

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2260 of 1993 and 55 of 1995

New Delhi, this the 29th day of September, 1997

Hon'ble Mr. N. Sahu, Member (Administrative)

O.A. No. 2260/93-

Inder Dev Singh, S/o Shri Kanta Sharma,
R/o F-59, Lado Sarai, New Delhi-30

APPLICANT

(By Advocate - Mrs. Meera Chhibber)

Versus

1. Union of India - Through: Secretary
(Medical) Delhi Administration,
5, Shannath Marg, Delhi - 54

2. Medical Superintendent, Ex. Officer
Chairman, Managing Committee,
Departmental Canteen, L.N.J.P.
Hospital, New Delhi.

3. The General Manager, Departmental
Canteen, L.N.J.P. Hospital
New Delhi-2

RESPONDENTS

(By Advocate - Shri Raj Singh)

O.A. No. 55 of 1995 - ✓

Indu Paswan, S/o Shri Ram Lakhan Pawan,
resident of RZF-34, Gali No.19, Indira
Park, Palam Colony, New Delhi

APPLICANT

(By Advocate - Mrs. Meera Chhibber)

Versus

1. Government of NCT of Delhi through
Secretary (Medical), 5 Sham Nath
Marg, Delhi.

2. The Medical Superintendent, Ex. Officer
Chairman, Managing Committee, L.N.J.P.
Departmental Canteen, New Delhi

RESPONDENTS

(By Advocate - Shri Raj Singh)

JUDGMENT

By Mr. N. Sahu, Member (Admnv) -

Common grounds are involved in these two
Original Applications and they are consolidated together
for disposal in a common order.

2. I shall take up the facts in OA 2260/93. In this OA the grievance is against the oral termination of the applicant's services as Bearer in the departmental canteen. The applicant was appointed by respondent no. 3 who is the appointing authority as per the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980 (hereinafter referred to as 'the Recruitment Rules'). Under these rules the appointing authority for Bearer is the General Manager in departmental canteen of Maulana Azad Medical College (in short 'MAMC') and four other associated hospitals. There is a sanctioned strength of 35 Bearers. The applicant was initially appointed on 1.5.1991 (Annexure-C). It has been clearly stated in the appointment order that the appointment was purely temporary on an adhoc basis and after 89 days this appointment would be reviewed and if necessary extended. After the order dated 1.5.1991 order dated 1.4.1992 (Annexure-D) on the same ad-hoc basis as a casual labour for 89 days is annexed. Thus, the case made out is that the applicant continued to work as a Bearer for more than two years after completing the period of probation of six months and has acquired the status of a regular employee as a Bearer under Rule 2(8) read with Rule 8(3) of the Recruitment Rules. At page 24 of the application there is a letter by the Deputy Medical Superintendent (A) stating that the Medical Superintendent has approved payment in respect of Inder Dev Singh and Indu Paswan, the applicants, daily wage workers for the extra duties they had performed in the Canteen till December, 1992. As proof of the services rendered by the applicant the following evidence has been submitted - attendance sheet

(Annexure-E page 26 to 34) and Annexure-F showing that applicant Inder Dev Singh was deputed to deposit cash in the Bank on 23.6.1992. Some sheets have also been filed showing stock taking and handing over of eatables and vessels by the applicant.

3. This application was admitted on 22.10.1993. There was an earlier OA bearing no.1247 of 1993 by the same applicant seeking regularisation as well as payment of wages. It was disposed of on 7.6.1993 directing the respondents to consider his representation and pass final orders within three months. This representation was not disposed of and instead the services of the applicant were terminated on 5.10.1993. The applicant as an interim relief sought release of wages and his continuance as a casual labourer. A direction was given on 22.10.1993 for keeping one vacancy of Bearer (emphasis supplied). On 11.11.1993 it was directed by the Tribunal that in case any casual labourer is being appointed in the canteen, the respondent shall give preference to the applicant. The Court also recorded on that date that a letter was written by the General Manager to the Medical Superintendent in which he admitted that arrears of pay due to the applicant should be paid to him from February, 1993. A direction was also given that the respondents shuld look into and settle the wages. On 24.1.1994 a Division Bench heard the matter relating to the payment of wages for February, 1993 as well as from April to 5.10.1993. The plea taken by the respondents was that the applicant was unauthorisedly appointed by the respondent no.3, the General Manager, Departmental Canteen, who did not have

the power to employ the applicant as a casual labourer. Respondent no.3 stated that with the approval of the Medical Superintendent and the honorary Secretary DMS(A) the applicant was appointed and the appointment proceedings in the custody of the respondent no.2 are proceedings of the committee and not of an individual. These proceedings were produced before the Bench by the Medical Superintendent.

