

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 600/90

199

ExAxxNQx

DATE OF DECISION 13.10.92

Shri Shivram Mahadu Gaikwad Petitioner

Shri K.B.Bhat Advocate for the Petitioners

Versus

Secretary, Govt. of India Respondent

Department of Posts & others

Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

S.K.DHAON
(S.K.DHAON)
VICE CHAIRMAN

mbm*

NS/

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 600/90

(B)

Shri Shivram Mahadu Gaikwad

... Applicant.

V/s.

Secretary to Government of India
Department of Posts,
New Delhi.

Director General of Posts,
New Delhi.

Post Master General (Recctt.)
Aurangabad Region,
Aurangabad.

Superintendent of Postal
Store Depot.,
Upnagar, Nasik.

... Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman
Hon'ble Shri M.Y. Priolkar, Member (A)

Appearance:

Shri K.B.Bhat, counsel
for the applicant.

Shri P.M. Pradhan, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 13.10.92

(Per Shri S.K. Dhaon, Vice Chairman)

The applicant, a casual labourer, in the Postal Stores Depot, challenges the order dated 7.10.86 passed by the Supdt. Postal Depot to the effect that his services stand discharged with effect from 22.9.86.

The admitted facts are these: As evidenced by a certificate issued on 16.11.86 by the Supdt. Postal Depot, the applicant was employed in the office of Supdt. Postal Stores Depot on daily wages as a casual labourer from 15.7.85 to 15.3.86 and from 24.3.86 to 20.9.86. The impugned order of discharge was issued without complying with the provisions of section 25 F of the Industrial Dispute Act 1947 (herein after referred to ^{as the} Act).

In view of the decision of the Supreme Court in the Bangalore Water Supply case, (AIR 1978 SC 349), It is now well settled that the P & T Department is an "industry" within the meaning of the Act.

Sections 25 B and section 25 F of the Act fall in chapter V A of the Act. Section 25B (1) provides inter-alia that for the purpose of Chapter V A, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service. Sub-section (2) of the said provision provides inter-alia that where a workman is not in continuous service within the meaning of clause (1) for a period of one year, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman during the period of twelve calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. Applying the aforesaid provision and taking the fiction created therein to its logical conclusion, we have to find out whether the applicant rendered the service to the P & T Department for a period of 240 days between 21.9.85 and 20.9.86, excluding the broken period during which he was prevented from rendering service. There can be no escape from the conclusion that he had performed a job of a casual labourer for a period of 240 days during the aforesaid period.

Section 25 F posits certain conditions precedent to retrenchment of workman. It ~~ordains~~ that no workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the conditions innumerated therein from (a) to (c) are fulfilled. As already stated,

it is the admitted case of the respondents that none of the conditions were complied with. There can be no dispute that the applicant was a workman. Indisputably he was employed in an industry. He was in continuous service for not less than one year. Thus section 25 F squarely applied to his case. If that be so, his discharge from service was illegal and the order dated 7.1.86 was void.

This Tribunal is a substitute of the High Court in service matters. It is empowered to exercise jurisdiction under Article 226 of the Constitution for the enforcement of Fundamental Rights as enshrined in Articles 14 and 16 in so far as they pertain to service matters. The primary facts are not in dispute. The Supdt. Postal Depot passed the order discharging the applicant from service in controvension of law viz Section 25 F. The action of the Supdt. therefore was clearly arbitrary. It resulted in the infraction of the Fundamental Right guaranteed under Article 14 to the applicant. This Tribunal, therefore, will be fully justified in entertaining the complaint of the applicant and giving him redress without ~~regulating~~ ^{legating} him to the alternative remedy of raising an industrial dispute for adjudication under the machinery provided by the Act. It is well steeled that the bar of the exhaustion of an alternative remedy is a self-imposed fetter of the High Court itself. The framers of the Constitution have not placed such an impediment in the exercise of power under Article 226. We, therefore, repel the contention of the counsel for respondents that we should decline to exercise our discretion under Article 226.

This application succeeds and allowed. The impugned order dated 7.10.86 is quashed. The applicant shall be re-instated in service and paid the back wages etc. as permissible. We, however, make it clear that it will be open to the respondents to pass a fresh order in accordance with law.

The Supdt. Postal Stores Depot shall pass necessary order reinstating the applicant and also pass necessary order for the payment of back wages etc. to the applicant within a period of six weeks from today.

There shall be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

NS/ *Styed by SLE order 27-11-93*
This Judgment has been Set-aside
by SLE by order placed below dt 12-1-94