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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 47/1993

Date of Decision: 11-4-97

Baliram Sakharam Bhoir Petitioner/s

Shri V.S. Masurkar. Advocate for the
Petitioner/s

V/s.

Union of India and others. Respondent/s

Shri S.S. Karkera for
Shri P.M. Pradhan. Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESOCOT ROAD, BOMBAY:1

Original Application No.47/93

Pronounced the 11th day of — April 1997.

CORAM: Hon'ble Shri M.R. Kolhatkar.

Baliram Sakharam Bhoir
Ex-Casual Labour
residing at
Repoli, Post : Usarghar
Rai: Mangaon,
Dist. Raigad. ... Applicant.

By Advocate Shri V.S.Masurkar.

V/s,

Union of India through
Telecom District Engineer
4th floor, Mohatta Market
Palton Road, Bombay.

Junior Telecom Officer
Department of Telecom,
Shriwardhan. ... Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R

{ Per Shri M.R. Kolhatkar, Member (A) }

In this O.A. the applicant, who was working as a Casual Labourer with the respondents has challenged his termination order dated 18.1.92 at page 7 of the O.A. as well as earlier oral termination in October '89. The contention of the applicant is that he has been working as a casual labourer in the Telecom department with effect from November 1982. In the first calendar year i.e. from November 1982 - October 1983, he had completed 240 days and he ought to have been given temporary status in terms of Supreme Court judgement in the case of Daily Rated Casual Labour Employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch V/s. Union of India and others (1987) 5 ATC 228. The applicant further contends

that he has put in 1077 days of service from 1.11.82 to 30.9.89. His services were at that stage orally terminated. The applicant thereafter made a representation on 30.10.89 and the same came to be considered favourably and the applicant was engaged afresh as a casual labourer with effect from 1.5.90 till he was terminated on 18.1.92. According to the applicant he had completed 230 days of service ending 18.1.92 and he was not tendered one month's wages in lieu of notice and he should therefore be deemed to have completed more than 240 days and attained temporary status even in the second spell of engagement. The applicant therefore seeks the relief that the oral termination of October '89 and subsequent termination order dated 18.1.92 should be held to be illegal and should be quashed and that the applicant should be reinstated and deemed to have acquired temporary status in service.

2. The respondents have opposed the O.A. According to the respondents the applicant was engaged not in November '82 but in December '82, that the applicant was irregular in attendance and the total number of service from 1.12.82 to 31.7.89 was about 24 months whereas the applicant was absent for about 4 years and 10 months. Since there was no work and the applicant was irregular ~~from~~ in attendance he was orally terminated from 1.10.89. The applicant appealed on 30.10.89 and taking into consideration the appeal that the applicant had completed 240 days in a year, the respondents have issued an order asking the applicant to report for duty at Mangaon under S.D.O.T. Mahad on or before 1.6.91 pending verification of duty period completed by him. On verification it was found that the

applicant had never worked for 240 days in any calender year right from his date of employment. In this connection the respondents have produced photo copies of the Muster Roll and also given summary thereof in Annexure II to the written statement.

3. On perusal of the summary it is seen that prior to the termination of the applicant in October 1989 the applicant had not put in 240 days in any calendar year. I have considered the period from January '88 onwards. In January '88 particulars are stated to be not traceable. The applicant contended that he had worked for 31 days. However taking the respondent's statement from February '88 till January '89 it is seen that the ~~seen that the~~ applicant has worked for the following days.

February '88	-	29 days.
March '88	-	31 days.
June '88	-	26 days.
July '88	-	19 days.
October '88	-	27 days.
November '88	-	25 days.
December '88	-	24 days.
January '89	-	24 days.
	-	205 days.

February '89	-	21 days.
March '89	-	30 days.
July '89	-	25 days.
August '89	-	30 days.
September '89	-	06 days.
	-	112 days.

4. So far as the days on which the applicant has worked after fresh engagement is concerned, he has worked as below.

June	'91	- 30 days.
July	'91	- 31 days.
August	'91	- 31 days.
September	'91	- 30 days.
October	'91	- 31 days.
November	'91	- 30 days.
December	'91	- 31 days.
January	'92	- 17 days.
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		- 230 days.

5. The contention of the applicant is that the applicant was all along prepared to work but he was not given work and the respondents obtained a statement from the applicant that he has never worked for a continuous period of 240 days (Annexure 10) and that such a statement was taken to deprive him of his right to continued employment and temporary status.

6. The respondents stated that the department had a scheme for conferment of temporary status on casual labour, copy of which is at Annexure 11 and that the applicant did not fall within the four corners of the said circular.

7. The applicant apart from relying on Supreme Court judgement of Daily Rated Casual Labour case referred to above has also relied on the following judgements.

(1) Supreme Court in Briji Kishor & Ors. V/s. Union of India Writ Petition No. 1041 of 1988.

(2) CAT Judgement in K.C. Hariharan V/s. Senior Fisheries Scientist & Others. 1993 (1)(CAT) SLJ 439.

(3) CAT Judgement in Mohinder Singh and others etc. V/s. Union of India and others etc. 1995(2) ATJ 274.

