under Section 21 (3)kk of the Administrative
Tribunals Act, 1985)

Union of India and ors ... Applicants

IN

CIVIL MISC. APPLICATION NO. OF 1990

(Under Section 22(3)(f) of the Administrative
Tribunals' Act, 1985)

Union of India and ors ... Applicants

vs

Jagdish Prasad ... Respondents

IN

Registration No.11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and ors ... Respondents

Affidavit of -

Surendra Kumar aged about 42 years, s/o -
Shri Minal Lal Adel, S.D.O.T. Behrauli


(Deponent)

I, the deponent above named do hereby
solemnly affirm and state on oath as under:

(b7)

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1. THAT the deponent is

and is well conversant with the facts
deposed to hereinafter.

2. THAT the aforesaid petition was disposed
of by this Hon'ble Tribunal on 2-5-1990 and the
certified copy of the judgment was delivered to
the answering respondents on 16-5-1990.

3. THAT the aforesaid petition was disposed
of by this Hon'ble Tribunal and immediately after
the receipt of a copy of the judgment, the Officers
of the Office of Sub Divisional Officer Telegraph
Bhariaich rushed to the Office of the Divisional
Engineer Telegraph, Gorakhpur under whose direct
control, the aforesaid Office works. In fact since
due to the change of administration, the Sub
Divisional Office, Bhariaich has been brought
under the control of Divisional Engineer, Gonda
at present and as such from the Office of respondent
No.2, the answering respondents were asked to
seek the instructions of the Divisional Engineer,
Telegraph, Gonda and as such, again they have
knocked the door of the Divisional Engineer
Telegraph Gonda.

4. THAT after seeking the instructions
from the controlling authority, i.e. Director

Telecom, Varanasi, was also consulted and on the basis of their instructions, the matter was referred by hand to the Chief General Manager, Telecom. U.P. Circle, Lucknow.

5. THAT the aforesaid process took considerable time which has delayed in moving the present review application.

6. THAT it is also pertinent to mention here that the present applicants of the review application were not sleeping over the matter, and since the delay which was beyond the control of the authorities as it was the procedural, it has occurred. As mentioned above, the delay was not deliberate and intentional, neither at any point of time the applicant-respondents were sleeping over the matter.

7. THAT in the interest of justice the delay in filing the present review/recall application may kindly be condoned and the review application may be treated as if, the same has been filed in time and may be decided on merit.

8. THAT the deponent named above do hereby

Subba

:: 7 ::

(b7)

affirm on oath that the contents of para 1
of this affidavit and those of paragraphs
of this affidavit are true to my personal
knowledge, those pf paras _____
are based on perusal of record and those of
paras 1 to 8, _____ are based on legal
advice, which all the deponent believes to be
true. No part of this affidavit is false and
nothing material has been concealed in it.

So help me God.


Deponent.

(b)10

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, CIRCUIT BENCH, LUCKNOW

....

CIVIL MISC. APPLICATION NO. _____ OF 1990

(Under section 22(3)(f) of Administrative
Tribunals' Act, 1985)

In behalf of

Registration No. 11 of 1989(L)

Union of India, through Secretary,
Department of Communication,
Govt. of India, New Delhi and
others ...

Applicant

vs

Jagdish Prasad, son of Sri Prahlad Rai
resident of village Bhadauli, Post
Chilwaria, district Bahraich Respondent

In

Registration No. 11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and others.... Respondents

To,

The Hon'ble The Vice Chairman and His
companion Members of the aforesaid Hon'ble Tribunal.

The humble application of the abovenamed
applicants Most Respectfully states as under:

1. THAT by means of O.A. No. 11 of 1989(L),
the applicant has challenged the order dated
30-6-1988 through which the applicant's engagement
as casual labour was disturbed. The applicant
has also sought a relief that the applicant may
be treated as a casual labour and he may be paid

the wages.

2. THAT the answering respondents contested the case by filing counter affidavit where, stand was taken that on the basis of over all performance of the applicant, as a casual labour, he was disengaged for further work.

3. THAT it appears that on 2-5-90 when the case was taken up, no proper assistance was rendered by the counsel for the respondents and the Tribunal has decided the case in favour of the applicant through which the application was allowed and a direction was given by this Tribunal by means of a judgment dated 2-5-1990 that the Opposite party shall reinstate the applicant within a period of one month and he shall also be paid back wages from the date of the termination order within three months from the date of receipt of a copy of the judgment.

