

11 CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA-439 of 1997

New Delhi, this the 17 day of February, 1998.

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

T. Dominic
S/o Shri A. Theres Nathan
R/o RZ 20 B/10, Gali No.4
Main Sagarpur
New Delhi

...Applicant

(By Advocate : Sh.E.X. Joseph)

Versus

Union of India : through

1. The Secretary to the
Government of India
Dept. of Personnel & Training
North Block, Central Secretariat
New Delhi
2. The Chairman
Staff Selection Commission
Block No.12, CGO Complex
Lodhi Road
New Delhi.

(By Advocate : Sh.R.P. Aggarwal)

ORDER

By Sh. N. Sahu, Member(A) -

This OA prays for quashing the termination order No.A-12032/7/96-G dated 31.01.1997/03.02.1997 and reinstate the applicant in service with other consequential benefits.

2. The facts leading to the OA are not in dispute and are in a brief compass. The applicant worked in the Staff Selection Commission as a daily-rated Casual Worker. The Station House Officer, Lodhi Colony, New Delhi informed the respondents by a letter dated 24.01.1997 that the applicant has been

arrested in FIR No.372 dated 21.09.1996 under Sections 380, 120-B, 420 and 201 of IPC and he was in judicial custody till 01.02.1997. Pursuant to this, the services of the applicant were terminated w.e.f. 16.01.1997 by an order dated 19.02.1997 (Annexure R-II) which was amended by a letter dated 19.02.1997 (Annexure R-III) which had the effect of enforcing the termination from 12.01.1997. The Additional DCP-II by a report dated 04.04.1997 informed the respondents that one of the accused mentioned that he obtained the question papers of LDC Exam. - 1996 from the applicant who is a resident of 20-B/10, Gali No.4, Main Sagarpur, New Delhi against payment of Rs.25,000/-. It was found that another person, Shri Ritesh Roshan had obtained question papers of UDC Exam - 1996 from the applicant against payment of Rs.35,000/-. This person "was apprehended by the police when he was faxing the papers to Patna". The applicant's house was searched and several incriminating documents were found. These documents included the application forms of several other candidates. Relevant portion of Para 3 of (Annexure R-IV) the letter dated 04.04.1997 addressed by Additional DCP to Dy. Secretary, SSC is extracted as under:

"During course of investigation the house of T. Dominic was searched and several incriminatory documents i.e. application forms and UDC Examination-1995 of Raj Singh (5 papers), Kamaljeet(5 papers), Satyavrat(6 papers), Arvind(8 papers), Vipin(3 papers), Vipin(6 papers) and Vedpal(5 papers) were recovered."

Thus the case against the applicant was one of theft of question paper and utilization of these stolen papers for personal monetary gain.

3. The order of termination is challenged on the ground that it is arbitrary and the principles of natural justice were not observed. The applicant was appointed as a Casual Labourer w.e.f. 07.05.1983 and by an order dated 24.11.1993 he was granted temporary status w.e.f. 01.09.1993 pursuant to a court order. The learned counsel submits that under the Scheme of Ministry of Personnel dated 10.09.1993, the services of a temporary status Casual Labourer may be dispensed with by giving a notice of one month in writing. A casual labourer can also quit service by giving a notice of one month. The wages for the notice period will be payable only for the days on which he was engaged on work. The learned counsel argues that as this notice of one month was not sent to the applicant, the termination is in violation of the Scheme and, therefore, bad in law. The applicant being a Casual Labourer, the respondents are concerned only with his work and they need not take notice of his conduct outside the sphere of his work. The personal acts of omission and commission need not concern the employer. The arrest on the basis of some suspicion is not conclusive of the guilt. The FIR is still under investigation and even as on date no charge sheet has been framed. The learned counsel cited Rule 10 of CCS (CCA) Rules and stated that under such circumstances a Govt. servant is suspended pending inquiry and his future is decided only after

the inquiry is concluded. In the applicant's case the termination was sudden without even waiting for the applicant's explanation on the subject. It is urged that although the applicant is neither a temporary Govt. servant nor a permanent Govt. servant yet the spirit of Rule 10 should have been observed in his case. He should have been issued a show cause notice and his explanation obtained with regard to the police report. Thus, the conduct of the respondents is held to be not only arbitrary but stigmatic. It is a termination for an alleged misconduct. In all fairness the applicant deserved at least a hearing. Learned counsel concedes that if it is a termination order simpliciter, he could have no grievance but the order attributes a misconduct and is not an innocent termination order. Learned counsel has cited the following decisions in support of his contentions noted against each authority:

