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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No 739/2002

Date of Decision 25-9-2003

Shri Nitesh Sharma Applicant

Present in person ... Advocate for the Applicant

VERSUS

UOI and Ors. ... Respondents

Shri Rajeev Bansal Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri V.K. Majotia, Member (A)

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. 739/2002

Thursday, this the 25th day of September, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Nitish Sharma,
S/o Late Shri R.P. Sharma,
R/o D-109/A, Gali No.1,
Burari Road, Saroop Nagar,
Delhi - 110 042

.... Applicant
(Applicant in person)

Versus

1. Union of India thro'
The Secretary,
Ministry of Law, Justice & Company Affairs,
Vth Floor, A-Wing, Shastri Bhawan,
Dr. Rajender Prasad Road,
New Delhi-110001

2. Regional Director (N.R.)
Department of Company Affairs,
10/439-B, Allenganj,
Kanpur (U.P)

3. Official Liquidator,
Attached to Punjab, Haryana Power,
and H.P. High Courts,
S.C.O. No.9, II Floor,
Sector -26, Chandigarh (UT)

... Respondents

(By Advocate : Shri Rajeev Bansal)

O R D E R (ORAL)

BY HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J) :

The applicant has challenged the termination order dated 12.9.2000 issued by respondent No.2 on the ground that the same is illegal, arbitrary and in contravention of the Statutory Rules.

2. We have heard the applicant in person and Shri Rajeev Bansal, learned counsel for the respondents. We have also seen the pleadings and relevant documents on record.

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3. To understand the relevant facts in this case and the grievance of the applicant, it is necessary to see some judgements i.e. judgements of the Hon'ble Supreme Court dated 27.8.1999 in Umesh Butt & Ors. v. Official Liquidator, Delhi & Ors. with connected case (WP (C) 473 of 1988 with connected case) and the Hon'ble Delhi High Court order dated 5.5.2003 in Smt. Daya Dua & Others v. Official Liquidator & Others (CW 2728/2001 & CM 4774/2001). In the High Court's order dated 5.5.2003, after referring to the judgement of the Hon'ble Supreme Court in Umesh Butt's case (supra), it has been held as follows:

I do not find any substance in the arguments of counsel for the respondents that the Supreme Court has not given a direction for giving seniority to the petitioners after their absorption. If I agree with the interpretation of the respondent that would mean a person who has worked for twenty or more years in the office of Official Liquidator and now he gets absorption his past services of twenty years or more will not be counted. The very proposition of the respondent is preposterous. The Supreme Court in its judgement has not used the words 'new appointment' but has used the word 'absorption'. The Supreme Court had categorically given a mandate to absorb all the company paid employees and not to give fresh appointment. Therefore, the incident of seniority by implication is implicit in the judgement of the Supreme Court and respondents have to absorb the petitioners giving them fitment in their appropriate scales as well as other promotions, if any, which has to be given as per law."

4. The applicant was one of the staff working in the Office of Official Liquidator as a Company paid employee. He has submitted that he was entitled for absorption as directed in the aforesaid Judgements. However, he was issued Memorandum of appointment dated 31.12.1999 in which it has been stated that in pursuance of the Supreme Court order dated 27.8.1999 with regard to absorption of Company

paid staff, he has been given a temporary appointment to the post of Junior Stenographer with the respondents. He was also placed on probation for a period of two years during which period his services have been terminated by the impugned order dated 12.9.2000. The applicant has impugned the termination order. He has also submitted that even the Memorandum dated 31.12.1999 giving him a temporary appointment to the post of Junior Stenographer and placing him under probation is also against the aforesaid judgements which have held that persons like the employees were to be absorbed and not to be treated as 'new appointments'. It is relevant to note that this original application has been filed on 13.3.2002 i.e. before the order passed by the Delhi High Court on 5.5.2003. He has submitted that he could not attend Office from 29.3.2000 to 7.8.2000 as he was on medical leave. He has, therefore, prayed that in the circumstances of the case, the Memorandum of appointment itself is against the directions of the Hon'ble Supreme Court's order dated 27.8.1999 and that the impugned termination order may be quashed and set aside with all consequential benefits like reinstating him in service with continuity of service and full back wages. He has also annexed a copy of the Calcutta High Court's order dated 26.3.2001 in the case of Court Liquidator's Employees v. Government of India & Ors. In this order a writ of mandamus was issued directing the respondents to give to the petitioners No. 2 to 55 the full status of permanent Central Government employee on the expiry of 360 days of joining service with further directions with regard to payment of arrears of pay to them in the circumstances of the case.

