

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:553/97

DATE OF DECISION: 11-1-2001

Shri Kamlesh Moreshwar Karhadkar Applicant.

Ms. S.S. Joshi. Advocate for
Applicant.

Versus

Union of India and others Respondents.

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

CORAM

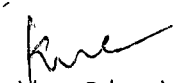
Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not? |

(2) Whether it needs to be circulated to
other Benches of the Tribunal? | 2

(3) Library:


(Kuldip Singh)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 553/97

the 11th day of JANUARY 2001

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

Kamlesh Moreshwar Karhadkar
Residing at
5/B-205, Shalibhadra Nagar,
B.P. Cross Talao Road,
Bhayandar (East) Thane.

...Applicant.

By Advocate Ms. S.S. Joshi.

V/s

1. The Union of India
C/o Member of Post
Sanchar Bhavan,
New Delhi.
2. The Postmaster General
Maharashtra Circle, GPO,
Mumbai.
3. The Superintendent of Post
Thane West Division,
Mira Road, (East)
Thane.
4. Shri S.J. Nimla
The Post Master,
Bhayandar (W) Post Office,
Bhayandar (West), Thane.

...Respondents.

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

O R D E R
{Per Shri Kuldip Singh, Member(J)}

The applicant impugns his oral termination of service by the respondents. The applicant claims that during February 1993 to November 1996 he had been engaged on daily rate wages as Postman / Telegram messenger against a clear substantial vacancy without any formal orders. But one fine morning he has not been allowed to resume duty which amounts to oral termination. Even thereafter applicant had been reporting for duty but he was not allowed to resume duty.

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2. The applicant further claims that during June 1995 to November 1996 he had completed 240 days and was entitled for re-instatement. He also claims wages for October and November 1996.

3. In reply the respondents say that applicant was not regularly appointed so question of termination does not arise. He was engaged only on those days when regular staff was not available on stop gap and daily rate wages basis.

4. Respondents also deny that applicant had been working for 4 years i.e. during 1993 -96. They further deny that applicant had completed 240 days during June 1995 to 1996.

5. As regard wages for the period October 1996 to November 1996 are concerned the respondents say that they have sent a letter to applicant dated 25.2.1997 (R -2) but applicant failed to collect the amount due.

6. Respondents also submitted that on availability of regular staff the respondent had disengaged the service of applicant.

7. Rejoinder was also filed where the applicant alleges that work is of perenial nature and is still available. The department has engaged another daily worker in his place, which they could not have done. He has also filed an affidavit of the person who has been engaged after his termination.

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8. We have heard the learned counsel for the parties and have gone through the records.

9. Admittedly the applicant was working as daily wage / casual employee with the respondents. His service has been disengaged as according to respondents work is not more available as regular staff had become available, so applicant cannot be engaged again.

10. On going through the pleadings we find that applicant claims to have worked for more than 240 days in a year, which fact is denied by respondent as respondents have relied on a circular that while counting the number of days ~~over~~ the ~~period~~ weekly offs are to be excluded and respondents had submitted that no right for ~~conferring~~ ^{confering} even temporary status had ~~worked~~ ^{accrued} ~~to~~ ^{to applicant or}.

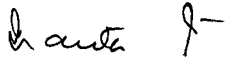
11. However, the facts remain that there is some dispute in calculating the number of days.

12. As regards the availability of work is concerned, applicant has placed on record affidavit of another person who is said to have been engaged by the respondents which at least shows that the work of the nature which applicant was performing is still available with the respondents.

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13. Hence, we feel that this OA can be disposed of with the direction to the respondent that if work is available with them then respondents shall reengage the applicant on daily wage / casual basis in preference to any freshers and juniors to the applicant.

14. As regards the conferment of temporary status is concerned, the applicant shall make a detailed representation within 15 days of the order, giving complete number of days for which he has worked and respondents thereupon shall pass a speaking order within a period of 2 months on receipt of representation.



(Ms. Shanta Shastry)
Member (A)



(Kuldip Singh)
Member (J)

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