1. Rahmat Ullah Khan & Ors. Vs. UOI & Ors. - SLJ, 1989(2) CAT 293. This Tribunal held that casual labourers are Central Govt. employees and come under its jurisdiction to settle their grievances against the employer.
2. Smt. Maneka Gandhi Vs. UOI - AIR 1978 SC 597. Before any punitive action is taken, which deprives the employee of the benefit he is enjoying, an opportunity has to be given to him.
3. Delhi Transport Corpn. Vs. DTC Mazdoor Congress & Ors. - AIR 1991 SC 101. The rules of natural justice also require that the applicant should be given an opportunity to be heard before subjecting him to any punitive action.
4. Olga Tellis & Ors. Vs. Bombay Municipal Corporation - AIR 1986 SC 180. The applicant has been deprived of his livelihood without even being heard in the matter and without any notice merely on the basis of an on-going

police investigation. Right to life includes right to livelihood and thus the order is violative of Article 21 of the Constitution.

5. E.P. Royappa Vs. State of Tamil Nadu - AIR 1974 SC 555 (on page 583).

6. Ramana Dayaram Shetty Vs. International Airports Authority of India - 1979 3 SCR 1014 (Headnote on page 1015).

Both the above decisions establish that right to fairness is irrespective of the legal rights of the employees.

His brief argument is that the order of termination violates the philosophy of fairness and is a classic case of arbitrariness. The applicant's counsel further contends that disengagement because of absence of work does not require any notice. It is only termination other than disengagement due to absence of work that is covered by Clause 7 of the Scheme which lays down that a notice has to be given. He cited the Full Bench decision in K.Ch. Venkatreddy & Ors. Vs. Union of India & Ors. - (1987) 3 ATC 174 in support of his claim.

4. The learned counsel for the respondents submitted that the applicant did not hold any civil post and has ~~no~~ rights of a temporary or permanent Govt. servant. He further cited another instance of written complaint received against the applicant from one Constable Sh. Narpal Singh Yadav on 20.10.1995. This constable was a candidate in one of the examinations conducted by the Staff Selection Commission. In that complaint, the applicant was accused of demanding a gratification of Rs. 1.00 lakh for his selection. That investigation is also under progress as is revealed from the report of Additional

DCP dated 09.05.1997 (Annexure R-7). The learned counsel cited the order of the Supreme Court in Principal, Institute of Post Graduate Medical Education & Research, Pondicherry vs. S. Andel - 1996 SCC (L&S) 208. That was a case of termination of a temporary employee whose work was found to be constantly unsatisfactory and who did not show improvement despite repeated opportunity. The termination of his service was stated to be not penal in character. The services of a temporary employee can be terminated without notice and without holding an inquiry on the ground of unsuitability. The Supreme Court held that because the services of the employee was found to be unsatisfactory from time to time, the ensuing termination order was held to be proper and legal. This decision of the Supreme Court was cited by the learned counsel to show that the applicant's case is also one of unsuitability for the job. This unsuitability is arising out of the applicant's involvement in a criminal case which is pending investigation and there is no question of entertaining any appeal or representation. As he is not the holder of a civil post, the service rules applicable to a Govt. employee are not applicable to him. It is further urged that the Scheme of DOP&T dated 10.09.1993 relied upon by the applicant does not provide for suspension of a person with temporary status. With regard to the point raised of giving notice of one month, it is vehemently stated that such notice arises when services are dispensed with on

account of non-availability of work and not in a case where the applicant's alleged conduct makes him undesirable.

5. I have carefully considered the submissions. The applicant is a daily rated Casual Labourer. It is settled law of the Supreme Court that a Casual Labourer has no right to a particular post. He is neither a temporary Govt. servant nor a permanent Govt. servant. The protection given by Article 311 does not apply to him. He is asked to do a job on a daily wage basis. His tenure is precarious. His continuance is dependent on the satisfaction of the employer. A temporary status conferred to him by the Scheme only confers on him those rights which are spelt out in Clause 5, namely, wages at the minimum of the scale for Group 'D'; benefits of increments would be taken for pro-rata wages annually; leave entitlement and certain other privileges. Thus, the respondents are very much within the rights in terminating his services.

6. In my view this termination is a termination simpliciter. There is no stigma attached in the order of termination. The respondents on receiving information about his arrest and reports about his conduct of leaking question papers for monetary consideration terminated his services. There was no inquiry. There was no charge-sheet. There was no finding that the applicant was guilty of a misconduct. The Hon'ble Supreme Court in Governing Counsel of Kidwai Memorial Institute of Oncology Bangalore Vs.