4. THAT it was admitted case of the party that no appointment letter was ever issued in favour of the applicant for engaging him as a casual labour and as such the question of reinstatement of a casual labour does not arise. In fact the casual labourers are engaged on the availability of casual nature of work with the Department in view of the exigencies of work, but, they do not hold any civil post, neither they are governed with any certain rules.

BR

:: 3 ::

5. THAT the Hon'ble Tribunal has also admitted on page 3 of the judgment that the applicant do not hold civil post.
6. THAT the application of principle of natural justice arises only when the person has got right to retain the post, but, in the case of the casual labour, their engagement depends upon the availability of work and in case there is no work, they cannot have any right to retain the same post.
7. THAT the Tribunal has decided the issue on the application of the industrial law i.e. Industrial Disputes Act, 1947, where, as the fact reamin that the organisation which is Divisional Officer, Telegraph Bahraich, where the applicant was working, is not an industry and the applicant cannot be dealt with the provisions of section 25(F) of the Industrial Disputes Act.
8. THAT for engagement of the casual labour, the satisfaction of the appropriate authority is also a paramount factor and in case the said authorities dis-satisfied, the dis-engagement of such a casual labourer automatically follows and there is no question of violation of principle of natural justice.
9. THAT the Hon'ble Supreme Court has already given an essential indulgence in the case of Bangalore Water Supply and Sewage Board vs. Union of India, where it has been held that the Posts and Telegraphs Department is not an industry.

(BB)

10. THAT in fact at the time of arguments as stated earlier, no effective assistance could be rendered by the counsel for the respondents, by mistake as he could not notice the aforesaid case and as such, the said finding has come.

11. THAT the answering respondents are filing the review application with the following grounds:

G R O U N D S

- (a) BECAUSE the protection of provisions of Chapter V-A cannot be extended to casual labour who are of proved culpable character, having sneaked into this unscreened entry-point of a Government Department for which no police verification of antecedents is taken due to the very nature of intermittent work taken from the casuals. The culpable characters cannot be intended by law to be protected by the munificent provisions of Chapter-V-A of the Industrial Disputes Act;
- (b) BECAUSE Article 16 has no relevance in the case as the applicant is not a holder of a post in a Government Department;
- (c) BECAUSE any reference to, or invocation of Article 14 of the Constitution as a liability of the O.P. casts a call to sovereign functions of Govt. Departments. This is beyond the scope of I.D. Act which is the prime statute applied in present case;
- (d) BECAUSE even the rules of natural justice cannot be invoked in a contractual relationship which is implied in engagement of casual labour for

incidental work in the Department of Telecom. The judgment of acts of either party to the implied contract, in a case like this, has to base upon the terms of the contract, and obligation thereto;

(e) BECAUSE the Department of Telecom employes staff for covering all posts it sanctions under regulations for installation, maintenance and administration of communication lines and gadgets from which consumer terminations are taken out and given to the subscribers. It is a vast field covering over millions of line mileage of wires over head or underground or wireless communication. Every inch of this net work is covered by regular staff manning this or that post. Casual labourer are taken in for assistance of technical staff when unexpectedly terminations in communications occurred due to natural calamities or other man-wrought havoc; or a new consumer applies for a termination. This unforeseeably oscillating work, moving over locales of all the millions of circuit-mileage is not of an established character, and is partly seasonal and partly intermittent. For this reason regulations for contracting local labourer force to assist the ~~concerned~~ concerned technical staff provides for only an engagement contract on daily basis. It is implied in this engagement on contract that discovering entry of undesirable element as casual labour no second day of engagement be contracted. Such residual circumspection in managerial prerogative

BIS

is absolute and inalienable except by a specific law to be taken away;

(f) BECAUSE despite intermittance and shifting locale pertaining to engagement of casual labour to assist the technical staff of Telecom Department on site, fast expansion of consumerist terminations i.e. new telephone, Telex, PBX connections applied for has made it possible for many casual labour to continue at one locale for long uninterrupted durations whereby they earn rights of seniority by flux of time to offer candidature for regular employment for which regulations have been framed. At the time of eventual regularisation each is subjected to police and health verification requisite for Govt. employment. Even thereafter under Art. 311(2)(b) the undesirables can be weeded out any time without show cause. Presumably this prerogative is inherent in the engaging staff, of casual labour and at best can be looked into for sufficient justification by the Hon'ble Court but cannot be questioned;

