CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1091/93.

Date of Decision 9.12.98

Harendrakumar B. Bhandari, & 2 Others. — Petitioners.

Shri R. S. Mohite, — Advocate for the Petitioners.

VERSUS

Union Of India & Another, — Respondents.

Shri R. K. Shetty, — Advocate for the Respondents.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? No

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1091/93.

Dated the 9th day of December, 1998.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

1. Harendrakumar B. Bhandari,
Residing at -
Chowki Falia,
Kharapada,
Dadra & Nagar Haveli.

2. Shivabhai Mahdubhai
Chaudhari,
Residing at -
Chapapada Besda,
Post : Bedpa,
Dadra & Nagar Haveli.

3. Halpati B. Babubhai,
Residing at -
Post - Naroli,
Dadra & Nagar Haveli.

... Applicants

(By Advocate Shri R.S. Mohite)

VERSUS

1. Asst. Director In Charge,
Small Industries Service
Institute,
Masat Industrial Estate,
Dadra and Nagar Haveli,
Silvassa -396 230.

2. Small Industries Service
Institute,
Ministry of Industry,
Union Of India having its
office at Harsiddh Chambers,
4th Floor, Ashram Road,
Ahmedabad - 380 014 through
its Director.

... Respondents.

(By Advocate Shri R. K. Shetty).

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OPEN COURT ORDER

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN (

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicants were appointed as Workmen under the first respondent at Silvasa. The first applicant was appointed as a Skilled Worker by order dated 25.03.1988, the second applicant was appointed as a Helper by order dated 25.03.1988 and Applicant No. 3 was appointed as a Peon by order dated 18.10.1988. All the applicants were appointed on temporary basis and on probation of two years. The appointment order contains a clause for terminating the services of the applicants with one month's notice or immediately by making payment of one month's salary in lieu of notice. The applicants successfully completed their probation period. Subsequently, the respondents terminated the services of the applicants by order dated 27.05.1992 w.e.f. 31.05.1992. The respondents also issued subsequently a letter dated 22.06.1992 to correct their mistake. It is alleged that the order of termination is illegal and void for not giving one month's notice or failing to tender one month's salary immediately in lieu of notice. It is also alleged that the order of termination is in the nature of retrenchment and since it is not as provided in Section 25(F) of the Industrial Disputes Act, 1947, the order is bad in law. Therefore, the applicants have approached this Tribunal praying for a declaration that the termination

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order dated 27.05.1992 and the subsequent correction order dated 22.06.1992 are null and void and be quashed and for a direction to the respondents to reinstate the applicants with full back wages and other benefits.

3. Respondents have filed a reply opposing the application and justifying the action taken by them in terminating the services of the applicants. It is stated that the applicants have been paid one month's salary in lieu of the notice and therefore, the order of termination is valid. That the application is barred by limitation. It is stated that due to economic reasons and re-organisation of the department, it was decided to close down some of the field offices. Accordingly, the branch offices at Nanded, Bhavnagar, Jamnagar and Udhna ~~was~~ were closed down w.e.f. 31.05.1992. Consequently, all the posts were abolished with effect from that day. The senior officers working in those Branch Offices were accomodated at the existing offices, including the one at Silvassa, where the applicants were working. Since the seniors had to be accomodated, the services of the junior most officials had to be terminated. As a consequence, the applicants' services had to be terminated. It is stated that the respondents are not "Industry" within the meaning of Industrial Disputes Act. Hence, the applicants challenge as illegal retrenchment under the provisions of Industrial Disputes Act is not sustainable in law. The respondents are considering the cases of retrenched employees for re-employment. The matter is being processed. It is therefore submitted that the applicants are not entitled to any other reliefs and the application be dismissed with costs.

