

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BRANCH HYDERABAD.
O.A.NO'S. 1598/93, 1599, 1600/ 1993



Between

O.A.1598/93.

Between:

1. Circle Secretary, All India R.M.S. & M.M.S. Employees Union, A.P.Circle, Hyderabad.
2. T. Narasimhan, HSG-II, Sorting Asst., Hyderabad Sorting Division, Secunderabad.
3. All India Asst. Superintendents & Inspectors R.M.S. Association, Andhra Circle Rep. by T.A.S.Seetha Rama Murthy, Circle Secretary, Hyderabad.
4. T.A.S.Seetharama Murthy, O/O Chief Post Master General, A.P. Circle, Hyderabad.

... Applicants

And

1. Union of India represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Post Master General, A.P.Circle, Hyderabad.
3. The Post Master General, Visakhapatnam, Region, Visakhapatnam.
4. The Senior Superintendent of Post Offices, Secunderabad Division.
5. Senior Superintendent of R.M.S., Hyderabad Sorting Division, Hyderabad.

Counsel for the Applicant : Sri. P.Rathaiah

Counsel for the Respondents : Sri. N.R.Devaraj, Sr. CGSC.

O.A.NO.1599/93.

Between:

1. Bharateeya Postal Employees Union Class-III, Bharateeya Postal Employees Union Postmen & Group 'D' Employees Union, A.P.Circle, Represented by its President, Head Post Office, Secunderabad.
2. N.Krupa Rao, LSG Postal Assistant, Head Post Office, Sec'bad.
3. All India Ssst. Superintendents/ Inspectors of Post Offices Association, Andhra Circle rep. by its President, Banjarahills post office buildings, Hyd.
4. Y. Appala Raju, Asst. Superintendent of Post Offices, Hyd.

... Applicants

and

1. The Secretary, Department of Posts, Ministry of Communications, Dak Bhavan, New Delhi.

The applicants quoted the instance wherein the Telecom employees struck their work on 3.11.90 and 22.11.90 and that the Department of Telecommunications paid the wages for the said period to the employees and also quoted another instance wherein the postal employees of Assam and N.E. Circle who struck their work on 15.11.91 and 28.12.91 and that they were paid wages for the said period, Thus they felt that instructions issued to withhold their wages for the period as discriminatory. Hence the applicants filed these OAs praying this Tribunal to direct the respondents not to withhold the wages of any postal employee of the Andhra Pradesh circle for the period from 7.12.93 to 10.12.93 declaring that the alleged principle of "No work-No pay" is unenforceable and consequently sought reliefs with consequential in OA 1598/93. The same is considered while considering the other 2 OAs. They contend that the present applications are premature for the reason that their representation dt. 12.9.93 is yet under consideration by the department. That further, withholding of wages for the strike period was issued "pending regularisation of the period". That the Director General of posts, New Delhi made an appeal on 13.11.93 to all the postal employees enumerating various improvements made in the service conditions of the employees and in the said back ground the decision of the federations and unions to go on indefinite strike from 7.12.93 is not justified and that the postal service is an essential service. Thus the Director General warned the employees of severe consequences that the assurances contained in the letter of Member(D), Postal Services Board and the D.O. do not relate to the action taken on principle of "No work no Pay" that the same principle has been employed in the case of postal employees who struck their work between 7.12.93 and 10.12.93. That according to O.M. 42016/(s)/90 Estt.(B) Dt. 1.5.93 of the DOPT, New Delhi, the Government have specifically instructed all the Ministries and Departments to observe the principle of "No work no pay" as a mandate that in view of the the above principle the Director General issued instructions to the disbursing officers that the Hon'ble Supreme Court of India in the case of Bank of India Vs. Kelawala and others has enunciated that whether the strike is legal or illegal the management has power to deduct wages for the period of absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. That the applicants intentionally asked for the action to be taken.

Since facts submitted and reliefs claimed in all these 3 OAs are identical, these 3 OAs are clubbed, heard and are being disposed of by this common judgement.

There are 4 applicants in O.A.1598/93. Applicants 1 & 3 are Union and association, Applicant No.2 is the sorting assistant SSG-2, Hyderabad Sorting Division, Secunderabad. Applicant No.4 is the Assistant Superintendent working in the office of the CPMG, Hyderabad.