(g) BECAUSE the privilege of receiving show cause, of an employee/labourer is based on the employer-employee relationship defineable or inferable from the service contract. Where no employment of any stable character has been offered the contract cannot be interpreted to require a show cause. The offer of employment to a Telecom casual labour is only incidental to a very specific, small incident of repairing an unwanted

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termination caused or installing a new termination. Each engagement at the longest cannot be beyond the period of particular incident for which engagement of labourer was done;

(h) BECAUSE the engagement of applicant on last work-order being preceded by 240 work days spread over preceding 12 months would not give him protection of the Industrial Disputes Act for the simple reason that he is not the subject of any industrial dispute. His is an individual case of hire and fire based on his misconduct which cannot be a common factor for a dispute between employer and employee;

(i) BECAUSE the jurisdiction of the Hon'ble Tribunal does not extend to adjudicating upon provisions of the Industrial Disputes Act. The Hon'ble Tribunal would adjudicate by the same nature of overriding powers as used by the O.P. i.e. managerial prerogative implied in Art. 311(2)(b) of the Constitution. In other words the Hon'ble Tribunal could adjudicate by looking into the justification of terminating action;

(j) BECAUSE in absence of contract of service of stable kind and for indefinite period for the applicant, it is incorrect to deem him in continuous employment. An incidental, casual employment has no presumption of continued employment more so because the Department has not saved but has employed another hand to complete the incidental work from which the applicant was dropped.

b7B

(k) BECAUSE there being no lien to employment as casual there is no question of restitution of lien;

(l) BECAUSE for the Telecom Department collectively it is uniquely important to safeguard the credit of services by dropping out entrants of culpable character, especially when the culpable individual is not yet a regular employee and merely on an implied contract of day by day engagement;

(m) BECAUSE within the ambit of laws in effect or force, the Department of Telecom has correctly discharged its functions and it is not open to the judicial forum to cast upon it the crippling load of culpable individuals without indicating a positive alternative for dealing with such culpable entrants of casual character when neither Industrial Employment (Standing Order) Act 1946 nor CCS(CCA) Rules, 1965 have been rightly extended to the casuals as their joining is purely incidental to an emergent fringe work not regular enough for the industry to call for creation of establishment;

(n) BECAUSE since the Telegraph Department is not an industry as such, Industrial Disputes Act, 1947, shall not be applicable.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to accept the aforesaid application and the judgment dated 2-5-1990 delivered by this Hon'ble Tribunal may kindly be reviewd/recalled and

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the matter may be decided after hearing
both the parties again, otherwise the
applicant would suffer irreparable loss.

K.C. Sinha
August 1990. (K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE APPLICANT.

ALLAHABAD BENCH,
CIRCUIT BENCH AT LUCKNOW

Affidavit

On behalf of

Union of India and ors ... Applicants

In

CIVIL MISC. APPLICATION NO. OF 1990

Union of India and ors ... Applicants

vs

Jagdish Prasad ... Respondents

In

Registration No. 11 of 1989(L)

Jagdish Prasad ... Applicant

vs

Union of India and ors ... Respondents

Affidavit of

Surendra Kumar aged about 42 years, s/o -
Sh. Muni Lal Add. S.D.O.T. Bahadur

Surendra Kumar
(Deponent)

I, the deponent abovenamed do hereby
solemnly affirm and state on oath as under:

1. THAT the deponent is
and is well conversant with the facts
deposed to hereinafter.
2. THAT by means of O.A. No. 11 of 1989(L),
the petitioner has challenged the order dated
30-6-1988 through which, he was engaged as casual
Labour was disturbed. The petitioner has also
sought a relief that he may be treated as a

J. R. G. M.

(B19)

B79

casual labour and he may be paid the wages.

3. THAT the answering respondents contested the case by filing counter affidavit where, stand was taken that on the basis of over all performance of the applicant, as a casual labour, he was disengaged for further work.

4. THAT it appears that on 2-5-1990 when the case was taken up, no proper assistance was rendered by the counsel for the respondents and the Tribunal has decided the case in favour of the applicant through which the application was allowed and a direction was given by this Tribunal by means of a judgment dated 2-5-1990 that the Opposite parties shall reinstate the applicant within a period of one month and he shall also be paid back wages from the date of the termination order within three months from the date of receipt of a copy of the judgment.

5. THAT it was admitted case of the party that no appointment letter was ever issued in favour of the applicant for engaging him as a casual labour and as such, the question of reinstatement of a casual labour does not arise. In fact the casual labourers are engaged on the availability of casual nature of work with the Department in view of the exigencies of work, but, they do not hold any civil post, neither they are governed with any certain rules.