4. At the time of argument, Mr. R. S. Mohite, the Learned Senior Counsel appearing for the ~~respondents~~ applicants contended that the order of termination is illegal both being in violation of service rules and also the provisions of the Industrial Disputes Act. It is, therefore, submitted that the order of termination be quashed and the applicants should be reinstated with effect from the date of termination with all back-wages, seniority and other service benefits. The Learned Counsel for the respondents submitted that the order of termination is perfectly according to the Service Rules and the contract of employment, namely - the order of appointment. As far as the violation of provisions of Industrial Disputes Act, it is submitted that respondents are not an 'Industry' and even otherwise, this Tribunal has no jurisdiction to decide the matter.

At the time of arguments, it is now admitted by both sides that applicants have since been re-employed somewhere in 1995 or so. Therefore, strictly speaking, the main prayer, namely - the prayer for reinstatement does not survive for consideration. Now the only question is, whether the applicants are entitled to backwages and other service benefits?

5. If the order of termination is perfectly valid, then the applicants are not entitled to any other reliefs and since they have been subsequently re-employed, they can continue in service under the terms of re-employment. But if the order of termination is bad in law, then the further question is, whether the applicants are entitled to back-wages and other service benefits or not ?

6. As far as the contention of the Learned Counsel for the applicant, that the order is bad because of violation of the provisions of Industrial Disputes Act is concerned, we cannot go into that question in a proceedings under Section 19 of the Administrative Tribunals Act. This Tribunal, under the Administrative Tribunals Act, can only decide the service disputes of civil servants under the Civil Service Rules. This Tribunal has no jurisdiction to decide the dispute under the Industrial Disputes Act.

The Learned Counsel for the applicants, nodoubt brought to our notice earlier decisions of this Tribunal at Ahmedabad Bench and other places where similar termination orders were quashed only on the ground of violation of Section 25(F) of the Industrial Disputes Act. In particular, he placed reliance on an unreported judgement dated 01.11.1995 in O.A. No. 401/93, judgement dated 23.11.1994 in O.A. No. 447/94 and judgement dated 24.06.1993 in O.A. No. 461/92 of the Ahmedabad Bench of this Tribunal. Nodoubt, in these decisions, the Ahmedabad Bench of this Tribunal has taken the view that the order of termination is bad for violation of Section 25(F) of the Industrial Disputes Act. In our view, in view of the recent decisions of the Apex Court, this Tribunal cannot decide a dispute which has to be decided by a Labour Court or a Industrial Court under the provisions of Industrial Disputes Act. In K.P. Gupta's case [JT 1995 (7) SCC 522] the Supreme Court has observed in para 22 of the reported judgement at page 530 as follows :-

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> "It is, therefore, apparent that inspite of Section 14 of the Act, the jurisdiction of the Industrial Tribunal, Labour Courts or Other authorities under the Industrial Disputes Act or Authority created under any corresponding Law remains unaffected."

In that case, an order of the competent authority under the payment of Wages Act was challenged before the District Judge under the provisions of the said Act. Then the appeal was transferred to the Central Administrative Tribunal. The question was, whether the appeal pending with the District Judge under Section 17 of the Payment of Wages Act can be transferred to the Central Administrative Tribunal and whether the Tribunal has jurisdiction to decide that appeal ? In page 42 of the reported judgement, the Supreme Court has observed that the Tribunal cannot consider either the original claim under Section 15 of the Payment of Wages Act or Appellate Jurisdiction under Section 17 of the Act.

In view of the above decision of the Supreme Court, this Tribunal cannot have any original jurisdiction like that of a Labour Court or an Industrial Court to decide the disputes arising under the Industrial Disputes Act. Hence, we cannot go into the question of whether the respondents is an 'Industry' under the Industrial Disputes Act and whether the order of retrenchment is contrary to Section 25(F) of the Industrial Disputes Act or not. The applicant will have to approach the appropriate forum under the Industrial Disputes Act and agitate those claims

arising under that Act. Infact, the respondents have even produced a judgement of the Industrial Tribunal, Bangalore in Central reference no. 29/84 dated 08.08.1986 where it has been held that first respondents' counter-part at Bangalore is not an 'Industry' within the meaning of Industrial Disputes Act. Anyhow, we need not go into this question, since we have no jurisdiction to decide that point.

7. As far as the validity of the termination order under the Central Service Rules or Contract of Appointment is concerned, we will examine it now.