There are 4 applicants in O.A.1599/93. Applicants 1 & 3 are union and association. Applicant No.2 is working as the postal Assistant and the applicant No.4 is working as Assistant Superintendent of Post offices, Hyderabad.

There are 3 applicants in O.A.1600/93. Applicant 1 & 2 are the unions. Applicant No.3 is the Assistant postmaster, Hyderabad.

Facts in brief are to the following effect:

It is stated that the respective unions and associations with All India Federation of Postal Employees Union served a notice dt. 20.10.93 to the Secretary, Department of Posts, New Delhi under section 22(1) of the Industrial Disputes Act(Copy of the notice is at annexure A-1), of the proposed indefinite strike of the postal employees in case their charter of demands are not accepted.

After the notice the negotiations and conciliation proceedings did not yield any fruitful result. The postal employees of the Andhra Pradesh circle struck their work between 7.12.93 and 10.12.93. On 10.12.93 Department's package offer was offered to the employees. The package offer is at Annexure A-3. Thus the employees called off their strike on and from 11.12.93. It is stated that through the D.O.letter No.B7/Strike-12/93 dt. 20.12.93 copy of which is attached at Annexure-4, the respondent No.4 under instructions of the CPMG, directed all the authorities pay and allowances of the employees for the strike period i.e. 7.12.93 to 10.12.93. The instructions were issued "pending regularisation of the period in the light of the agreement reached by the Department with the Federations and the Unions."

In the case of Syndicate Bank and another Vs. Umesh Naik reported in 1994 SCC (L&S) 1197 the Hon'ble Supreme Court of India has been pleased to observe as follows:-

"A strike may be illegal if it contravenes the provisions of Sections 22, 23 or 24 of the Act or of any other law or of the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. Hence such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute. The machinery has to come to its findings on the said issue by examining all the pros and cons of the dispute as any other dispute between the employer and the employee.

The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and running of the enterprise. It is an abuse by the labour of their economic power to bring the employer to see and meet their view point over the dispute. It takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running sore strike", i.e. disobeying the lawful orders, sit down, stay in and lie down strike etc etc. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well being of the society as a whole. It is for this reason that the law, which has tried to regulate it along with the right of the employer to lockout and has also provided

Hence no mal-fide intention could be imputed to them that the postal Employees of the Orrisa Circle have also filed OA.167/93 before Cuttack Bench of the Tribunal that the employees of Andhra Pradesh have already filed writ petition bearing No. 20554/93 and that the said proceedings are pending and that the applicants are not entitled to any of the reliefs and that the applications are liable to be dismissed.

On 27.12.93 this Tribunal made an interim order to disburse the wages to the employee for the strike period subject to the result of this OA.

When this matter came up for hearing on 28.12.96 we felt to secure further details from the respondents. The details we desired from the respondents were whether the respondents considered feasibility to appoint an impartial body to consider whether the strike of the postal employee from 7.12.93 to 10.12.93 was legal and justified or was illegal and justified or was illegal and unjustified. These facts are to be decided only after collecting factual particulars.

During the hearing the learned counsel for the respondents submitted that the Industrial Disputes Act under which the applicants claimed to have issued notice dt. 20.10.93 is not valid notice and that the provisions of the Industrial Disputes Act are not applicable to the postal services. In support of their contention the respondents relied on the decision of the Hon'ble Supreme Court of India in the case of Sub Divisional Inspector of Post Vaikam Vs. Theyyam Joseph "Industrial Disputes Act(14 of 1947), S.2(j) 'Industry' Postal and Telecommunication Department is not industry.

The welfare measures parttake the Character of sovereign functions and the traditional duty to maintain law and order is no longer the concert of the State. Directive Principles of State policy enjoin on the State diverse duties under part IV of the Constitution and the performance of the duties is constitutional function. One of the duties of the state is to provide telecommunication service to the general public and an amenity, and so is one essential part of the functions of the State as welfare state. Postal and Telecommunication Department are not, therefore, industry."

Every dispute between employer and employee has to take into consideration the third dimension, viz. the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. But more imperatively so in the public sector. The management in the public sector is not the capitalist and the labour and exploited lot. But are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interest and to promote them".