4. It is further stated that the direction issued on 21.10.1993 pertain to a prohibition of employment of any casual labour/ leave vacancy/ daily wager in the departmental canteen with effect from 1.10.1993. The argument of the learned counsel for the respondents was that in view of the instructions of the Ministry of Finance, Department of Economic Affairs, No. F.2(26)-B(CDN)/92 dated 24.1.1992 (Annexure-R-2) the employees of the non-statutory departmental canteens became Central Government employees with effect from 1.10.1991 and, therefore, respondent no.3 did not have any power of appointment.

5. The Division Bench recorded on 24.1.1994 that the applicant worked in the canteen in the month of February, 1993 as well as from April, 1993 to 5.10.1993. With regard to unauthorised appointment it is held that this matter would be decided when the O.A. is finally disposed of. Paragraphs 6 & 7 of the order dated 24.1.1994 of the Division Bench are reproduced below-



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"6. *Prima facie*, we are not satisfied with this argument. The recruitment rules produced by the applicant's counsel give full power to respondent 3 to appoint bearers. If so, he can also appoint casual labourers against vacant posts. The respondent 3 has produced today the selection list for engagement of casual labours, which includes the applicant's name. The respondents 1 and 2 have not modified the recruitment rules after the judgment of the Supreme Court. The Annexure R-2 letter produced by respondent 3 cannot have retrospective effect before it is issued on 21.10.1993. These are matters which will be finally decided when the OA is heard finally.

7. In the meanwhile, the applicant cannot be deprived of the wages to which he is entitled nor can we say that this would be the responsibility of the third respondent. Therefore, without prejudice to the rights of respondents 1 and 2 to take any action they feel justified against the third respondent for the alleged contravention of the rules, we are of the view that the wages for the month of February, 1993 to 5.10.1993 should be paid by respondents 1 and 2 to this applicant within one month from the date of service of this order, failing which interest @ 12% will be payable until the amount is paid. A copy of this order be given to all the parties."

6. Shri Raj Singh, learned counsel for the respondents stated that the attendance sheets and other evidence filed pertaining to short sale deposit in the Bank as well as handing over and taking over of the material of the canteen (pages 37 to 39 of the OA) are manipulated in connivance with the General Manager. He proposed to produce official records to set at rest the controversy about genuineness. After taking adjournment on 6.8.1997, the matter was fixed on 19.9.1997. The departmental representative Shri A.K. Meena, was present.

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Shri Raj Singh, had made his submissions on 21.7.1997 after Smt. Chhibber, learned counsel for the applicant. At the time of hearing on 19.9.1997 further records have not been produced as promised by the respondents on 21.7.1997. (b)

7. Smt. Chhibber's arguments are that - (i) it is inappropriate to say that the General Manager had no power to make appointments in view of the powers given to him under Rules 7 and 19 of the Recruitment Rules. In Schedule 'C' the Sweeper and Wash boy are to be appointed by Manager and the Bearer, by the General Manager. These appointments were made after due selection and ratification by the Managing Committee; (ii) it is stated by the counsel that out of 35 sanctioned strength the regular employees were only 30 and out of these 30 two Bearers died and two Bearers resigned. When vacancies exist there was no justification for terminating the services of the applicant; (iii) the applicant had completed 240 days in 1992. He was again given artificial break and re-engaged in February, 1993 only. From April, 1993 he was made to work in double shifts for which attendance sheets duly countersigned by the General Manager were filed as Annexure-E. When the shift changed handing over was done by the out-going person to the counter; (iv) although, the applicant had been engaged on 1.5.1991 his juniors, namely, Bij Bihari, Ratin Das and Shashi Prasad were regularised as Bearers with effect from 1.10.1991 ignoring the applicant's claim. To

be answered

substantiate her contention, the learned counsel cited a decision of the Apex Court in K. Narayanan and others Vs. State of Karnataka & other, 1993(5)JT 102.

