

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1549/94

Date of Order : 28.8.97

BETWEEN :

M.Ramana

.. Applicant.

AND

1. The Sub-Divisional Officer, Phones, Eluru.
2. The Divisional Engineer, Telecom (Mtce), Eluru.
3. The Telecom Dist. Manager, W.G.Dist, Eluru.
4. The Chief General Manager, Telecom (reptg. Union of India), AP Hyderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.C.Suryanarayana

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER, (ADMN.)

J U D G E M E N T

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.)) (

Heard Mr.C.Suryanarayana, learned counsel for the applicant and Mr.N.R.Devraj, learned standing counsel for the respondents.

2. The applicant was engaged as Casual Mazdoor on 1.11.1981 and got temporary status on 1.10.1989. He absented himself from 7.4.1992 onwards. According to the applicant he was suffering from jaundice and was under the treatment of a Government doctor who advised rest for the applicant from 7.4.1992 to 27.6.1993. During his absence, according to the applicant, owing to sickness,

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he was removed from service on 8.1.1993 wherein it was stated that the applicant had unauthorisedly absented himself (and was "absconding", the word used in one of the communications) for more than one year. The applicant submitted a representation on 28.6.1993 and enclosed a medical certificate, together with sickness certificate, dated 28.6.1993, i.e. nearly five months after his services were terminated. The representation resulted in a reply of the respondents that since he had a break-in-service of more than one year, the same could not be condoned. Hence this OA.

3. Sri C.Suryanarayana raises the following contentions:

- i) The Department has been inconsistent in its stand to say that he was unauthorisedly absent, or that he was absent for more than one year which constitutes a break-in-service. It is pointed out that his total absence from duty from 7.4.1992 to 8.1.1993 does not add up to one year.
- ii) In the light of the provision of the Industrial Disputes Act, that cases of absence which are not covered by regular incidental hazards like sickness, accident or participation in illegal strikes which require - ~~for~~ ^{the provisions} of the Industrial Disputes Act, it is argued that termination is in total violation of principles of Natural Justice inasmuch as no Notice was ever served on the applicant nor was he provided an opportunity to explain his defence.
- iii) Further more, if the respondents had any doubt as regards ~~validity~~ of the certificate of sickness of the applicant and of the treatment, they should have sent it for second medical opinion, which they failed to do.
- iv) The respondents in their counter affidavit in para-5 of the counter affidavit state that a list of eligible and non-eligible officials were circulated in February 1992 requesting the Controlling Office to obtain original documents of service record

v) According to the instructions issued by DOT the services of Casual Mazdoors with temporary status cannot be terminated without resort to proper proceedings and abrupt termination of service in such situation is not permissible even by the Departmental instructions.

vii) A Casual Labourer with temporary status acquires status of temporary Government servant and enjoys the same privileges and safeguards as are available to temporary Government servants. The services of the temporary Govt. servants cannot be terminated by summary orders. In this regards, the Government of India instructions under Rule 25(3)(iii) of CCS (Leave Rules) (p.26 of Swamy's Compilation of FROR Para 111 - ...)

viii) Lastly, the DET's insistence on the so-called absence of more than one year which constituted a break-in-service cannot be endorsed as the same is contrary to the prevailing legal jurisprudence.

in the following cases :



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- b) 1985 SCC (L&S) 389 (Jawaharlal Nehru University Students' Union vs. Jawaharlal Nehru University and another)
- c) 1992 (2) ATJ 1
- d) 1989 (2) ATR 614 (CAT)
- e) 1987 (1) SLJ 677
- f) 1964 AIR (SC) 1272
- g) 1963 ATR (SC) 1141
- h) 1961 ATR (SC) 1567
- i) 1992 SCC (L&S) 645

5. Sri N.R.Devraj, learned standing counsel for the respondents in his reply states that the applicant could not possibly be ill for so long a time in a small town, known only to his own family and close relatives and known only to his Physician. Incidentally, the medical officer who issued the certificate does not appear to be an expert or a Specialist in any field of medicine but only a Graduate and the so-called certificate has the appearance more of a testimonial on his letter-head than a medical certificate. He states that the respondents had duly sent all necessary communications, like a notice regarding contemplated action as well as the termination order to the applicant's last known address. Since, however, the applicant could not be located in any of his known addresses, the respondents were eventually left with no option except to paste the notice on the applicant's last known address. It was added that the applicant's services were not terminated owing to absence for more than one year, but solely on the ground of prolonged absence for more than 6 months, resulting in a break-in-service for a length of time the condonation of which was not within the competence of DET. The proper course of action available to the applicant was to submit an appeal to a higher authority empowered to condone a break-in-service of six months to one year's duration. This was seen to have not been done by the applicant.

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6. From the above narration of the facts it is evident that the services of the applicant were terminated as he was unauthorisedly absent w.e.f. 7.4.1992. When he reported for duty he was informed that his services have been terminated and hence he cannot be take back on duty. The only course left to the applicant is to ask for condonation of break in service from 7.4.92 to 8.1.93 the date of the termination of his services. The period as above is less than one year though the respondents submit it is more than one year. The learned counsel for the applicant submits that the period of absence is to be treated only from 7.4.1992 to 8.1.1993 and hence it cannot be more than one year. In any case the applicant can submit a suitably worded representation to the

7. Though the applicant had cited number of cases to contend that the termination of his service is illegal and arbitrary I do not find all the citations^{as} applicable in this case. However i.e. 1981 SCC (L&S) 478 (Mohal Lal vs. The Management of M/s Bharat Electronics Ltd.) may some extent ~~will~~ help the portion of the observation is re-produced below:-

"In industrial employment or for that matter in any service, sickness, authorised leave, an accident, a strike which is not illegal, a lock-out, and a cessation of work not due to any fault on the part of the workman, are known hazards and there are bound to be interruptions on that account".

8. As the applicant submits that he could not attend duty due to sickness he may in his representation brought^{out} down the full facts with reliable proof for consideration for respondents

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Copy to:

1. The Sub Divisional Officer, Phones, Eluru.
2. The Divisional Engineer, Telecom, (Mtce), Eluru.
3. The Telecom District Manager, W.G.District, Eluru.
4. The Chief General Manager, Telecom, A.P., Hyderabad.
5. One copy to Mr.C.Suryanarayana, Advocate,CAT,Hyderabad.
6. One copy to Mr.N.R.Devraj,Sr.CGSC,CAT,Hyderabad.
7. One copy to D.R(A),CAT,Hyderabad.
8. One duplicate copy.

YLKR

98/129/97

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R.R. VENKATJAN : M (A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
(M) (J)

Dated: 28/8/97

ORDER/JUDGEMENT

M.A/R.A/C.A.NO.

in

C.A.NO. 1549/94

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLKR

II Court

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

वैषम्य/DESPATCH

- 9 SEP 1997

हैदराबाद न्यायपीठ
HYDERABAD BENCH