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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No.927/91.

Date of Judgment:23-3-1992

Between:

Divisional Engineer, Telecommu- Applicant
nications, Bhimavaram (A.P.)

Vs.

- 1. G.Rama Murthy
- 2. Industrial Tribunal (Central), Respondents
Hyderabad.

For the applicant : Shri Naram Bhaskara Rao, Addl.
Standing Counsel for Central
Government.

For the Respondents : Sri C.Suryanarayana, Advocate (R-1)

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY , MEMBER (JUDL.)

{JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J.ROY, MEMBER(J) }

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This application is filed under section 19 of the Adminis-
trative Tribunals Act, 1985 with a prayer to quash the award
passed in I.D.No.29 of 1988 dt. 25.8.1990 by the Industrial
Tribunal, Hyderabad (R-2).

2. The applicant states that the 1st respondent had applied
for the post of Telephone Operator in the 1st half year 1980
recruitment in the erstwhile Eluru Telecom Division. One Sri
Sri M.V.N.Koteswara Rao, as per merit of marks was at Sl.No.70
in the list. He appeared for the aptitude test and General
knowledge but was not selected. The applicant also states
that 1st respondent could not come within the zone of con-
sideration due to less marks and was at Sl.No.177 in the merit
list, and therefore he was not selected for the post.

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It is stated that, the 1st respondent was, however, engaged purely on casual basis to meet the absent^{ee}ism of regular Telephone Operators by giving a training for a short period of seven days on hourly basis. He was also informed that the said engagement as S.D.T.O. would not confer any right on him for regular absorption and that he would be disengaged if there is no work. The applicant states that 1st respondent was engaged as Short Duty Telephone Operator from 2-11-1980 to 25-4-1981 and further as Casual Telecom Office Assistant from 9-7-81 to 27-9-82 and thereafter was not engaged to any work. The applicant alleges that the said respondent has no right to continue in the department without being properly selected.

3. The applicant states that the 1st respondent approached the Industrial Tribunal by preferring an I.D. No.29 of 1988 against the disengagement by the applicant. The said Tribunal held that the 1st respondent had worked for 250 days as S.D.T.O. and T.O.A. on casual basis. The Tribunal directed the applicant herein to absorb the 1st respondent as regular Telephone Operator without back wages but with all other attendant benefits vide award dt. 25.8.90 on the ground that the Sri M.V.N.Koteswara Rao was absorbed and thus the applicant was discriminated. The applicant states that the 1st respondent had not applied for the 2nd half-year 1980 recruitment and that the said Sri M.V.N.Koteswara Rao was given regular Telephone Operator training from 13-7-1981. After successful completion of training he was allotted as S.D.T.O. in place of Casual S.D.T.Os. by letter dt. 13-10-1981 in terms of the instructions issued by the C.G.M.Telecom, A.P. by proceedings dt. 5-3-1981. The applicant states that no irregularity or impropriety much less illegality committed in selecting the said Sri M.V.N.Koteswara Rao and not selecting the 1st respondent herein.

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4. The applicant alleged that the Industrial Tribunal with an erroneous presumption held that Sri M.V.N.Koteswara Rao was selected in the 1st half year 1980 Telephone Operators recruitment, and states that he was selected through the 2nd half year recruitment. The applicant averred that the 1st respondent did not even apply for the 2nd half year recruitment and that the award passed by the Industrial Tribunal to absorb the 1st respondent into service from the date of dismissal is liable to be set aside.

5. The 1st respondent filed counter affidavit and opposed the application. It is alleged that the application is not maintainable as no error of law or fact in the proceedings of the Industrial Tribunal or in the Award passed by the Tribunal. It is also alleged that the applicant neither presented the proper perspectives nor any evidence adduced during the trial and that the same cannot be permitted to re-open the case to have a reassessment of the evidence on record. The respondent No.1 states that the applicant is stopped from making the allegation that the Tribunal made an erroneous presumption as no evidence was adduced to that effect during the trial. The respondent No.1 states that a Writ court can issue the extraordinary legal remedy of writ of certiorari only for correcting an error of law or an error of fact on the face of the record or any breach of rules of natural justice and further state that this Tribunal cannot sit in appeal and award any relief. It is alleged that the applicant has not raised any error of law and states that this O.A. is not maintainable at all, and desired the application be dismissed.

