CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

(19)

O.A. 100/90 and O.A. 101/90

The Executive Engineer,
Central Water Commission
Upper Krishna Division,
Government of India
44, Gultekdi Industrial Estate
Pune-411 037 — Applicant in both cases

vs.

Shri Mohamed Iqbal Shaikh and another — Respondents in O.A. 100/90

Shri Mallikarjun Bhimasha Gaigawale and one another — Respondents in O.A. 101/90

CORAM:

HON'BLE SHRI M. Y. PRIOLKAR, MEMBER (A)
HON'BLE SHRI N. DHARMADAN, MEMBER (J)

Appearances:

Mr. R. K. Shetty — Advocate for the applicant

Mr. D. V. Gangal — Advocate for the respondents

JUDGMENT

(PER SHRI N. DHARMADAN, MEMBER (J)

These two applications are heard together and disposed of by a common judgment on the consent of parties since the questions involved in them are identical.

2. For the sake of convenience we may refer to the facts in O.A. 100/90. The Executive Engineer, Central Water Commission, Govt. of India, 44 Gultekdi Industrial Estate, Pune is the applicant. He engaged the first respondent as Gauge Khalasi w.e.f. 11.1.1979 as per order Ext. A-1 on a temporary basis in a Work Charged Establishment. While he was continuing in service the applicant has issued a show-cause memo cum chargesheet, Ext. A-3, dated 1.12.1982 with the following six items of misconduct:

(i) forgery,

(ii) leaving headquarters without proper application for leave or permission;

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(iii) refusal to perform the duty,

(iv) misbehaviour with local women

(v) insubordination and

(vi) threatening of villagers.

In answer to the show-cause cum chargesheet, the first respondent submitted a reply on 2.12.1982, Ext.A-4, unconditionally admitting all charges. But the applicant conducted a preliminary enquiry through an Asstt. Engineer, who submitted Ext. A-5 enquiry report finding the 1st respondent guilty of all charges. Thereafter, the applicant passed Ext. A-9 order dated 24th March 1983 removing the first respondent from service with immediate effect. The first respondent raised an industrial dispute which resulted in Ext. A-12 reference order dated 20.1.1987 under section 10 of the Industrial Disputes Act, 1947. The question which was referred to the second respondent, Central Government Industrial Tribunal, reads as follows:

> "whether the action of the Exeutive Engineer, Pune, Gauging Division, Central Water Commission Pune in relation to its cite at village Shridon of Sholapur Gauging Sub Division in the removal from service of Shri M. I. Shaikh, Gauge Khalasi from 28.3.1984 is justified? If not to what relief the employee is entitled to?"

After considering the contentions of the parties, the Central Industrial Tribunal passed Awards dated 8.10.1987 and 26.2.1988, Ext. A-15 and A-16 respectively by which it was held that the Central Water Commission is an 'Industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947 and that the action of the Executive Engineer in removing the first respondent from service was illegal and void and hence directed reinstatement with full backwages from the date of removal. These two awards are challenged by the applicant

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on various grounds. It was contended that the Industrial Tribunal erred in holding that the functions of the Central Water Commission will come within the purview of an 'Industry' under section 2(j) of the Industrial Disputes Act 1947 because the Commission discharges sovereign functions of the State. The applicant also submitted that the Industrial Tribunal failed to advert to the fact that no enquiry need be conducted when the first respondent unconditionally admitted all the charges in Ext. A-4 reply to the memorandum of charges.

3. At the time of the hearing Shri R. K. Shetty, the learned counsel for the applicant, relying on the full bench decision of the Punjab and Haryana High Court reported in State of Punjab Vs. Kuldip Singh and another, 1983 LAB.I.C.83, contended that the core question is whether the CWC is indulging in a trading or a business activity or discharging sovereign functions. He pointed out that even by remote analogy the character of the activity of the CWC is neither that of trade or business nor partakes any economic venture. Hence it is necessarily out of the ambit of industrial activity. He submitted that in the aforesaid case under similar circumstances the Punjab and Haryana High Court held that "the establishment, construction and maintenance of national and state high-ways is an essential Governmental function." Hence according to him the functions of the CWC is noway different from the functions of establishment, construction and maintenance of national and State high-ways. So the CWC also discharges Governmental functions.

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4. With very great respect we ~~beg to~~ disagree with the views taken by the full bench and find it difficult to accept the contention of the learned counsel Shri R. K. Shetty. It has been held by the Chief Justice Beg in "Bangalore Water's case", AIR 1978 SC 548, that the term 'soverign' function is a misfit. He observed as follows:

> "I do not feel happy about the use of the term 'sovereign' here. I think the term 'sovereign' should be reserved, technically and more correctly, for sphere of alternate decision... Again, the term 'Royal' from which the term 'sovereign' functions appears to be derived, seems to be a misfit in a republic where the citizen shares political sovereignty in which he has even a legal share, however shall, in as much as he exercises the right to vote..."

