

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 08.09.2000

O.A. No. 170/95

Mahaveer Prasad Sharma son of Shri Parturam aged about 50 years resident of Opp. Old Post Office, Lachhmangarh and working as E.D. Chowkidar Post Office Lachhmangarh District Sikar.

... Applicant.

v e r s u s

1. Union of India through the Secretary to the Govt. of India, Deptt. of India through the Secretary to the Government of India, Department of Posts, Ministry of Communications, New Delhi.
2. Postmaster General, Rajasthan Western Region, Jodhpur.
3. Director Postal Services, Rajasthan Western Region, Jodhpur.
4. Superintendent of Post Offices, Sikar Division, Sikar.
5. Sub Divisional Inspector of Post Offices, Fatehpur Shekhawati, Distt. Sikar.
6. Sub Postmaster, Lachhmangarh, Distt. Sikar.
7. Shri Bhagwan Singh, Superintendent of Post Offices, Sikar.

... Respondents.

Mr. K.L. Thawani, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. N.P. Nawani, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

In this case, the applicant has sought quashing of the order dated 23.03.95 vide Annexure A/l on the ground that the same is illegal and contrary to the provisions of Industrial Disputes Act, 1947. In



support of the relief prayed for, the applicant contended that he was appointed as Extra Departmental Chowkidar, L.S.G., Post Office, Lachhmangarh, vide Annexure A/2. The respondents vide Annexure A/3, abolished the post of E.D. Chowkidar, Lachhmangarh, on which the applicant was working, with an observation that the applicant would be absorbed in the E.D. post available in Fatehpur Sub Division. Thereafter, vide Annexure A/4 dated 8.12.92, the applicant was re-employed as EDMC/EDDA, Akwa (Khuri Badi). Challenging this order Annexure A/4 dated 8.12.92, the applicant approached this Tribunal in O.A. No. 25/93, and the said O.A. was disposed of vide judgement/order dated 7.7.93 by holding that the applicant cannot be forced to accept another post at a different place. Accordingly, that order Annexure A/1 was quashed, with a direction to the respondents to take the applicant on duty and to pass a fresh order of termination in accordance with the law prescribed. Thereafter, the respondents have passed the impugned order at Annexure A/1, which also, according to the applicant, is illegal and without jurisdiction. The applicant in this application contended that the impugned order was in substance, an order of retrenchment contravening the provisions of the Industrial Disputes Act, 1947. Therefore, the same is liable to be set aside.

3. By filing reply, the respondents have denied the allegations of the applicant. They have further contended that for the alleged violation of the provisions of 25-F of the Industrial Disputes Act, the applicant could necessarily go to the Industrial Tribunal and such application is not maintainable before this Tribunal in view of the judgement of the Hon'ble High Court of Rajasthan, reported in 1995 (2) W.L.C. 1. It is further submitted that the impugned order has / been passed



in view of the directions of this Tribunal in O.A. No.25/93. Therefore, there are no merits in this application and the same is liable to be dismissed. Learned counsel for the respondents reiterating what has been stated in the reply, further contended that the applicant had earlier filed an R.P. No. 72/93 against the order passed in OA No. 25/93 and he had also filed an M.P. No. 447/93 in R.P. No. 72/93 and all of them were dismissed, giving an opportunity to the respondents to terminate the services of the applicant after paying the compensation. Accordingly, the impugned order ~~xxxxxxxxxxxxxx~~ has been passed by giving compensation to the applicant under Section 25-F of the Industrial Disputes Act, 1947. Therefore, there are no merits in the application, and the same is liable to be dismissed.

4. From the pleadings and also from the arguments by both the counsel, we find that certain facts are clearly admitted. It is admitted that the applicant was appointed as E.D. Chowkidar vide Annexure A/2. Annexure A/2 itself states that he was appointed on contract basis and the same was liable to be terminated by notifying the applicant and that appointment was only under P&T Extra Departmental Agents (Conduct and Service) Rules, 1964, and on acceptance of those conditions, the applicant could be appointed. After accepting this condition only, the applicant was appointed as E.D. Chowkidar. It is also an admitted fact that the post of E.D. Chowkidar, on which the applicant was working, was abolished on the basis of the recommendations of the Savoor Committee dated 14.12.87 vide Annexure A/5 with a condition to discharge the present incumbents working on those posts. On the basis of recommendations vide Annexure A/5, the for a decision/abolishing number of posts, including the post of ^{E.D.} Chowkidar, Thereafter has been taken. An order was issued to the applicant, vide Annexure A/3, dated 7.12.92, stating that the post on which the applicant was working was abolished and the incumbent, i.e., the applicant be absorbed in the vacant E.D. posts available in Fatehpur Sub Division. Immediately