[Signature]

(B7)

:: 3 ::

6. THAT the Hon'ble Tribunal has also admitted on page 3 of the judgment that the applicant do not hold civil post.

7. THAT the application of principle of natural justice arises only when the person has got right to retain the post, but, in the case of the casual labour, their engagement depends upon the availability of work and in case there is no work, they cannot have any right to retain the same post.

8. THAT the Tribunal has decided the issue on the application of the industrial law i.e. Industrial Disputes Act, 1947, where, as the fact remain that the organisation which is Divisional Officer, Telegraph Bahraich, where the applicant was working, is not an industry and the applicant cannot be dealt with the provisions of section 25(F) of the Industrial Disputes Act.

9. THAT for engagement of the casual labour, the satisfaction of the appropriate authority is also a paramount factor and in case the said authorities dis-satisfied, the dis-engagement of such a casual labourer automatically follows and there is no question of violation of principle of natural justice.

10. THAT the Hon'ble Supreme Court has already given an essential indulgence in the case of

4

Bangalore Water Supply and Sewage Board vs. Union of India, where it has been held that the Posts and Telegraphs Department is not an industry.

11. THAT in fact at the time of arguments as stated earlier, no effective assistance could be rendered by the counsel for the respondents, by mistake as he could not notice the aforesaid case and as such, the said finding has come.

12. THAT in view of the facts stated in the accompanying application and affidavit, it is expedient in the interest of justice that the review/recall application of the answering respondents may kindly be allowed, otherwise the answering respondents shall suffer irreparable loss.

THAT the deponent above named solemnly affirm and state that the contents of para 1 of this affidavit and those of paragraphs are true to my personal knowledge; those of paras ~~1~~ 1 are based on perusal of record and those of paras 1612 _____ are based on legal advice, which all I believe to be true. No part of this affidavit is false and nothing material has been concealed in it.

So help me God.

Deponent.

Respondent
Plaintiff
6.5.89

IN THIS CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH AT LUCKNOW

O.A. NO. 11/89 (L)

Jagdish Prasad Applicant.

Versus

Union of India & Others Respondents.

Hon. Justice Mr. K. Nath, V.C.
Hon. Mr. K. Obayya, A.M.

(By Hon. Justice Mr. K. Nath, V.C.)

This application under section 19 of the Administrative Tribunals Act, 1985, is for quashing the order dated 30.6.1988 Annexure-4 (erroneously typed as Annexure-3 in the relief clause) whereby the applicant's service were terminated.

The applicant was working as a casual labour with the opposite parties when by the impugned order, he was removed from service. The order mentions inter-alia that large number of complaints had been received against the applicant from different officials for applicant's misbehaviour, negligence and intention to slow down government work, that his work and conduct was not satisfactory and therefore he was removed from service with immediate effect.

Two of the points taken in this petition rest on the provisions of 25-F of the Industrial Disputes Act and principles of natural justice.

The duration of work of the applicant is set out in Para-6(iii) of the application and it is stated that the applicant had completed more than 240 days as regular employee work man in one calendar year prior to the impugned order of termination. Of the various periods set out in the application, the last period is from 10.9.1986 to 18.6.1988.

B24

In the supplementary counter affidavit dated 17.9.1989 of J.B. Singh, the chart of the days on which the applicant worked between June.87 and June.88 is annexed. A perusal of the chart leaves no manner of doubt that between July.87 and March.88 the applicant had worked for continuous period of more than 261 days, while he still continued to work, till he was terminated in June.88. This satisfies the requirements of Section 25B(2) (b) of Industrial Dispute Act. The facts of the applicant's department i.e. Postal Department, being an industry is not in dispute. As casual labour, he also satisfied the definition of the expression 'workman'. Clearly, the chapter V(A) of the Industrial Dispute Act, 1947 applies to his case and he was entitled for the protection of Section 25(F) of that Act. Before the service of the applicant, in the circumstances, could be terminated, which includes retrenchment as defined under section 2(00) of the Act, one month's notice or full payment of wages in lieu thereof, was essential. In addition, he was also required to be paid compensation equivalent to 15 days average pay for every completed year of continuous service or part thereof. Admittedly, none of these conditions are satisfied. The termination of the applicant service, therefore is void.

It is also clear from the terms of the impugned termination order (Annexure-4) that he was removed from service because of alleged misbehaviour, misconduct, complaints, negligence and slothfulness in the work. The learned counsel for the opposite parties tried to contend that the applicant's work was found unsatisfactory. It was found to be something more, vitiated by alleged misbehaviour, negligence etc. The removal, therefore, may not be stated to be simpliciter; it is penal.