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6. The applicant filed 10 annexures along with the O.A. Annex. A-1 is the Statement of Claim made by the 1st respondent in I.D.No.29 of 1988; Annex. A-2 Affidavit to Industrial Tribunal dt. 18-10-1987; Annex. A-3 counter affidavit; Annex. A-4 Award dt. 25-8-1990 in I.D.No.29/88 passed by the Industrial Tribunal, Hyd.; Annex. A-5 Notification dt. 19-9-1990 publishing the award in Gazette of India; Annex. A-6 Writ Petition No.8834/91 filed against the award of Industrial Tribunal in High Court of A.P.; Annex. A-7 order dt. 16-7-1991 passed in W.P.No.8834/91; Annex. A-8 dt. 17-10-1980 engaging Sri G.Rama Murthy as SDTO on casual basis; Annex. A-9 Minutes of the DPC dt. 27-2-1981 in connection with recruitment of Telephone Operators for the 2nd half year 1980; and Annex.A-10 allotment of Sri M.V.S.Koteswara Rao to Akiveedu. The records on the file of the Industrial Tribunal, Hyderabad in I.D.No.29 of 1988 are also placed on record.

7. We heard Sri N.Bhaskara Rao, learned counsel for the applicant and Sri C.Suryanarayana, learned counsel for 1st respondent, and perused the records carefully.

8. The learned counsel for 1st respondent Sri C.Suryanarayana, in support of his contentions cited the following cases.

- (i) AIR 1984 SC 976 - Jitendra Singh Rathod Vs. Sri Baidyanath Ayurved Bhavan Limited
- (ii) AIR 1964 SC 477 - Syed Yakoob Vs. Radhakrishna(n)
- (iii) 1962 (2) LLJ 236 SC - Balwant Rai Chamanlal Trivedi Vs. M.N.Nagarashana
- (iv) AIR 1988 SC 2168 - Calcutta Port Shramik Union Vs. The Calcutta River Transport Association and others.

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9. The point involved in this case is whether the award passed by Industrial Tribunal, Hyderabad directing the absorption of 1st respondent herein on regular basis in the post of Telephone Operator or Office Assistant, from the date of his dismissal or termination or non-engagement but without any back-wages, with all other attendant benefits is correct or not?

10. In view of the observation of the Industrial Tribunal in para-17 that "if that was a case of M.V.N.Koteswara Rao, how the case of the present workmen in question Sri G.Rama Murthy can be distinguished or differentiated is un-understandable. Hence, it can be safely be stated that the Management is not justified in non-engaging him or not entrusting him in work and simply dropping him out is not justified at all", the case of 1st respondent herein and Sri M.V.N.Koteswar Rao cannot be distinguished or differentiated. It can also be seen that during the trial the applicant herein has not adduced any evidence as observed by the Industrial Tribunal -

".. on behalf of the management, no documents were marked except Ex. M-1, a representation dt. 20.1.1984 requesting for regular absorption as Telephone Operator in Bhimavaram Division. On behalf of the workman all other documents are marked and they are all departmental circulars etc. and there is no dispute about it."

The learned Tribunal further observed in para-7 & 10 that -

"these documents go to show that the Short Duty Telephone Operator should be absorbed as a regular Telephone Operator according to their terms in the next year of their recruitment provided they put in 120 days in the 6 months preceeding absorption in the regular establishment."

"it can be safely stated that none of these documents are in dispute. There are orders to the effect that once a fellow was appointed as SDTO and having worked for 120 days in a period of 6 months, he must be absorbed."

In view of the observations made by the learned Industrial Tribunal, we have to examine whether the 1st respondent is entitled for absorption as stated in the Award; and whether ^{there} was enough material before the learned Chairman of the Industrial Tribunal;

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and whether the case should be remanded back to the learned Chairman, Industrial Tribunal for re-consideration *and for allowing additional evidence*

11. On perusal of the Exhibits marked during the trial before the Industrial Tribunal viz. Ex. W1 - Advertisement for the posts of Telephone Operators; Ex.W2 - Letter with regard to Training and Posting addressed to 1st respondent by the Divisional Engineer, Telegraphs, Eluru; Ex. W3 Attendance Certificate in respect of 1st respondent; Ex.W4 Service Certificate of Sri G.Rama Murthy; Ex.W5 Scheme of Short Duty Telephone Operators; Ex.W6 Instructions regarding absorption of Short Duty Telephone Operators as regular Telephone Operators; Ex.W7 - Clarifications issued by the Deptt. in the matter of absorption and regularisation of Telephone Operators; Ex. W8 - regarding constitution of Standing Pool of trained reserve candidates viz. Telephone Operators, Office Assistants etc.; Ex.W9, W10, W.11 - again regarding Constitution of Standing Pool of trained reserve as aforesaid; Ex.W12 letter addressed to Sri M.V.N.Koteswara Rao by the Divl.Engineer regarding training and posting as Short Duty Operator at Bhimavaram Exchange; Ex.W13 gradation list of Telephone Operators; Ex.W14 - Appointment orders dt. 10.7.1985 issued to Sri J.V.S.N. Murthy and others by the DE, Telephones, Bhimavaram-I; Ex.W15 Letter dt. 27.3.1986 issued by Ministry of Communications; Ex.W16 SSC certificate of 1st respondent herein regarding his educational qualification; Ex.W17 Memorandum of marks issued by the Board of Intermediate Education of Sri Ram Murthy; Ex.W18 - Copy of Certificate of the 1st respondent (B.Com.); Ex.W19 - Copy of M.Com certificate issued by the Andhra University, Waltair to Sri G.Ram Murthy (1st respondent); Ex.W20 letter issued by the Department regarding validity period of list of selected candidates on the basis of direct recruitment etc. in competitive examinations; Ex.W21 regarding Recruitment of Telephone Operators for the year 1980 & 82 in Khammam Division, Ex.W22 letter regarding removal from Service of Short Duty Staff/regularisation thereof;