thereafter, another order was given to the applicant vide Annexure A/4 dated 8.12.92, stating that the post on which he was occupying, was abolished, and he is to be reemployed as EDMC/EDDA, Akwa (Khuri Badi). The order Annexure A/4 further states that the right of re-employment in near future ceases automatically on refusal of this order of re-employment. The applicant challenged this order Annexure A/4 before this Tribunal in O.A. No. 25/93, specifically contending that the applicant could not have been transferred to some other place, on re-employment and he cannot be compelled to accept that post against his Will. His further contention was that the applicant should be given preference on some other posts. Accepting his contentions that the applicant could not be transferred to a place and post contrary to his Will, the order at Annexure A/4 was declared illegal. The second contention that preference would be given in future appointment, the Tribunal rejected that contention by holding that if he himself refuses to avail of the opportunity given to him, no preference for future vacancies could be given to such a person. A part of the order of this Tribunal is extracted as under :-

"3. We have already held the order Annexure A/1 is bad in law and has been quashed. The applicant shall be taken on duty as a consequence of setting aside the order Annexure A/1 and will be entitled to arrears of pay and allowances. However, in the light of the discussion above, the respondents at liberty to pass a fresh order of termination in accordance with law and the prescribed procedure. He will also be entitled to pay and allowances till the date of passing of any fresh order by the respondents. His services can be terminated now by the Department in accordance with law and the procedure prescribed."

5. From the above order, it is clear that after quashing of the order at Annexure A/4, the respondents were directed to reinstate the applicant with a further opportunity to them to pass a fresh order of termination in accordance with law and prescribed procedure, and the applicant was entitled to arrears till such order was passed. Against the said order, the applicant filed a Review Petition No. 72/93 and after dismissal of that R.P., he also filed a Misc. Petition No. 447/93 for modification of the said order dated 7.7.93 passed in O.A. No.

(P.W.)

25/93. That M.P. was also dismissed on 17.11.93, by observing as under:-

"3. As far as the question of abolition of the post is concerned, this Court has not passed any order and does not want to interfere in the matter of abolition. However, the subsequent part of the order that the incumbents working on these posts will be absorbed in present available vacant E.D. Posts in Fatehpur Sub Division is bad in law to this extent that he could not be compelled to go to Fatehpur Sub Division. In such circumstances, the respondents have the remedy to retrench the applicant if he is not willing to go on E.D. Posts and for this reason also, the appointment made vide Annexure A/3 is bad in law. If the applicant is not willing to join at the place of his new posting, then his services can be retrenched after payment of compensation and the applicant will have no right to make any grievance against that order."

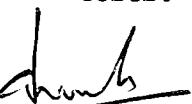
6. From the above order, it is clear that so far as the abolition of the post was concerned, the same was being taken as having become final. The Tribunal also further observed that if the applicant was not willing to join at the place of new posting by the impugned order, his services can be retrenched after the payment of compensation and the applicant would not have any right to make any grievance against that order. Thus, from the above order, it is clear that the case of the applicant has been concluded, since the applicant was not willing to accept the re-employment as EDMC/EDDA, Akwa (Khuri Badi), in terms of Annexure A/4. The respondents have terminated the services of the applicant by Annexure A/1 by paying compensation under Section 25-F of the Industrial Disputes Act, 1947. Thus, the imnpugned order has been passed practically in obedience of the order passed by this Tribunal in OA No. 23/93 and also the order passed in M.P. No. 447/93. Therefore, now the applicant cannot contend that the Annexure A/1 is either contrary to the provisions of Industrial Disputes Act, 1947, or the Industrial Disputes Act does not apply to the facts of the case. In case the applicant feels that any ^{of the} /provisions of Industrial Disputes Act is violated, it was open to him to approach the Industrial Tribunal, in view of the judgement of Hon'ble High Court of Rajasthan, reported in 1995 (2) WLC 1. Thus, we find that there is no case for the applicant. Moreover, the applicant has been appointed on

contract basis vide Annexure A/2 and it was not a regular appointment as such, and in terms of order at Annexure A/2, his services could be terminated at any time. At any rate, even otherwise, the applicant being a person not appointed on the basis of any regular selection, could not claim to be a workman for the purpose of Industrial Disputes Act. Therefore, even the protection of the Industrial Disputes Act, would not be available to the applicant, in view of the judgement of Hon'ble the Supreme Court of India, reported in 1997 (3) Supreme 733 = 1997 (4) SCC 391 [Himanshu Kumar Vidyarthi & Ors. vs. State of Bihar & Ors.]. In that case, Hon'ble Supreme Court has held as under:-

"Every department of the Government cannot be treated to be "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules, but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment", therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioner did not contend it is a case of retrenchment but termination of services is arbitrary. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."

7. For the above reasons, we find that there are no merits in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances, without costs."


(N.P. NAWANI)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

cvr.