

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A.No. 117 of 1997

DATE OF DECISION. 24.3.1999.....

Shri Mohendra Ch Bora ----- (PETITIONER(S))

Mr R.P. Sarma, Mr S.C. Dutta Roy and

Mr H.K. Baishya-----

ADVOCATE FOR THE  
PETITIONER(S)

-VERSUS-

Union of India and others

----- RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

----- ADVOCATE FOR THE  
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN.

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.117 of 1997

Date of decision: This the 24th day of March 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Mohendra Ch Bora,

Chowkidar,

Office of the Sub Divisional Officer, Phones,

Jorhat.

.....Applicant

Mr R.P. Sarma, Mr S.C. Dutta Roy and

Mr H.K. Baishya.

-versus-

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Communication,  
New Delhi.

2. The Chief General Manager, Telecommunication,  
Assam Telecom Circle,  
Guwahati.

3. The Sub-Divisional Officer, Phones,  
Jorhat.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R

BARUAH.J. (V.C.)

In this application the applicant has challenged the action of the respondents not allowing him to resume his duty.

2. Facts for the purpose of disposal of this application are:

The applicant was initially appointed Porter in the office of the Sub Divisional Officer, Phones, Jorhat. Subsequently, he was made a Chowkidar. The applicant applied for leave from 20.7.1994 to 24.7.1994 on medical ground. During that period two drums of copper energy cable were



found missing from the staircase of the ground floor of the Telephone Exchange where the applicant was on night duty as Chowkidar. An F.I.R. was lodged in the local Police Station and pursuant to that the applicant was arrested by the police while he was on leave. He was subsequently released on bail and a criminal case was instituted against him and another employee in the court of the Additional Chief Judicial Magistrate, Jorhat. Immediately after his release the applicant approached the authority with a prayer to allow him to resume his duty. However, according to the applicant he was not allowed to resume his duty.

3. The Addl. Chief Judicial Magistrate, Jorhat fixed 20.5.1996 for framing of charge against the applicant. The said Magistrate after considering the materials available before him found that no charge could be framed and accordingly the applicant was discharged. After receipt of the certified copy of the order dated 20.5.1996 passed by the Addl. Chief Judicial Magistrate, Jorhat in G.R. case No.760/94, the applicant submitted Annexure B representation dated 30.5.1996 to the Assistant Engineer (D-Tax), Department of Telecommunication, Jorhat, enclosing therewith a copy of the order dated 20.5.1996, to allow him to resume his duty. However, his representation was not disposed of. Hence the present application.

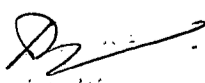
4. In due course the respondents have entered appearance. However, the respondents have not filed any written statement. In the absence of written statement the statements and averments made by the applicant in his application should be accepted, inasmuch as in the absence of any denial of any allegation or averment it is deemed to be admitted.



5. We have heard Mr H.K. Baishya, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. Mr Deb Roy, very candidly, submits before us that in the absence of any written statement on behalf of the respondents it will be difficult to challenge the averments made by the applicant. At least, that is the settled principle of law. Records have also not been produced today. In the absence of any such records we do not have any reason to disbelieve the averments made by the applicant. No doubt, the applicant himself has admitted that he was impleaded in a criminal case. However, he was discharged from the said case. In spite of several representations he was not allowed to resume his duty. As submitted by Mr Baishya, there was no formal order of termination of his service. Mr Deb Roy, however, has drawn our attention to Annexure F order dated 27.2.1997 wherein it has been mentioned that the applicant failed to resume his duty in spite of the fact that several letters were issued to him asking him to resume his duty. However, this was denied by the applicant in his statement made at para 6(xi) of his application, wherein the applicant has stated as follow:

".....the applicant has been requesting the authorities time without number to allow him to resume his duties, as will be evident from his pleader's notice at Annexure D and the letter of the D.E., Jorhat at Annexure E, but without any success. Therefore, the allegation that the applicant is unauthorisedly absent from duty from 25.7.94 is without any basis."

Therefore, the contention of Mr Deb Roy cannot be accepted in this regard. Be that as it may, the manner in which the service of a casual employee having been granted temporary status in the Telecommunication Department can be terminated has been mentioned in Swamy's Complete Manual on Establishment and Administration, fifth edition, 1994. We quote the relevant portion.




"8. Despite conferment of temporary status the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947, on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one month's notice.


"9. If a labourer with temporary status commits a misconduct and the same is proved in the enquiry after giving him reasonable opportunity (emphasis added), his services will be dispensed with. They will not be entitled to the benefits of encashment of leave on termination of services."

6. There is no material before us to show that such a procedure was adopted in the case of the applicant, inasmuch as even the termination notice was not issued. Therefore, in our opinion the action of the respondents was arbitrary, unreasonable and without any basis.

7. In view of the above we allow the application and direct the respondents to immediately allow the applicant to resume his duty and he shall continue to be a casual employee with temporary status till he is eligible for regularisation.

8. No order as to costs.

  
( G. L. SANGLYINE )  
ADMINISTRATIVE MEMBER

  
( D. N. BARUAH )  
VICE-CHAIRMAN