

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH:
J A I P U R.

O.A. No.152/1995

Date of order: 30.7.1997

Manna Lal Sevda S/o Shri Nanda Ram, resident
of V&PO Mundeti, Tehsil Phulera, Panchayat
Samiti Rainwal, District Jaipur.

: Applicant

Versus

1. Union of India through Secretary, Telecommunication, Government of India, Sanchar Bhawan, New Delhi.
2. The General Manager, Telephones, Jaipur District, Near Government Press, Jaipur.
3. Sub Divisional Engineer (Store), Telephones, Sansar Villa, M.I. Road, Jaipur.
4. Sub Divisional Officer (Central), Telephones, Sansar Villa, M.I. Road, Jaipur.

: Respondents

Mr. P.V.Calla, counsel for the applicant
Mr. S.S.Hasan, counsel for respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE))

In this application under Section 19 of the Administrative Tribunals Act, 1985 Shri Manna Lal Sevda has prayed that respondents may be directed to take the applicant back on duty with all consequential benefits of salary w.e.f. 1.5.1986 with interest etc. He has sought a further direction to the respondents to confer benefit of regularisation on the applicant on the post of regular Mazdoor and grant ~~one~~ further promotion for the post of Phone Mechanic with a regular

grade and arrears.

2. The applicant's case is that he was appointed as a Casual Labour on daily wages in the office of S.D.O. Telephones (Central Jaipur) on muster roll basis on 14.12.1981. He continued in the Telephones Department till May 1986. The applicant was implicated in a case of theft under Section 379 IPC when he was working on the post of Chowkidar in the office of S.D.O. (Stores). Apparently the applicant was in police custody for sometime and on his release he reported for duty to the authorities who however refused to take him back on duty on the ground that he had been implicated in a case of theft. Subsequently, the applicant was tried of the offence and was convicted by the Lower Court but was released under Section 4 of the Probation of Offenders Act. The applicant filed an appeal against the order of the Lower Court before the District & Sessions Judge who acquitted him of the charges by order dated 10.1.1995 (Annex.A-4). Thereafter the applicant reported to the authorities for joining duty on 17.1.1995 (Annex.A-5), but the authorities did not allow him to join duty. The applicant subsequently gave a legal notice for demand of justice through his counsel on 16.2.1995 but the said notice also did not evoke any satisfactory response. The applicant's case is that since the very basis of not taking him back on duty or termination ^{of} from service has now disappeared, he is entitled to be taken back on duty, when there is no other misconduct alleged and no inquiry has been initiated against him.

3. The respondents in their reply have stated that the applicant is not an employee of the Central Government

because he was a daily wager and muster-roll casual labour who had himself discontinued attending to his duties because of his arrest by the police in connection with a case of ~~the~~ theft and ^{he} re-appeared after a lapse of 9 years demanding that he may be taken back on duty. In these circumstances, the respondents are under no obligation to take the applicant back on duty. At page 8 of their reply, however, the respondents have stated that the applicant was removed from the muster-roll on his arrest by the police. The same point has been reiterated by them at page 9 of their reply.

4. 3 The applicant has also filed a rejoinder to the reply filed by the respondents which is on record.

5. We have heard the learned counsel for the applicant and have perused the material on record.

6. The learned counsel for the applicant has drawn our attention to Annexure A-3 dated 14.11.1996 which is a reply to the notice given by the applicant regarding his being taken back on duty. In this reply the respondents have stated that applicant's case has been referred to the Legal Cell of the Department and a suitably reply would be sent to him. However, according to him the applicant has received no further communication from the respondents in this regard so far. According to him, the respondents have themselves admitted in their reply that it was on account of the applicant's arrest by the police that he was not taken back on duty. Once he had been finally acquitted by the Appellate Court of the criminal charges against him, he was entitled to be taken back on duty by the respondents.

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7. What we find is that the reply given by the respondents is rather contradictory at places. In the first part of the reply at page 2 they have stated that the applicant himself discontinued coming for his duty but later on they have stated that applicant's name was removed from muster roll because he was involved in a case of theft. In the circumstances, we are inclined to the view that the correct position seems to be that the respondents did not take the applicant back on duty after his release from detention by the police because he was involved in a case of theft. No doubt the applicant was a casual labour not borne on the regular establishment of the respondents. However once the ground for which the respondents had declined to take the applicant back on duty had disappeared, as a result of the applicant being acquitted of the criminal charges framed against him, the respondents were required to take the applicant back on duty, may be in the same position in which he was performing his duties earlier before his services were discontinued. Annexure A-3 dated 14.11.1986 which is a reply to the applicant's request for being taken back on duty shows that the matter regarding his being taken on duty was under consideration of the respondents. The respondents' reply with regard to Annexure A-3 is that this does not affect the merits of the case and it does not create any right in favour of the applicant. However, in the circumstances of the present case since the ground or the charge on account of which the applicant's services were discontinued by the respondents no longer survives, the respondents are directed to take

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the applicant back on duty in the same position which was held by him prior to his being discontinued. The respondents shall comply with this order within a period of two months from the date of receipt of a copy of this order.

8. As regards the applicant's prayer for regularisation, apparently this amounts to a mis-joinder of causes. The learned counsel for the applicant states that he would be agitating this matter separately. As regards back wages etc., the applicant is free to raise the matter separately.

9. The O.A. is disposed of accordingly. No order as to costs.

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(RATAN PRAKASH)
MEMBER (J)

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(O.P.SHARMA)
MEMBER (A)