

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

DATE OF JUDGEMENT: 21/3/1995 21, 3 - 1995

Between

R.Narasimhulu .. Applicant

and

1. The Asst.Engineer,
UHF Mtce.,DRDL,Kanchanbagh
Hyderabad-268.
2. The Divisional Engineer
Microwave Mtce Sai Nilayam
6-1-85/10, Saifabad
Hyderabad-4.
3. The Director
Mtce,STSR 6-1-85/10 2nd Flr
Saifabad, Hyderabad-4.
4. The Divisional Engineer,
Telecom, Hyderabad(Rural)
Hyderabad-50

.. Respondents

Counsel for the Applicant :: Mr C. Suryanarayana

Counsel for the Respondents :: Mr V. Bhimanna

CORAM:

HON'BLE SHRI A.V. HARIDASAN, MEMBER(JUDICIAL)

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

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JUDGEMENT

(As per Hon'ble Shri AV Haridasan, Member(Judl.))

The applicant, who was engaged as a Casual Mazdoor under the ~~first~~ respondent from 1.9.1991 onwards and had rendered a service of 552 days was terminated by the impugned order dated 11.3.1993, with effect from 12.3.1993 for want of work and as he was said to be the junior most casual mazdoor. The applicant states that he is neither the junior most casual mazdoor nor is there want of work ~~was~~ requiring his retrenchment and that the impugned order issued pursuant to the letter issued by the third respondent dated 18.2.93 (annexure A-II) to the OA) to the DE, STSR, Hyderabad, stating that inspite of instructions issued from the CGMM's office to all field units that engagement of casual mazdoors on Muster Rolls after 31.3.1985 was totally banned, It was noted that several field units were continuing to engage casual mazdoors under ACG.17 and that the said practice was contrary to the instructions. The applicant states that in the retrenchment notice, his position in the seniority of casual mazdoors of Hyderabad DE Territory is not mentioned and therefore, it is not possible to find that his retrenchment was necessitated for want of work and he being the junior most. According to him, he has been retrenched without following mandatory provisions contained in 5(f) of Industrial Disputes Act, as also in violation of Article 14 of the Constitution of India. Therefore, the applicant prays that the impugned order of termination dated 11.3.93 may be set aside and the respondents be directed to reinstate the applicant with full backwages as if he continued in service and protection of seniority showing his name at the appropriate place in the seniority list of casual mazdoors pertaining to his ~~Territorial Telecom Distt~~ to which he belonged.

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2. The respondents in their reply statement have contended that the application is not maintainable since the applicant has not resorted to the remedy provided under the Industrial Disputes Act. They also contend that the Telcom Department is not an industry and therefore the provisions of Industrial Disputes Act do not apply. They admit that the applicant was engaged from 11.9.1991 with the first respondent and was retrenched for want of work by the impugned notice. The position of the applicant in the seniority list of Casual Mazdoors of Hyderabad Territorial Division was not indicated because he was not sponsored by the Telecom-D TDE (Hyderabad (Rural)). It has been indicated that the applicant's service particulars have ~~has~~ been kept in the office of the first respondent and intimated to TDE of Territorial Division of Hyderabad (Rural) for re-engagement as and when work becomes available. As the applicant has been given one month's ~~maximum~~ wages in lieu of notice and retrenchment compensation, simultaneously with the retrenchment ~~and~~ as the retrenchment was effected after completing all formalities in accordance with the rules. According to the respondents, the applicant has no legitimate grievance to be redressed.

3. In the rejoinder filed by the applicant he has contended that the retrenchment compensation has not been correctly paid to him and that, it was paid only after the retrenchment and therefore, the retrenchment is not in order.

4. We have perused the pleadings and materials on record and have heard learned counsel for both the parties.

5. The contention of the respondents that the application is not maintainable as the applicant has not resorted to the remedy available to him under the Industrial Disputes Act and that the provisions of Industrial Disputes Act, are not applicable to the case of the applicant are inconsistent. The applicant has filed this application not only on the ground that the provisions of Industrial Disputes Act have been violated, but also on the ground of violation of Art.14 of the Constitution as Juniors to the applicant have been engaged while the applicant has been retrenched. Provisions of the Industrial Disputes Act are applicable in case of the applicant is evident from the action taken by the respondent themselves because, in the retrenchment notice it has been stated that retrenchment compensation as required under the Industrial Disputes Act was being paid to the applicant. Therefore, the contention that the Industrial Disputes Act is not applicable in the case of the applicant has no force at all. As the applicant has contended that there is violation of fundamental rights guaranteed under Art.14 of the Constitution, the Forum prescribed under the Industrial Disputes Act is not competent to adjudicate this question. Therefore, we find that this application is maintainable.

