

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 68/94.

Date of Decision: 27-2-98

Vilas Giridhar Mhatre

.. Applicant

Shri S.P.Kulkarni

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri S.S.Karkera.

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

(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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 68 /94.

Friday, this the 27th day of February, 1998.

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

Vilas Giridhar Mhatre,
LIG B 41, CIDCO Colony,
Sector No.3, At P.O. Kalamboli,
(New Bombay), At P.O. Kalamboli,
New Bombay.

... Applicant.

(By Advocate Shri S.P.Kulkarni)

V/s.

1. Union of India through
Superintendent of Post Offices,
New Bombay Divn., At P.O.
Panvel-410206.
2. Postmaster,
Panvel Head Office,
At P.O.
Panvel-410 206.
3. Director of Postal Services,
(City) Office of the
Chief Postmaster General,
Maharashtra Circle,
Bombay-400 001.
4. Shri N.D.Jagtap,
E.D.A. and Night Watchman,
(On Deputation-adhoc),
Panvel H.O.,
At P.O. Panvel H.P.O.410206.

... Respondents.

(By Advocate Shri S.S.Karkera)

O R D E R

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

In this O.A. the applicant is aggrieved by the action of the respondents in terminating his ^{night Watchman} services as/ orally in October, 1993 after having worked for 248 days i.e. in excess of 240 days continuously. According to the applicant, therefore, he has attained temporary status and therefore he cannot be removed arbitrarily without due process of law.

2. The second grievance of the applicant is that after being terminated he was replaced by a deputationist as Extra Departmental Agent (EDA). This was done on the basis of standing instructions incorporated in the D.G.P. & T letter dt. 7.12.1972 (E.D.A. Conduct and Service Rules, 1995 vide page 107 of Swamy's Compilation). In the clarification it is stated that the first preference in short term arrangements against Group 'D' posts should be given to ED Agents and Group 'D' employees may be brought on overtime duty, only when ED Agents are not readily available. It appears that it was in reliance of these instructions ^{that} the Divisional Superintendent ^{regarding} had advised the Postmaster, Panvel the appointment of an E.D. Official working in the New Bombay in place of the applicant (vide Annexure R-2 to the written statement).

3. According to the applicant, the instructions of the department directing preferential treatment to be given by to the EDA vis-a-vis outsiders are held to be bad ⁱⁿ law / successive judicial pronouncements. In Raj Kumar V/s. Union of India and Ors. (1992(2)A.T.J. 480) it was observed in para 7 that "giving preference to the EDAs and ignoring the applicant (who was an outsider) for appointment in an unapproved capacity on daily wage basis is legally unsustainable." Reliance was also placed on the observations of the Full Bench in G.Manjunath V/s. P.M.G. Bangalore (1992 20 ATC 402). Further, only ^{though} recently, ~~xxxx~~ this particular Judgment has not been noticed therein, in K.Rajasekharan Nair & Ors. V/s. Union of India and Ors. ((1995) 29 ATC 760) it was observed in para 4 as below:-

"Deploying them as casual workers, denying work to casual workers, prima facie, would amount to an unfair labour practice. We declare that engagement of Extra Departmental Agents against

regular group-C and group-D vacancies, masquerading them as casual employees, is illegal."

I

In this Judgment the issue was approached from the point of view of rights of ^{Extra}Departmental Agents, but the judicial authority appears to support the view that the departmental instructions dt. 7.12.1972 have been held to be illegal, though they have ^{not} been formally quashed and to the extent ^{the} termination of the applicant was based on these departmental instructions, his termination is also illegal.

3. On this point the contention of the respondents is that the applicant in fact has not worked for 248 days but he has only worked for 196 days after excluding Sundays and Holidays. Therefore, the question of applicant getting any temporary status does not arise because he has not completed 240 days. On this point, the counsel for the applicant relies on Shakuntala Devi V/s. Secretary, Department of Food Ministry of Food & Civil Supplies (1990 (3) CAT SLJ 408). In this Judgment it was held that "the weekly offs and holidays must be reckoned for computing the number of working days put in by a casual worker" and for this purpose reliance was placed on the Supreme Court Judgment in the case of H.P. Singh v. Reserve Bank of India (AIR 1986 S.C. 132).

4. If Sundays and Holidays are included then it is conceded by the department that the record shows that the applicant had worked ^{though} not for 248 days as contended by the applicant but, ~~has worked for 244 days~~ for 244 days. There is no ^{therefore} dispute that he has worked in excess of 240 days and if there is a scheme of the department ^{under} which he can be declared to be temporary then he should certainly get the benefit thereof. In this connection,

reliance was placed on Union of India V/s. Basant Lal & Ors. (1992(1) SLJ 190). That was a case relating to Casual Labour in the Railways and the question was regarding temporary status of Casual Labour in the Projects as against Open Lines in the light of Indian Railway Establishment Manual. But, here we are concerned with the Postal Department and it was conceded that although there is a scheme in the Postal Department for confirmation of temporary status casual labour and though the scheme which was initially promulgated on 12.4.1991 was extended to 1.9.1993, this does not really help the applicant because he does not fulfill the conditions laid down even in the revised memorandum. Therefore, the position in the nutshell is the following : That the applicant is found to have worked in excess of 240 days and therefore he is entitled to all the benefits flowing there from under the rules. However, the applicant cannot get benefit from the departmental scheme. Of course, to the extent replacement of the applicant by deputationist EDA was illegal, deputationist EDA could have been directed to make way for the applicant. The present position, however, is that the post is no longer held by the EDA, but it is held by a regular Group 'D' employee. Therefore, the relief of reinstatement cannot be granted to the applicant. Faced with this predicament, the learned counsel for the applicant prayed that the relief may be granted in terms of para 15 of the Judgment in the case of Sub-Divisional Inspector of Post, Vaikam & Ors. etc. V/s. Theyyam Joseph etc. (1996(1) SC SLJ 293). Para 15 of the Judgment reads as below :

"The facts of this case are that the respondent

was selected on regular basis as substitute to Extra-Departmental Packer at Calicut. While he was working, recruitment was made by calling the names from the Employment Exchange. Since his name was not sponsored, he was terminated from employment. In view of the reasoning given above, he being temporary working candidate, he cannot get any right; however, his case is directed to be considered along with other candidates and if he is found eligible, he may be considered and appointed according to the Rules."

In that Judgment, the Hon'ble Supreme Court observed that since the applicant was a temporarily working candidate he cannot get any right; however, his case was directed to be considered along with other candidates and if he is found eligible, he may be considered for appointment according to the rules.

5. In view of this, the O.A. is disposed of as below:

O R D E R

1. It is hereby declared that the applicant worked as casual night watchman for 244 days in 1993 when his services were orally terminated.
2. It was illegal for the department to have replaced the applicant by a deputationist EDA.
3. Since the post of night watchman is no longer available and the applicant cannot be granted the relief of reinstatement, it is hereby directed that the department may consider the applicant's case keeping in view his experience, for an appropriate Group 'D' post or the post of EDA, if he is found eligible for either of the post.
4. The age relaxation may be given to the extent of the period during which he was kept out of work viz. from October, 1993 till the date of the order.
5. No orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A).

B.