5. From the above passage it is clear that the core question to be examined in a given case is not as to whether the establishment is discharging Governmental functions but as to whether that establishment propelled by systematic activity modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefits individual industries and the nation in terms of goods and services and wealth."

6. The Supreme Court in the same case laid down the 'triple tests' to satisfy whether an establishment comes within the 'industry' in section 2(j) of the I.D. Act as follows:

> "(a) where (i) systematic activity (ii) organised by cooperation between employer and employee.. (iii) for the production and for distribution of goods and service calculated to satisfy human wants and wishes ..prima facie, there is an 'industry' in that enterprise.
>
> (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector
>
> (c) The true focus is functional and the decisive test is the nature of activity with special emphasis on employer and employee relations
>
> (d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.."

6. Applying the above 'triple tests' laid down by the Supreme Court and after evaluating the day to day functions, duties and responsibilities of the CWC in extenso in paras 4 & 5 of the Award, Ext. A-15 dated 8.10.1987, the Industrial Tribunal came to the following conclusion:

> "The Commission satisfies the triple tests laid down by the Supreme Court in the case between Bangalore Water Supply & Sewerage Board and A. Rajappa and others (I LLJ-Vol.I 1978,page 349) The functions which the Commission is expected to perform are welfare activities or economic adventures and not sovereign functions of the State as strictly understood. It may be that as contended the Commission may be a full fledged department of Government of India and is an attached office of the Ministry of Water Resources. But the factor is not decisive because in determining the question whether a particular activity is a 'Industry' or not, regard must be had to the nature of the activity and not to who engages in it. It is immaterial whether the activity is undertaken by the State or private organisations. For qualifying for exemption from the definition of industry the activity must be undertaken in the fulfillment of the State's constitutional obligation or in the discharge of its constitutional functions. All the functions of the commission can be entrusted to an performed by private individuals or private organisation. The Commission therefore must be held to be an 'Industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947."

7. We are of the view that on the facts and circumstances of the case, the view taken by the second respondent, Central Government Industrial Tribunal, in this case is correct and it is liable to be upheld. According we uphold Ext. A-15 Award.

8. Coming on merits of the case we find it difficult to endorse the reasonings and conclusions arrived at by the Central Government Industrial Tribunal in Ext. A-16 Award dated 26th February, 1988 The case of the applicant is that when Ext. A-3 show-cause memo cum chargesheet was issued containing six charges and the first respondent submitted Ext. A-4 reply on the very next day of the date of charge, unconditionally admitting all the charges. He has

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never withdrawn the admission excxpt stating that the admission was given on persuasion on leniency with regard to the punishment. When once a delinquent employee admits the guilt and does not avail of the opportunity to contest the charges and prove his innocence he cannot be allowed at a later stage to content that the admission happens to be given under coersion and that no enquiry was conducted before imposing the punishment. It would also be inequitable to give opportunity for the delinquent employee to resile from his admission and turn around and say at a later stage that the entire enquiry is vitiated on account of failure to give him opportunity of being heard in the enquiry or that the enquiry had been conducted without following the proceedural formalities. The Supreme Court considered the question of admission of the guilt of the delinquent employee in the enquiry vis-a-vis natural justice in Channabasappa Basappa Happali, Appellant v. The State of Mysore, AIR 1972 Supreme Court 32, and held as follows:

> "It was contended on the basis of the ruling reported in R. V. Durham Quarter Sessions; Ex parte Virgo, (1952 (2) QBS 1) that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the court must ask the person and if the plea of guilt is qualified the court must not enter a plea of guilty but one of not guilty. The Police Constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of whichdue notice was given to him. He admitted the facts but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a Police Officer remains absent without leave and also resorts to fast as a demonstration against theaction of the superior officer the indicipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observations of the learned Single Judge.

> The case really is not one of any merit; the plea raised before us was in ad misericordiam. We were asked to take the view that this man was actuated by his own feeling that leave would be extended and further that his going on fast was not for the purpose of the administration but for some other purpose. Even if we were to take the admission as a whole with all its qualifications, we are quite clear that he admitted the facts necessary to establish the charge against him."

8. Under the above circumstances we are of the view that in the light of the unconditional admission of the guilt by the first respondent it is not incumbent upon the applicant to conduct an enquiry before imposing the punishment against the first respondent. In the result we hold that the findings and the conclusions of the Central Government Industrial Tribunal in Ext. A-16 Award dated 26.2.1988, that the order of removal without holding an enquiry is bad and illegal, cannot be sustained. Accordingly we set aside this Award.

9. In the result both the applications O.A. 100/90 and O.A. 101/90 are partly allowed as stated above. There will be no order as to costs.

True Copy

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