6. From the notice dated 8.3.1993, Annexure R-1 to the counter of the respondents, it is seen that the list of casual mazdoors working under Divisional Engineer, Microwave Mtnce, Hyderabad has been published on 8.3.93. Therefore, the contention of the applicant that notice as required under Rule 77 of the Industrial Disputes Act (Central) Rules, 1957 has not been published is found to be untenable. The learned counsel for the applicant argued that while Rule 77 of the Industrial Disputes (Central) Rules,

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1957 requires publication of notice ~~seven~~ days prior to the retrenchment, even if it is admitted that notice was published on 8.3.93, the requirement of notice is not fully satisfied. However, since the notice has been published four days prior to the retrenchment, we are of the considered view that the provisions of Rule 77 of the Industrial Disputes (Central) Rules, 1957 have been complied with.

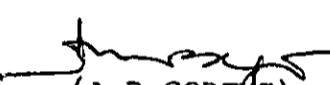
7. The contention of the applicant that the retrenchment compensation has not been properly fixed is not established by any evidence. The case of the applicant that the retrenchment compensation has not been paid prior to the retrenchment also has no force because, the retrenchment compensation and notice pay have been sent to the applicant along with the notice of retrenchment.

8. Learned counsel for the applicant argued that as the ~~compensation~~ position of the applicant in the seniority list of casual mazdoors in the Hyderabad Territorial Division has not been indicated the retrenchment has to be held as illegal. It is not the case of the applicant that the applicant was sent to the first respondent by the TDE (Rural) Hyderabad. He was engaged by the first respondent since the TDE (Rural) could not supply sufficient casual labourers for carrying out work under the first respondent. It is not practically possible to prepare consolidated list of casual mazdoors under different field units simultaneous with their engagement, as engagement by the field units are made under exigencies when the Territorial Division could not sponsor casual mazdoor. However, after the retrenchment of the applicant, the service particulars of the applicant has already been forwarded to the TDE Territorial Division Hyderabad, who will issue orders of ~~re-engage~~ re-engagement.

152

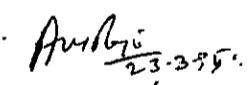
as and when work becomes available anywhere under the division. Therefore, we find that the retrenchment has been effected in accordance with the provisions of Industrial Disputes Act.

9. In the result, the application is disposed off with a direction to the respondents to include the name of the applicant at an appropriate place commensurate with the length of his service in the list of casual mazdoors kept under the fourth respondent and to re-engage the applicant as and when work becomes available anywhere in the division in preference to casual mazdoors with lesser length of casual service than the applicant. There is no order as to costs.


(A.B.GORTHI)
Member(Admn)


(A.V.HARIDASAN)
Member(Judl.)

Dated: 21-3 1995


23-3-95
Dy. Registrar (Judl.)

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Copy to:-

1. The Asst. Engineer, UHF Mtce., DRDL, Kanchanbagh, Hyd.
2. The Divisional Engineer, Microwave Mtce Sai Nilayam, 6-1-85/10, Saifabad, Hyd-4.
3. The Director, Mtce. STSR 6-1-85/10 2nd floor Saifabad, Hyd-4.
4. The Divisional Engineer, Telecom, Hyd(Rural), Hyd-50.
5. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
6. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
7. One spare copy.
8. One copy to Library, CAT, Hyd.

Rsm/-

07-85/93
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CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(C)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

DATED : 21/3/95

ORDER/JUDGEMENT.

M.A.R.P.C.P.No.

in
D.A.N.C. 85/93

Admitted and Interim directions
issued

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

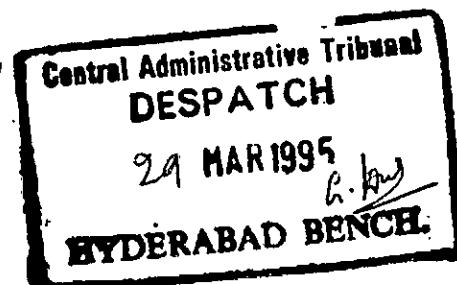
Dismissed for Default.

Rejected/Ordered

No order as to costs.

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20