The learned counsel for the applicant particularly emphasized the fact that in K.C. Hariharan's case the Tribunal held that when the termination notice did not contain tender for notice pay and compensation which is a condition precedent under Section 25F, the termination is illegal. On the other hand the respondents relied on the Supreme Court Judgement in the case of Sub-Divisional Inspector of Post, Vaikam & Ors. etc. V/s. Theyyam Joseph etc. 1996(1) SC SLJ 293. According to this judgement, the Post and Telecom Department is not an industry. Hence ID Act does not apply.

8. As to the question of Post and Telecom Department is not being an industry, the issue stands referred to a larger bench. Hence the issue of Telecom Department not being an industry remains open. However it is not necessary for me to go into the question of whether P & T Department is an industry or of going into the question of applicability of Section 25 F of the I.D. Act to the facts of this case. I am of the view that I can consider the matter as observed by the Tribunal in the case of K.C. Hariharan by examining whether the department of Government/ in terms of various schemes of the department for decasualisation following the directions of the Supreme Court for conforming of temporary status on casual labour. The Tribunal observed in

para 7 as below:

" The learned counsel for the applicant argued that even though it is legal for the employer to retrench a workmen, the retrenchment should be bonafide. If the requirement to retain the workmen is there and if work is available, to retrench the workmen at the pleasure of the employer should be deemed to be for collateral motives and not bonafide. The learned counsel for the respondents on the other hand argued that if the mandatory provisions of Section 25 F of the ID Act are complied with, there is nothing which would stand in the way of an employer dispensing with the services of a workman. We are not impressed with this argument. If we accept that proposition, it should mean that an employer can at his sweet will and pleasure throw out an employee from service provided he pays the retrenchment compensation and notice pay. This is a policy of hire and ~~fair~~ ^{fire} which cannot be allowed to hold the field in a civilised society where the right to work is considered as a fundamental right. The Fisheries Survey of India is not a private enterprise. It comes under a Department of the Government of India. Therefore, it must be actual requirement of service and not the pleasure of the appointing authority that should decide whether a workman should continue in service or not. If the policy of retrenching a workman at the pleasure of the appointing authority after paying the retrenchment compensation and notice pay is allowed to be operative, the right of a person who had been working on a casual basis for a long period for regularisation can be easily defeated. We are of the view that it is unjust to allow such a course to be operative."

9. The Department issued the first scheme for regularisation of casual labour of the Department of Telecom with reference to the crucial date of 30.3.85 and thereafter with reference to crucial date of 18.11.89. So far the applicant is concerned his case was not considered with reference to 30.3.85 and his services were orally terminated in October '89 for reasons which are not clear but apparently to deprive him of the benefit of crucial date of 18.11.89. Thereafter the applicant made a representation and the same was considered favourably and the applicant was engaged afresh. As per the admission of the respondents the applicant had completed 230 days of service well within the period of calendar year (June 91 to January 92) as on the date of impugned termination order dated 18.1.92. The applicant was apparently terminated deliberately so as to deny him the benefit of completion of 240 days of service in a calendar year. I am inclined to hold that the applicant can/said to have completed more than 240 days of service in the calendar year 91-92, taking in view the fact that tender of money in lieu of notice period was not made. I therefore hold that the termination of the applicant both oral termination in October '89 as well as written termination dated 18.1.92 are arbitrary and the applicant is entitled to the relief of re-instatement and to be considered for conferment of temporary status. In this connection I also rely in my own decision in O.A. 913/93 in which I had an occasion to refer the decision of the Division Bench of the Tribunal in the case of Suresh Keshavrao Garad V/s. Union of India and others.

M 1995(1) ATJ 40 in which a Division Bench of Tribunal

dealt with an earlier circular on decasualisation I also hold that the applicant is entitled to the same relief namely quashing of the order of termination. The respondents are therefore, directed to consider the case of the applicant for grant of Temporary Status on the footing that he had completed 240 days in the calender year 1991-92. The applicant should be suitably employed as and when employment is available in the unit and he should be given benefit of seniority from 1991-92. In the facts and circumstances of the case, I am not inclined to grant backwages. The O.A. is therefore, allowed in these terms. No order as to costs.

M.R. Kolhatkar

— (M.R. Kolhatkar)
Member (A)

NS

15) 28/5/2001

C.P. No. 19/2001

Heard Shri K.R. Yelwe, the
Adv. counsel for applicant.

The order has been passed
by this Tribunal on 11.4.1997.
C.P. has been filed on 19.3.2001.
It is barred by limitation, which is
one year from the date of passing
of the order. Otherwise also, this
C.P. is not maintainable for the
reasons that applicant filed
C.P. No. 71/97 earlier in respect
of same cause of action. The applicant
preferred to withdraw that C.P. on
17.11.1997 and hence the second C.P.
No. 19/2001 is not maintainable.

The C.P. is dismissed
summarily at the admission stage.

B.N. Bahadur
(B.N. Bahadur)
MCA

B. Dikshit
(B. Dikshit)
V/C.

OS

order/despatched
to Respondent(s)
on 27/5/01

AM