

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.445/94

Date of order: 19.9.1996

Mukesh Kumar Rajput : Applicant

vs.

Union of India & Ors. : Respondents

None present for the applicant.

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, applicant Shri Mukesh Kumar Rajput has prayed that the termination of his services may be declared as null and void and he may be deemed to be in service for all purposes. He has further prayed that the respondents may be ordered to take back the applicant on duty with all consequential benefits regarding pay, seniority, regularisation etc. and also promotion, if any, be granted to the applicant with arrears of salary. The alternative prayer is that respondent No.2, namely Assistant Engineer (Coaxial), Telephone Exchange, Bharatpur, may be directed to refer the industrial dispute to a competent Labour Court, Jaipur for early disposal of the case and the respondents may be ordered to quash Anx.A3 dated 24.6.1994 by which reference to the Industrial Court has been declined.

2. According to the averments of the applicant, his services were terminated from 1.8.1984 by an oral order. Thereafter he made representations dated 3.12.86, 1.1.87, 22.5.87, 5.12.87 19.4.88 and 28.11.88 for being taken back on duty but without any effect. He moved a complaint before the Assistant Labour Commissioner (Central) Jaipur who initiated conciliation proceedings under the Industrial Disputes Act and

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gave a failure report on 30.10.92 (Annex.A1). The Department of Telephones is an Industry, the applicant is a workman and therefore, the provisions of Sec.25F of the Industrial Disputes Act are attracted in this case. However, no notice of one month was given before terminating the services of the applicant. The failure report by the Assistant Labour Commissioner was communicated to the applicant vide letter dated 22.11.93. On receipt of the failure report, the Central Govt, was bound to refer the dispute to the competent Labour Court which has not been done. Reference to the Labour Court was refused by the Desk Officer, Ministry of Labour, vide Annex.A3 dated 24.6.94, illegally. The applicant has assailed the order of termination as violative of Articles 14 and 16 of the Constitution and Sec. 25 G of the Industrial Disputes Act, inasmuch as three persons named in the O.A have been appointed after the termination of the services of the applicant. The applicant has also averred that since the Bharatpur Unit of the Telephone Department consists of more than 100 employees, the provisions of Sec.25 K onwards of the Industrial Disputes Act, are also applicable.

3. The respondents in the reply have taken a preliminary objection to the maintainability of the application on the ground of limitation. According to the respondents, it was the applicant himself left his service. However, if it is assumed that it was a case of termination of service, the date of the alleged termination was 1.8.1984 and more than a decade had passed since then. The O.A cannot be entertained at such a belated stage, <sup>it is</sup> and hopelessly time barred. Other averments and claims of the applicant have also been denied.

4. The applicant has also filed a rejoinder to the reply filed by the respondents in which inter alia, he has maintained that the services of the applicant were terminated by the respondents.

5. None is present on behalf of the applicant. We have

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heard the learned counsel for the respondents and have gone through the records.

6. The learned counsel for the respondents has stated that as held by the Hon'ble Supreme Court in their judgment in Sub Divisional Inspector of Post, Vaikam & Ors,etc. Vs. Theyyam Joseph etc, JT 1996(2) SC 457, the Departments of Posts and Telecommunications are not an Industry. Therefore, the question of referring an industrial disputes to the competent Labour Court does not arise and other provisions of the Industrial Disputes Act, referred to by the applicant, are also not attracted. He has added that since the cause of action arose on 1.8.84, even according to the applicant and he had raised the dispute before the Assistant Labour Commissioner(Central) Jaipur, in October, 1990, i.e. more than 6 years after the cause of action arose. Approaching the Tribunal also at such a belated stage cannot help the applicant.

6. We have considered the matter carefully. It could be that before the Hon'ble Supreme Court delivered their judgment in the case of Sub Divisional Inspector of Post, Vaikam, referred to above, the applicant was under a bonafide belief that the department of Telecommunications is an Industry. But even if it was so, he approached the Assistant Labour Commissioner (Central) in 1990 when his services had been terminated on 1.8.1984. Thus reference the matter to the Assistant Labour Commissioner (Central) at such a belated stage and thereafter approaching this Tribunal on failure of conciliation being reported would not extend the limitation in favour of the applicant. The applicant made repeated representations during 1986, 1987 and 1988 with regard to his grievance but repeated representations would also not help the applicant's case. Viewed from any angle, the application is hopelessly barred by limitation and it is, therefore, not

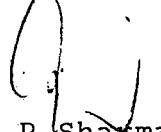
maintainable. As held by the Hon'ble Supreme Court in the judgment referred to above, the Department of Telecommunications is not an Industry and therefore, various provisions of the Industrial Disputes Act, referred to by the applicant, are not applicable and there can also be no question of directing the Central Govt, to refer the dispute to the competent Labour Court,

7. The O.A is accordingly dismissed for reasons given above. There shall be no order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P. Sharma)

Administrative Member.