8. The learned counsel for the respondents submitted that the employees of the Canteen became employees of the Delhi administration with effect from 1.10.1991 by the Orders of the Apex Court dated 11.10.1991 in W.P.Nos.6189-7044 and 8246-55 of 1993. The competent authority for appointment was the Medical Superintendent. The applicant was never appointed by the hospital competent authority as a casual labour against a leave vacancy post with effect from February, 1992 to October, 1993 and an allegation was made that the applicant's attendance had been marked in connivance with the General Manager. With regard to regularisation of three canteen employees as Bearers, they were stated to be on rolls as on 11.10.1991. It is urged that appointment letter issued by the General Manager was a fake appointment letter. The respondents admit that the applicant was paid wages for the period from April 1992 to December, 1992 from canteen funds unauthorisedly. It is denied that any appointment was made in 1991. The respondents deny that the applicant worked for 240 days or more in 1992. At para 4.8 of the counter affidavit it is submitted that the General Manager marked the applicant's attendance for 213 days in connivance with the applicant "whereas the payment was made to him for 211 days only from the canteen funds". It is denied that there is any vacancy in the hospital canteen as the hospital authorities found the employees working in the canteen to be surplus and,

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therefore, their services had been utilised in the kitchen of the hospital. It is finally submitted that the canteen employees were inducted in Government service as departmental candidates as on 1.10.1991. The applicant's name was not in the said list or in the leave vacancy list and the applicant was not appointed by any competent authority thereafter.

9. My attention was drawn to a decision of this Tribunal in the case of **Jatinder Kumar (Bearer) & 3 others Vs. Chief Secretary, Govt. of NCT, Delhi & another**, O.A. No. 2186 of 1993, decided on 6.1.1995. That was also a case where the four applicants in that OA contested the oral order terminating their services with effect from 5.10.1993. In that case also the claim was that the applicants were appointed by direct recruitment on the basis of an interview and selection held by a properly constituted selection board against posts of Bearer and Cooks in the departmental canteen of MAMC and associated hospitals. There also the appointments were made on 1.6.1991 and punctuated by short breaks they continued to work in the departmental canteen right upto 4.10.1993. It has also been contended that several persons junior to them have been allowed to continue in the service in the same departmental canteen. In that O.A. it is stated that these applicants have never been in the hospital canteen and their names did not figure in the list drawn up and it is contended that there was no interview for selection for canteen employees in May, June and July. That was a case where the applicant no. 2 happened to be the wife of Shri V.N. Sharma, the so called appointing authority who was involved in issuing

fake appointment letters. It is also noted that the posts of Bearer and Cook were to be filled by promotion failing which by direct recruitment and a DPC has to be constituted for selection headed by the Chairman of the Managing Committee and two Members. The Division Bench vide its order dated 12.1.1995 had held that the applicants had not been able to satisfactorily rebut the contention of the respondents that their appointments were made in violation of the prescribed rules. (19)

10. I have carefully considered the submissions. No doubt the facts in the case of Shri Jatinder Kumar (supra) have similarities as in the present O.A. . The material on record in this OA shows that there was a selection board duly constituted consisting of Smt. Sushma Johar, Member; Sh. S. B. Saxena, Member; Shri Dharam Pal, Member Secty; and Shri V. N. Sharma, Chairman. It interviewed the candidates sponsored by the Employment Exchange, Kamla Market, Delhi by requisition dated 4.5.1992. Out of 38 candidates sponsored by the Employment Exchange 32 were present before the Selection Board. Out of the 32, 10 were selected and 7 were kept in the panel. Out of the 7, the applicant Inder Dev Singh was at serial no.4. Shashi Prasad at serial no.3 was also kept in the panel and later appointed and finally regularised. Thus, Inder Dev Singh had been duly selected and appointed and he duly worked. It has been clearly established even by the orders of the Division Bench on 24.1.1994 that the applicant could not be deprived of his wages for the period he worked and wages were paid to him. Even in