Ex.W23 - Order of appointment of 1st respondent dt. 2.8.1985;
Ex.W24 - report on the petition of the 1st respondent submitted to ALC(C), Vijayawada; Ex.W-25 detailed report submitted to the ALC(C), Vishakapatnam by the Vice President, AITEEU Class III, Telephone Exchange, Bhimavaram; Ex.W26 - regarding Hall permit to 1st respondent to take the departmental competitive exam. for recruitment to the cadre of Telephone Inspectors for the year 1990; Ex.W27 copy of telegram issued to the 1st respondent regarding departmental examination, addressed by DGMT, Eluru; and Ex.M1 representation of the 1st respondent for regular absorption, it can be seen that Sri G.Ram Murthy, the 1st respondent herein had also worked for the period observed by the Industrial Tribunal. It can be seen that the 1st respondent had worked for the required period of 120 days, and also that the 1st respondent herein and Sri M.V.N.Koteswara Rao, had applied to the post in response to the Advertisement of Ex. W1. As per the record before the Industrial Tribunal, no material was produced to show that there was a different advertisement. Hence the learned Chairman, Industrial Tribunal, based on the evidence and documents on record, had properly held and passed the impugned award directing the applicant herein to absorb the 1st respondent herein.

12. We have also gone through the citations relied by the Counsel for 1st respondent viz.

(a) AIR 1964 SC 477 - Syed Yakoob Vs. Radhakrishnan and others .

Wherein Their Lordships observed that "A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a Writ Court."

"If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

(b) AIR 1988 SC 2168 - Calcutta Port Shramik Union Vs. The Calcutta River Transport Association and others, wherein the Hon'ble Supreme Court held -

"The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an Industrial Tribunal it has to be presumed ordinarily that there is genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by Industrial Tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the Tribunals by striking down awards on hyper-technical grounds."

(c) In Balwant Rai Chamanlal Trivedi Vs. M.N.Nagarashana, reported in 1962 (2) LLJ 236 SC, it was observed that -

"Even if an order or an Award of the Tribunal is vitiated by certain defects the High Courts in their jurisdiction under Articles 226 & 227 may not interfere unless there is a gross miscarriage of justice or flagrant violation of law calling for intervention."

13. In view of the observations supra, and the principles of rulings of the Hon'ble Supreme Court of India cited, we find no reason to remand back the matter to the Industrial Tribunal for filing additional documents, at this stage.

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14. Under the circumstances, we hold that the award passed by the learned Chairman, Industrial Tribunal, Hyderabad is proper. Hence the application is dismissed. There will be no order as to costs.

R. Balasubramanian

(R. BALASUBRAMANIAN)
MEMBER (A)

C. J. Roy
(C. J. ROY)
MEMBER (J)

Date: 23rd March, 1992.

grh.

S. S. S. S. S.
Deputy Registrar (Judl.)

Copy to:-

1. Divisional Engineer, Telecommunications, Bhimavaram (A.P.)
2. Industrial Tribunal (Central), Hyderabad.
3. One copy to Sri. Naram Bhaskara Rao, Addl. CGSC, CAT, Hyd.
4. One copy to Sri. C. Suryanaryana, advocate, CAT, Hyd. for R1.
5. One spare copy.
6. one copy to D.R. (J)

Rsm/-

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O.A. 927/91

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

~~THE HON'BLE MR.~~

V.C.

~~THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)~~

AND

~~THE HON'BLE MR. T. CHANDRASEKHAR REDDY~~
M(JUDL)

AND

~~THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)~~

DATED: 23/3 - 1992

Control Administrative Tribunal
DESPATCH
2-4-92
HYDERABAD BENCH

ORDER/JUDGMENT:

~~R.A./C.A/ M.A.No.~~

in

O.A.No.

927/91

T.A.No.

(W.P.No.)

~~Admitted and interim directions issued.~~

~~Allowed~~

~~Disposed of with directions.~~

~~Dismissed~~

~~Dismissed as withdrawn~~

~~Dismissed for default.~~

~~M.A. Ordered/ Rejected~~

~~No order as to costs.~~

3/28/92
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