5. The applicant has also filed MA 631/2002 for condonation of delay in filing the OA.

6. We have seen the reply filed by the respondents and heard Shri Rajeev Bansal, learned counsel for respondents. The respondents have stated that in pursuance of the Hon'ble Supreme Court order dated 27.8.1999, the Department has framed a Scheme for absorption of Company paid staff working in the Office of Official Liquidator. They have stated that the applicant was given a "fresh appointment" from the date of "appointment" in terms of the Hon'ble Supreme Court's directions. They have also submitted that on receipt of the representation by the applicant they have disposed of the same vide their order dated 10.10.2002 which is placed at Annexure A-4 to MA-2825/2002. This order has been passed in pursuance of the earlier order dated 19.3.2002 passed by the Tribunal in which liberty was granted to the applicant that in case any grievance arises it will be open to seek revival of the O.A. In the order dated 10.10.2002 passed by the respondents they have referred to the absence of the applicant from Office between 29.3.2000 to 7.8.2000. Therefore, for the reasons that he has been on unauthorised absence and in accordance with paragraph 2 of the Memorandum/offer of appointment letter dated 31.12.1999 his representation against the termination order was rejected. The respondents have referred in the order dated 10.10.2002 that the applicant has been appointed on purely temporary basis and his services could be terminated at any time by the appointing authority without assigning any reason.

7. We find merit in the application for the following reasons:-

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a) The stand taken by the respondents in their reply as well as in the order issued by them on 10.10.2002 in pursuance of the earlier order of the Tribunal dated 19.3.2002 refers to the applicant's appointment as a "fresh appointment" from the date of absorption/appointment on purely temporary basis. Having regard to the aforesaid judgements of the Hon'ble Supreme Court dated 27.8.1999 and High Courts orders i.e. Delhi High Court's order dated 5.5.2003 and Calcutta High Court's order dated 26.3.2001, the offer of appointment made to the applicant as a fresh appointment on temporary basis is contrary to those directions. Therefore, the action taken by the respondents stated to be in pursuance of the Hon'ble Supreme Court's order dated 27.8.1999 cannot be sustained. Accordingly, the Memorandum dated 31.12.1999 offering fresh appointment to the applicant on purely temporary basis being contrary to the aforesaid relevant judgements is liable to be quashed and set aside. Consequently, the termination order dated 12.9.2000 is also liable to be quashed and set aside.

b) In the circumstance of case, as the respondents themselves have issued the offer of appointment to the applicant contrary to the directions of the Hon'ble Supreme Court's order dated 27.8.1999, we consider that in the interest of justice the OA should not be dismissed on the ground of limitation. Therefore, in the circumstances of the case, we consider that the prayer for condonation of delay should be allowed under Section 21 (3)

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of the Administrative Tribunals Act, 1985. The respondents as a model employers cannot also take advantage of their own wrong orders and needless to say they should have acted strictly in terms of the orders of the Hon'ble Supreme Court (supra). Accordingly MA 631/2002 is allowed and the delay in filing the OA is condoned.

8. For the reasons given above, the OA succeeds and is allowed with following directions:-

- i) The impugned termination order dated 12.9.2000 is quashed and set aside;
- ii) The respondents are directed to reinstate the applicant in service within one month from the date of receipt of a copy of this order and pass such necessary orders as required, in accordance with the directions of the Hon'ble Supreme Court's order dated 27.8.1999 (supra);
- iii) The applicant shall be entitled to back wages in the post of Junior Stenographer with effect from one year prior to the date of filing of the OA i.e. 13.3.2001 but he shall be entitled to continuity of service from the date of his earlier appointment in that post and other consequential benefits as given to similarly situated persons who were directed to be absorbed, as held by the Hon'ble Delhi High Court in the order dated 5.5.2003 (supra).

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The respondents shall also keep in view the orders passed by the Hon'ble Calcutta High Court in the order dated 26.3.2001(^{supra});

iv) In the circumstances, liberty is granted to the respondents to proceed against the applicant for the alleged unauthorised absence from duty, in accordance with law.

No costs.


(V.K. MAJOTRA)

MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)

VICE CHAIRMAN (J)

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