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the case of Indu Paswan: OA 55/95, the Division Bench in CP No.89 of 1994 by order dated 19.9.1994, stated as under:-

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"5. Having considered the matter with due care and after examining the relevant record which has been produced for our perusal and also keeping in view the fact that the applicant had worked during certain period, we are satisfied that there appears to be a ring of truth in the applicant's assertion that he rendered services to the respondents from 1.5.1993 onwards. We accordingly direct the respondents to pay to the applicant the emoluments which would have been payable to him for having rendered service to them from 1.5.93 to 5.10.93."

11. On the basis of the above discussions, the following findings and directions are recorded in respect of OA 2264 of 1993:-

(i) the applicant's selection as evidenced by the proceedings dated 4.5.1992 by a three member committee, cannot be impugned; (ii) The Division Bench in a long order on 24.1.1994 had held that wages would be paid to the applicant for the work performed by him from February 1993 to 5.10.1993; (iii) after his termination on 6.10.93 till date the applicant could not claim either wages or benefits of employment because he was only appointed in a temporary post on adhoc basis terminable after the stated period in the order; the orders dated 1.5.1991 and 1.4.1992 are only such orders; (iv) the respondents shall reckon the period of service from the actual payments made from the date of the first appointment, namely, 1.5.1991 (Annexure-C-1) to the date of his termination regardless of whether the payments made from the Canteen funds or from Government funds.

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Once the payment was made for services rendered, such services shall be considered as a qualification for regularisation. An order shall be passed within 4 weeks from the date of receipt of a copy of this order as to whether the applicant fulfils the Scheme in this regard for grant of temporary status; (v) if the General Manager has fraudulently secured the appointment order prior to 4.5.1992, the respondents shall consider taking disciplinary action against him for this purpose and this should not cloud their judgment on the validity of actual service rendered by the applicant; (vi) it is true that the Medical Superintendent, LNJP Hospital vide OM dated 14.9.92 had withdrawn the powers of the General Manager retrospectively from 1.10.1991. The actions taken by the General Manager from 1.10.1991 to 14.9.1992 with regard to other spheres of work need not be commented upon in this order. But with regard to the applicant's order of appointment from 4.5.1992 and the services rendered by him for which wages have been paid from 1.5.1991 read with the orders of the Division Bench on 24.1.94, the applicant shall be deemed to have rendered valid service on those dates for which wages have been paid. Such services shall be considered as validly rendered in conformity with those orders as it stood at that time and such services shall be considered for temporary status, if the provisions of the 1993 Scheme of DOPT apply and for advancing his case for regularisation; (vii) for filling up the vacancy reserved by this Court's order, the existing orders dated 1.5.1991 and 1.4.1992 are not meant to be regular appointment orders for regular posts. They are orders for casual labourers on an adhoc basis. Although, on

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4.5.1992 there was a selection no appointment order issued thereafter had come on record. Thus the reserved vacancy has to be filled up in accordance with the Rules. In doing so, the applicant shall get priority of consideration and for such appointment he shall be considered along with others. The services rendered by him for the period from 1991 till his termination shall be considered as experience of work rendered by him and this shall be counted by the selecting authority while evaluating the applicant's candidature vis-a-vis others. Age relaxation vis-a-vis services rendered shall be granted. This exercise of considering the applicant to the reserved vacancy shall be completed within 3 months from the date of issue of a copy of this order.

(22)

12. O.A. No. 2260 of 93 is disposed of as above. Indu Paswan's case OA 55/95 is also disposed of on the basis of the findings and directions given above on a mutatis mutandis basis. Same directions apply to Indu Paswan with regard to his claims for regularisation/ temporary status. Although no vacancy is reserved for him by Court order, he shall be considered on priority giving due weightage for his experience for any vacancy that exists or likely to arise in future. The parties shall bear their own costs.

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(N. Sahu) 29.9.97.
Member (Admnv)

(Signature)
BIMLA MEYD
Secty. to the Office
of the Comptroller and Auditor General
of India
Court of Appeal (Tribunal)