One of the appointment orders of the applicants is at page 20 of the paper book. It says that the appointment may be terminated at any time by a month's notice without assigning any reason. It further provides for termination of appointment with one month's notice or even without a month's notice, subject to payment of a month's salary. The appointment order also mentions that the other service conditions are being governed by the rules.

In the present case, action has been taken by the respondents under the C.C.S. (Temporary Service) Rules, 1965. Earlier, Rule 5 of 1965 Rules provided either one month's notice or payment of one month's salary forthwith in lieu of notice. The Supreme Court interpreted this Rule in AIR 1972 SC 1487 (Sr. Superintendent R.M.S., Cochin & Anr. Vps. K.V. Gopinath) and held that if payment of one month's salary is not tendered alongwith the notice then the order of termination is bad. It is

admitted that in 1971
~~stated,~~ ~~in 1965~~ that rule was subsequently amended. After the amendment also, we have a decision by the Apex Court in the case of Union Of India & Others V/s. Arun Kumar Roy (1986 (1) SCC 675 (where the Supreme Court considered the amended rule and held that after the amendment of 1971, payment of one month's salary in lieu of the notice period alongwith the notice is not mandatory. The amount can be paid even subsequently. The amendment was in 1971. We are concerned with the order of termination of 1992, which is governed by the amended Rule 5. Now in view of the amendment of Rule 5 and a decision of the Apex Court, the payment of one month's salary alongwith notice is not mandatory. It can be paid subsequently.

In the present case, it is admitted by the Learned Counsel for the applicants at the time of arguments that the applicants have subsequently received one month's salary in lieu of the notice. Since payment alongwith the notice is not mandatory, the order of termination is valid even though the payment of a month's salary was paid subsequently.

8. Another argument is that the office at Silvassa was not closed but offices at different places were closed and, therefore, the order of termination is bad. The respondents have explained that due to closure of offices at different places and since all the branches work under the same Head Office, the senior officials in other branches had to be accomodated and some of them are accomodated at Silvassa. By applying the Rule or

by applying the principle - "last come first to go", the junior most employee had to be terminated to accomodate the seniors. That is how the applicants' services were terminated. Even if the termination order is held to be bad in law for any reasons, still the applicants cannot claim back-wages as of right when the termination or retrenchment is due to abolition of posts. Certain posts came to be abolished due to closure of certain offices and senior officers had to be accomodated at Silvassa and therefore, the applicants services were terminated. How can the Tribunal grant reinstatement with effect from the date of termination when there was no post available to the applicants due to abolition of posts in different places and senior officials being accomodated at Silvassa. Therefore, even if the order is held to be bad, it is not a case of reinstatement from the date of termination, hence, consequently, the question of granting backwages from the date of termination does not arise even if the order is bad in law. Because of opening of new offices or creating of new posts the respondents again gave employment to the applicants, for which the applicants should thank themselves. Now the applicants are happily re-employed and, therefore, they have no right to claim back-wages in the facts and circumstances of this case. The argument of the Learned Counsel for the respondents that the applicants are also not entitled to back wages on the principle of "No work, No pay" is also not without force.

For the above reasons, our finding ~~defence~~ is that the order of termination under the Service Rules is perfectly valid and therefore, the applicants have no claim for back-wages. As already stated, even if the order is bad in law, the applicants cannot get

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reinstatement from the date of initial order of termination and consequently cannot get backwages for the reasons mentioned earlier.

9. In the result, the application is disposed of as follows :-

(i) The prayer for reinstatement does not survive since all the applicants have since been re-employed by the respondents.

(ii) The applicants are not entitled to other reliefs like backwages and other service benefits claimed in the O.A.

(iii) This order is without prejudice to the rights of the applicants, if any, and if so advised, to challenge the legality or validity of the termination order and to claim consequential benefits before an appropriate forum under the Industrial Disputes Act, according to law.

(iv) In the circumstances of the case, there will be no order as to costs.

(D. S. BAWEJA)
MEMBER (A).

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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