Central Administrative Tribunal
Principal Bench, New Delhi

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O.A. No. 590/95

New Delhi, this the 5th Day of April, 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI K.MUTHUKUMAR, MEMBER(A)

Smt. Mamta Kumari
W/o Sh. Sanjeev Sehgal,
R/o 199/8 Marla Model Town,
Gurgaon-122 001

and

Rajesh Taneja
S/o Shri J.C.Taneja
R/o 3-H/34, NIT Faridabad. Applicants

(By Shri R.K.Kamal, Advocate)

Versus

E.S.I.C. through

1. Director General,
ESIC, Panchdeep Bhawan,
Kotla Road,
NewDelhi.

2. Regional Director,
Regional Office,
ESIC, Sec.16, Faridabad Respondents.

(By None)

Judgement (Oral)

delivered by HON'BLE SHRI J.P.SHARMA, MEMBER(J)

We heard the learned counsel Shri R.K.Kamal at length yesterday also on admission as well as on the grant of interim relief prayed for. The facts of the case are that both the applicants were given appointment purely on temporary and on ad-hoc basis for a period of three months. The terms & conditions were specifically mentioned and laid

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down in the offer of appointment given to both the applicants separately. Both the applicants have accepted the terms and conditions of the appointment and by virtue of that applicant No. 1 who joined on 9.1.1995 and applicant no. 2 who joined on 16.1.1995 their employment will cease automatically after a period of three months, if not extended by the respondents.

2. The applicants are apprehending that the respondents may replace the applicants by freshers from the market and that would be in violation of law laid down by the Hon'ble Supreme Court of India. The relief prayed for by the applicants in the O.A. are(i) to direct the respondents to consider the case of the applicants for regularisation against permanent sanctioned post to which they were appointed and (ii) to pass such other and further orders as deemed fit and proper. The applicants have also claimed the interim relief that the respondents be directed not to terminate the services of the applicants and to replace them by ad-hoc appointment of fresh and junior recruits.

3. We have considered the contention raised by the learned counsel for the applicant by highlighting paras No. 4.3, 4.4 & 4.6 of the original application. In nutshell, the contention of the learned counsel is that the applicants were given appointment though for a period of three months but the posts against which they were appointed were permanent and sanctioned posts in nature and that in order to avoid regularisation of the applicants and to violate the law laid down by the apex court the appointment

was restricted to a particular period and the respondents instead of considering the case of the applicants for regularisation are threatening to terminate or cease the applicants from service. Infact we are fortified by having a latest decision of the Hon'ble Supreme Court of India passed in the case of ad-hoc and temporary employees of E.S.I.C. who were granted a similar relief by the C.A.T. Principal Bench, New Delhi vide order dated 22nd September, 1991. These employees were appointed in the year 1990 and continued thereafter by virtue of the order of the Principal Bench. Director General ESIC filed a civil appeal before the Hon'ble Supreme Court challenging the order passed by the Principal Bench regularising the services of the E.S.I.C. employees who were engaged purely for a definite period by offer of appointment and also informing them that that is a stop gap arrangement. The Hon'ble Supreme Court of India considered that case in the civil appeal No. 5302-05 titled Director General ESIC Vs. Tirlok Chand and decided on 10th December, 1992. The Hon'ble Supreme Court also considered the case of State of Haryana v/s Piara Singh reported in 1992(4) SCC Page 118. The aforesaid case of Piara Singh is with regard to the fact that when regular incubments were available those who have been appointed on ad-hoc basis cannot be retained. Learned counsel for the applicant also argued that the ratio of this case will apply only at the time of final hearing as the point of regularisation is not being

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pressed./now for the grant of the interim relief which is only restricted to the fact that the services of the applicant be not discontinued. We are afraid that if the final relief cannot be granted in the manner prayed for as the case being fully covered by the decision of the Hon'ble Supreme Court of India and no other decision against the same has been referred to or pressed, application itself shall not be maintainable and the interim relief prayed for cannot be granted. In the present case the applicants have been appointed specifically for a period which may not last for more than three months. By accepting theoffer of appointment they very well knew that they are likely to be discharged from their employment after the expiry of that period. Infact there is another authority of the Hon'ble Supreme Court of India where the contractual employment was involved and the relief to such an employee was granted by the Allahabad High Court, Lucknow Bench. That case is of Director Institute of Management Dev. U.P. V/s. Rishpal Srivastava reported in JT 1992 (4) SC Page 489. The Hon'ble Supreme Court quashed the judgement of the Lucknow Bench of the Allahabad High Court and held that appointment purely ad-hoc and contractual for a limited period, the right to remain in the post comes to an end after the expiry of the period. I think the ratio decided in that case is fully applicable in this case also, thus, this case is fully covered as regards the final relief prayed for by the judgement of the apex court in the case of Director General

ESIC Vs. Tirlok Chand (Supra) and that of the Institute of Management Dev. U.P. Vs. R.Srivastava as regards the interim relief is concerned.

4. The learned counsel for the applicant fervently argued that the point pressed should be effectively discussed so that the petitioners of this case may be satisfied that their case has been judicially reviewed with an open mind. When we go to the provisions for the grant of the injunction then we have to find that there is a specific law that there should be a prima-facie case and balance of convenience in favour of a person and non-grant of the prayer for injunction will result in irreparable loss to the parties. The prima-facie case means that there should be certain issues for a decision of the case. If the issues have already been decided by a ratio laid down by the apex court then party cannot assert and confess to the convincing point that there is a prima-facie case both for admission as well as for grant of interim relief. We have referred to the judgement of theDirector General ESIC V/s. Tirlok Chand (Supra) and we have also read it with thelearned counsel for the applicant Shri R.K.Kamal. In that case the appointees who were similarly situated, have been in service since 1990 continued. Direction of the Tribunal which was made absolute in 1991 but has been quashed by the order of the Hon'ble Supreme Court in October, 1992 with the direction that those employees who have worked should be paid wages for the job done by them. It goes to show that such employees who came initially on contractual assignment

temporary and ad-hoc basis cannot be regularised. Regarding the balance of convenience, the applicants very well know that their engagement is for a short term and were free to work elsewhere on merit by way of regular selection;so the balance of convenience also does not exist in their favour. The applicants are also not to suffer any irreparable loss as they have only worked for less than even three months. There is no rule where a person who has worked only for a limited period of 90 days or so can claim regularisation. The Department of Personnel & Training issued a memo for regularisation of some ad-hoc employees who have atleast worked for 240 days where the working days are 6 in a week /and 206 days where the working days are 5 in a week. So from any angle whatsoever when we judge whether any irreparable loss would be suffered by the applicants we are not able to reach the conclusion in favour of the applicants.

5. In view of the above facts and circumstances, we find that no prima-facie case is made out in this application for admission as well as for grant of ad-interim relief. The application is, therefore, dismissed inlimini.

(K.MUTHUKUMAR)
MEMBER(A)

(J.P.SHARMA)
MEMBER(J)