

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2110 of 2001

New Delhi, this the 28th day of September, 2001

HON'BLE MR. KULDIP SINGH, MEMBER(JUDL)

Shri Dilwar Singh
S/o Shri Girdhaari Lal
R/o K-11/377 Sanagaam Vihar
New Delhi-110 062
working as Beldar
under respondent No. 4.

-APPLICANT

(By Advocate: Shri T.C. Aggarwal)

Versus

Union of India through

1. Secretary,
Ministry of Information and Broadcasting,
Shastri Bhavan,
New Delhi-110 001.
2. Dy. Director General (Admn.)
Dte. General of All India Radio,
Akashvani Bhavan,
Parliament Street,
New Delhi-110 001.
3. Chief Engineer(C)-I,
Civil Construction Wing,
All India Radio,
Soochna Bhavan,
CGO Complex,
New Delhi-110 002.
4. Executive Engineer (Civil)
Civil Construction Wing (AIR)
Division-V, Mall Road,
Delhi.

-RESPONDENTS

(By Advocate: Shri S.M. Arif)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member(Judl)

The applicant in this OA has assailed an order dated 31.7.2001 passed by respondents whereby the applicant has been given a notice that his services shall stand terminated with effect from the date of expiry of one month's notice from the date it was served upon him.

Notice is annexed as Annexure A-1.



(A)

2. The applicant through this OA prays that the respondents be directed to cancel the termination order dated 31.7.2001 and they be further directed to continue the applicant till the work lasts in the Project Division or in any other Division in accordance with his seniority as per his date of initial appointment.

3. The facts, as alleged by the applicant are, that he was engaged as Beldar on daily wages on 2.3.1998 and on 25.10.1998 he was placed on muster roll in the regular pay scale of Rs.2550-3540 in which capacity the applicant continued to work but suddenly the termination notice dated 31.7.2001 was served upon him.

4. The applicant also prays that there are persons who are much junior to the applicant but are still continuing to work and the respondents had arbitrarily exercised the power of termination of service on the basis of pick and choose policy without following the principle; particularly the principle of "last come first go". The applicant claims that since he had requested for increase of pay on the pattern of CPWD, so he has been served with this notice.

5. It is further stated that at the time of hearing of the OA on the first date, an interim order was passed on 21.8.2001 restraining the respondents from enforcing the respondents' order dated 31.7.2001. The

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respondents have only filed a short reply and have also filed a Miscellaneous Application separately for vacation of the said interim order.

6. In reply, the respondents submitted that the applicant was taken on muster roll with effect from 25.10.199 and prior to that he might have worked on contract basis with some Private Agency w.e.f. 2.3.98 to 25.10.98 which is not being opposed by the respondents.

7. It is further submitted that the salary of the applicant was chargeable to the Head "Stock" and the applicant is the only incumbent whose salary is from the Stock and right from the day of inception of Prasar Bharti the funds under the Head of Stock are not available. It is also submitted that some of the juniors alleged to be working with the department are Kumari Krishna, Smt., Veena and Shri Sumeet are not daily wage employees. All of them were working on contract basis with private agency and the services of all of them have been terminated w.e.f. 20.8.2001 by the Agency itself and no further contract has been awarded because of non-availability of funds.

8. As regards Smt. Lajwanti and Shri Sunil are concerned their salary is to be charged from HPT, AIR, Kingsway Camp, Delhi. So far as Shri Chander Prakash is concerned his salary is chargeable to A/R and M/o to All India Radio, Almora and similarly Shri Bhajan Lal's salary is chargeable to A/R and M/o to Broadcasting House, New Delhi. Thus it is stated that all those employees are in different establishment and they are not

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working under the Head "Stock" from which they are paid salary and under this Head there is no work nor funds are available, so it is submitted that the OA be dismissed.

9. I have heard the learned counsel for the parties and gone through the records of the case.

10. Shri T.C. Aggarwal appearing for the applicant submitted that all those employees are working under the Chief Engineer. Chief Engineer is the sole responsible person who had been engaging and disengaging these persons. Merely because one person is working in a different project that cannot be a ground to terminate his service. He has to be provided a job in some other Project or wherever the work is available and in any case the principle of last come first go should be observed.

11. The counsel for the applicant has also referred to a judgment in the case of Central Welfare Board and Others Vs. Ms. Anjali Bepari & Others reported in JT 1996 (8) SC 1 which was a case where the employee who was working on a Project and the Project was being wound up and the services of the applicants were being dispensed with. In that case also the Hon'ble Supreme Court had given a direction that the applicants may be continued in any other temporary scheme by keeping in mind the overall seniority of all the persons and dispensing with the service should be on the basis of last come first go.

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12. In reply to this, the counsel for the respondents submitted that as per the pleadings of the applicant itself the applicant was appointed as a Beldar w.e.f. 25.10.99 when he was placed on muster roll but none of the alleged juniors was appointed along with the applicant under the same Project, rather they were appointed by different authorities though may be working under the Chief Engineer, so much so that one of the persons appointed had been appointed at Almorah and he may have been appointed by the Assistant Engineer with the permission of the Chief Engineer and similarly there are other Assistant Engineers, who might have appointed some persons, but none of the persons had been appointed alongwith the applicant, whose salary is chargeable under the Head "Stock" so the question of retaining any junior whose salary is charged from Stock does not arise.

13. The respondents further submitted that after the coming of Prasar Bharti the work and funds were not available, therefore, applicant cannot be allowed to continue in service.

14. I have given my thoughtful consideration to the entire matter.

15. Though the applicant has alleged that certain persons who are continuing to work are junior to him, but as pointed out by the respondents, the applicant has not given the details as to who had appointed those persons and whether they are working in the same division and have been appointed by the same appointing authority. That material fact is not available on record. Even from

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the list of names given by the applicant of the persons who are continuing in employment and all of the who had been appointed on compassionate grounds, one of them is working at Almorah, which has also been mentioned in the letters. Thus it appears that the appointing authority must be a different one, though overall may be working under the same Chief Engineer. So far as such like casual labourers are concerned, it cannot be expected that the respondents shall maintain a seniority list of all those casual labourers on all India basis and will take care of termination of employees on the basis of seniority on all India basis. The applicant has not been able to show whether any person junior to him is working whose salary is charged from "Stock" or is working in same division, so I find that the applicant has no case. The stay granted on 21.8.2001 has to be vacated.

16. Accordingly the stay is vacated. The OA is dismissed. However, if and when any job becomes available where the aapplicant had earlier worked, the respondents shall provide the same to the applicant in preference to juniors and outsiders. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

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