Dr. Pandurang Godwalkar & Anr. - 1993 SCC (L & S) 1
had laid-down that whenever the services of an employee is terminated while his appointment is on temporary basis by an order of termination simpliciter after some preliminary inquiry, it cannot be held that as some inquiry had been made against him before the issuance of order of termination, it really amounted to his removal from service on a charge as such penal in nature. There was some inquiry in the Supreme Court decision. In the case before me there is no inquiry at all. It was just on the basis of information received that the respondents found him unsuitable. The termination was on the basis of the terms of the order of appointment. A daily-rated Casual Labourer does not ipso-facto get a right of continuance. His right of continuance is subject to (i) if work is available, (ii) if his performance and conduct are satisfactory. In the present case, the two premises are that applicant has absolutely no rights to a permanent post and the order of termination is an order simpliciter and not stigmatic. While the Supreme Court decision dealt with a temporary employee ^{who} is entitled to the protection of Article 311, a daily-rated Casual Worker cannot invoke the provisions of Article 311 of the Constitution. The next point related to the argument of the applicant's counsel that he should have been suspended. Suspension is an executive action whereby a Govt. servant is kept out of duty temporarily pending final action against him for criminal offences or acts of indiscipline, delinquency, misdemeanor etc.

The applicant is not a Govt. servant. He does not have a right to a post. He is simply conferred some privileges because of long years of service. The provisions of suspension are not attracted to him. Thus, there is no need to suspend a Casual Labourer and a termination is fully justified.

7. Learned counsel contended about deprivation of right to life and livelihood and cited Supreme Court decisions. He also cited that he should have been given an opportunity of being heard. The respondents are a public service commission. The activities of the applicant are such that the very existence of the respondents is threatened by his retention. If he is held guilty, he could be punished for a very serious crime such as stealing question papers and selling ~~them~~ for monetary gain. The argument that his private conduct has no relevance to his duties is not acceptable. Any job, be it permanent or temporary or that of a wage earner presumes an honest citizen. If a citizen seeking public employment, even that of a Casual Labourer is dishonest in his private life and is guilty of crimes and moral turpitude, he cannot be eligible for public employment. The same principle applies to his continuance in public service. No institution, much less a public service commission, can retain a person like the applicant, even though the charges against him are not conclusively proved in a court of law. It cannot be said that the imputations are frivolous. Such an

employee will threaten the existence of the very institution which employs him. On the question of natural justice we cannot find fault with the employer. In a termination simpliciter, there is no need to give a show-cause notice and consider his reply and then issue the order of termination.

8. The charges levelled against the applicant are grave and serious. It is undesirable for any employer to retain or continue the services of such a person who indulged in activities which are criminal in nature. The Staff Selection Commission is quite sensitive to such activities as leaking out questions papers or selling out question papers for monetary gain. The slightest of suspicion would be enough to disengage a casual worker. The employer is interested in keeping his house in order and free from such employees whose antecedents and present reputation are questionable. As stated above, a daily rated Casual Labourer even though granted temporary status need not be suspended because he is not entitled to a subsistence allowance.

9. I do not, however, agree with Sh. Aggarwal, learned counsel for respondents that in a termination of this type there is no need to give one month's notice. It is not necessary that one month's notice should be given only in cases where termination has to be resorted to because there is no work available for the Casual Labourer. A reading of the Scheme shows

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that one month's notice is a right conferred under the Scheme for a temporary status Casual Labourer, regardless of the grounds on which termination is proposed. However, since this notice had not been given in my view it would not render the termination order bad in law. Clause 7 of the Scheme itself says that due wages for the notice period will be payable only for the days on which such casual worker is engaged on work. This per se does not imply or presume an absolute right of notice failing which termination becomes bad in law. It is a right to allow the labourer to take wages for a month to enable his subsistence till he finds another job. The right conferred is not on account of a contract but it is conferred as a benefit to a particular status. It is a unilateral conferment of the privilege by the Govt. It would meet the ends of justice if within four weeks from the date of receipt of a copy of this order, the respondents remit to the applicant his wages in lieu of one month's pay.

10. It is necessary also to record that as a termination had been the direct result of a criminal case pending against the applicant, the applicant's termination order will cease to have its raison d'etre the moment the criminal case is closed and the applicant stands honorably acquitted. If and when the applicant is honorably acquitted, the respondents shall within four weeks from the date of production of that order of clean and honorable acquittal restore

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the applicant to his old job regardless of the time taken in the disposal of the criminal case and the earlier service will also stand counted for reckoning the benefits in Clause 5 of the Scheme. If the charges stands proved and the applicant is convicted, there is no need to shed a tear.

11. With the above observations, OA is disposed of. No costs.

Narasingh 17-2-98
(N. Sahu)
Member (A)

/Kant/