The learned counsel for the applicants attempted to distinguish the judgement of the Hon'ble Supreme Court in the Yam Joseph's case and submitted that provisions of the Industrial Disputes Act are to be made applicable to the Postal Services. Even the learned counsel for the applicants written resume in support of their contention.

The learned counsel for the applicants submitted that the view in Behan Josephine case holding that postal service is not a industry is not correct that in support of their submission they relied upon the definition of posts & Telecommunications service under the Industrial Disputes Act that their service is a public utility service, and that on the same as such the provisions of the section 22 of the Industrial Dispute Act were applied to the Ranch that the court while deciding that the postal services is not an industry has failed to take into account the decision of the constitution Bench of the Hon'ble Supreme Court of India in the case of BWSSB Vs. A.Rajappa reported in AIR 978 Supreme Court P.969, as also the decision of the Chief Conservator of Forests and another Vs. J.Maruthi notice a decision of the Division Bench of Hon'ble High Court of A.P. in A.Nagendra Rao. Vs. State of A.P.(1994) Supreme Court cases page 245 and submitted that in the said cases it has been declared that no civilised system could permit an executive to play with the people of the country and claim that it is entitled to act in any manner as it is sovereign as the concept of public interest has changed with structural changes

a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lock out as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

The prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lockout is provided under the law of the contract of the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the legal machinery as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation prohibits strikes and lockouts in public utility services.

- (a) The respondents shall consider the representation dated 24.12.1993.
- (b) The respondents shall constitute a high powered impartial body to take into consideration all factual aspects of the case and to decide whether the employees of the postal circle, A.P. were justified in remaining absent from duty from 7.12.93 to 10.12.93.

With these observations the OAs are disposed of.
No order as to costs.

The respondents shall take a decision within 4 months from the date of receipt of the copy of this order.

sd/-

Deputy Registrar(Judl.)

CERTIFIED TO BE TRUE COPY

[Signature]

Date: *[Signature]*

Court officer

Central Administrative Tribunal
Hyderabad Bench,

Hyderabad.

Rsm/-

केस संख्या	1591/934 Baker
CASE NUMBER	1591/934 Baker
निर्णय का तारीख	13/1/97
Date of Judgement	13/1/97
प्रति तय्यार किया गया दिन	29/4/97
Copy Made Ready on	29/4/97
धन मय अधिकारी (न्य विक) Section Officer (J)	

in the society. They also placed reliance on the Delhi Science forum and others Vs. Union of India and another reported in ISL 1996 Supreme Court 1356 wherein it was held that the Central Government has power to grant licences to establish, maintain and work telegraphs (including telecommunications) on conditions and for considerations regarding payments with regard to such commercial departments. Thus the learned counsels argued that postal services is an industry and compared to the employees of the Postal Circle with the employees of the Railway Administration and submitted that the postal services can be and must be regarded as an "Industry." Their anxiety in submitting thus to us was that the Unions had served the notice dated 20.10.93 under section 20 of the Industrial disputes Act. However vehement submissions they made, we have not been persuaded to hold that postal service is an industry. We are bound by the decision of the Hon'ble Supreme Court in Theyam Josephs case.

Admittedly, the employees of the postal circle did not work from 7.12.93 to 10.12.93. When they failed to work they cannot demand wages as of right for the said period. The rule "No work-No pay" comes into play. Therefore, we are of the view that the applicants cannot demand wages for the said period as of right.

This Tribunal cannot give any remedy to the applicants for more than one reasons. Firstly, their applications are premature. The respondents are yet to take a decision on the representation dt.24.12.93. Further, the deduction of the wages was ordered pending settlement with regard to their strike period. As observed by the Hon'ble Supreme Court of India in the case cited above it is necessary to consider whether the employees were justified in remaining were long pending, whether the said strike was illegal or justified or legal and unjustified or illegal and unjustified. These aspects have to be gone into by an impartial body and thus the respondents have to take a decision as to how the period of absence of employees is to be treated.

By the interim order dated. 28.12.93 of this Tribunal the respondents were directed to pay wages for the said period. We feel it proper to give following directions to the respondents before taking decision to recover the said wages from the employees of the postal circle.