There may be worth in the contention of the counsel for the opposite party that the provisions of CCS (CCA) Rules will not apply because the applicant is not a "holder of civil post." The view, that the casual labour is not holder of civil post has been taken by Full Bench of this Tribunal in the case of Rahmatullah Khan & Others Versus Union of India & others decided on 24.4.1989 by Principal Bench Delhi and published by Bahri Brothers in "Full Bench Judgement of C.A.T. 1990 to 1999." Even so, there could be no doubt that the principle of natural justice, which is the golden thread in the service Jurisprudence as developed in the constitutional law arising out of Article 14 & 16 of the constitution of India, must be applied in view of the special status conferred upon him by the Industrial Disputes Act and applicant can not be condemned in the manner in which he has been in the impugned termination order Annexure-4 without an opportunity to show cause. We are satisfied that the impugned termination order is void and illegal and not only the applicant must be reinstated but he must also get backwages.

The application is allowed. The applicant shall be deemed to have continued in service throughout the period since the alleged termination. The opposite parties shall reinstate him within a period of one month and shall also pay to him his back wages from the date of termination within 3 months from the date of receipt of a copy of this judgement. It is of course open to the opposite parties to take action against the applicant in accordance with law and, if necessary, after observance of the principles of natural justice. The parties shall bear their costs of this petition.

ADM. NUMBER.

VICE CHAIRMAN.

Dated: 2.5.1990

sd.

C.T.C.

Attested

True copy

DR. K. K. JADON
(Deputy Registrar)

Central Administrative Tribunal
Lucknow Bench,
Lucknow

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Review Appln. No. 496 of 1990 (L)

Union of India & Others..... Applicants

Versus

Jagdish Prasad Respondent

In

Registration O.A. No. 11/89 (L)

Jagdish Prasad Vs Union of India & Others

Hon. Mr. Justice K. Math, V.C.

Hon. Mr. K. Chayya, Member (A)

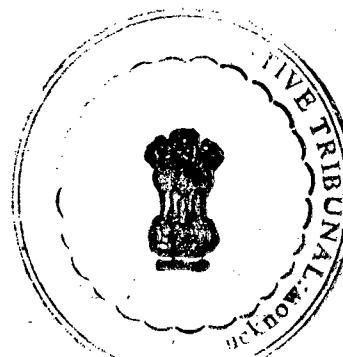
(By Hon. Mr. Justice K. Math, V.C.)

Original Application No. 11/89 Jagdish Prasad

Versus Union of India & Others was decided by this Bench by judgement dated 2.5.90 whereby the order dated 30.6.88 of the termination of services of Jagdish Prasad was set aside and he was held to have continued in service throughout. An order of reinstatement and payment of back wages was passed and the Union of India and Others were given liberty to take action against Jagdish Prasad in accordance with law and, if necessary, after observance of the principles of natural justice.

2. Jagdish Prasad was a Casual Labour and sought the benefit of Section 25-F of the Industrial Disputes Act and of the principles of natural justice. Relevant facts found in this regard were recorded and the case was allowed.

3. In this application for review, it is stated that since the applicant was a Casual Labour, the question of reinstatement would not arise as



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that would depend upon the availability of work. It was said that the principles of natural justice do not apply because Jagdish Prasad had no right to retain the post. It was lastly said that the Postal Department is not an Industry as held by Supreme Court in the case of Bangalore Water Supply and Sewerage Board Versus Union of India, whose citation is not given, below. We have carefully gone through the review application and also the contents of the judgement under review. We had recorded our view why we found the applicant to be workman and the Postal Department to be Industry, and the entitlement of protection of Section 25-T of the Industrial Disputes Act to Jagdish Prasad. These matters cannot be reagitated in a review application; they could well be a subject matter of appeal.



4. The question of a right of retaining a post is wholly irrelevant so far as the question of natural justice is concerned. The matter has been dealt with in detail in the judgement under review. We find no reason to depart from the view taken in the judgement. The Review Application is dismissed.

Sd — — — — —

Member (AD)

Sd — — — — —

Vice Chairman

Dated the 25th June, 1991.

Attested

RKM

True Copy

MOODI (T)

Section Officer

C.T.C. Central Administrative Tribunal
Circuit Bench
LUCKNOW

Sd/ — — — — —

17/9/