IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(9)

O.A. No. 98/98 with 99/97 199
T.A. No.

DATE OF DECISION 11.7.1997

Ms. Rakhi das and Ms. Anju Thapar Petitioner

Mrs. Rajkumari Chopra Advocate for the Petitioner(s)

Versus

ICAR & Ors. Respondent

Shri A-K. Sikri Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese, VC(J)

The Hon'ble Mr. Shri S.P. Biswas, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

(S.P. Biswas)
Member(A)
11.7.97

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-98/97
with
OA-99/97

New Delhi this the **11th** day of July, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

OA-98/97

Miss Rakhi Das,
D/o Sh. R.K. Das,
R/o B-393, Chitranjan Park,
New Delhi-19.

(through Mrs. Raj Kumari Chopra, advocate)

versus

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi-1.

2. The Chairman,
Agricultural Scientists Recruitment
Board (ICAR), Krishi Anusandhan Bhawan,
Pusa, New Delhi-12.

3. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi-1.

4. The Under Secretary (Admn)
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi. .... Respondents

(through Sh. A.K. Sikri, advocate)

OA-99/97

Miss Anju Thapar,
C-8/26, Sector-8,
Rohini, Delhi-55. ..... Applicant

(through Mrs. Raj Kumari Chopra, advocate)

versus

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi-1.

2. The Chairman,
Agricultural Scientists Recruitment
Board (ICAR), Krishi Anusandhan Bhawan,
Pusa, New Delhi-12.

3. The Secretary,
Indian Council of Agricultural Research,
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Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi. .... Respondents

(through Sh. A.K. Sikri, advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

These two original applications filed under Section 19 of the Administrative Tribunals Act, 1985 are being disposed of by a common order since the issues involved are same, but contain a very important question of law i.e.:-

(i) Whether the appointment/selection to a Government service, allegedly based on malpractices, can be terminated without affording any opportunity of being heard to the aggrieved individuals?

2. For better comprehesion of the issues, the details of facts in original application No.99/97 are being given as illustrative one. The Agricultural Scientists Recruitment Board (ASRB for short), an autonomous recruiting agency of the Indian Council for Agricultural Research (ICAR for short) conducted a combined written examination on 27.12.95, 28.12.95 and 29.12.95 for the posts of Section Officer and Assistant advertised in February, 1995. This was a combined competitive examination on all India basis. The applicants qualified in the written test for the post of Section Officer as well as Assistant and they were called for interview on 18.9.96. Results were

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declared, the select panel sent to ICAR on 7.10.96 and published through employment news on 9-15 Nov 1996. The applicants were successful in the selection as Assistants and were asked to accept the offer of appointment vide Annexure A-5 dated 10.10.96. The applicants complied with A-5 formalities by submitting the attestation forms, details of police verification and medical examination etc. The offer of appointment for the post of Assistant were issued to both of them on 2.12.1996 (Annexure A-7) and the applicants joined on the same date on being called from home. Respondent department on the basis of scrutiny of records/facts made by it pursuant to complaints, found that malpractices had crept into the conduct of the examination and decided to cancel the panel as well as appointment. Resultantly when the applicants were about to leave the office at 1730 hours, they were given the impugned A1 order dated 10.1.97 terminating their services with immediate effect. This order is under challenge in both the applications.

3. Reliefs sought for include issuance of directions to Respondents to quash the above orders, take them back on duty and grant other benefits. The impugned order dated 10.1.97 reads as under:-

> "The services of Miss Anju Thapar, Assistant are hereby terminated under Para 4 of the Memorandum No.6(5)/95-Estt.II dated 2.12.1996 with the approval of the competent authority with immediate effect."

4. The main thrust of arguments of Mrs. Raj Kumari Chopra, the learned counsel for applicants is that having been duly appointed/selected and having joined

their duties the applicants have not only the constitutional rights to continue but also on the basis of well accepted principle of "Audi Alteram Partem" under the nodular doctrine of the principles of natural justice, they can not be deprived of their inherent right of the opportunity of being heard before bringing their appointments to an end by the impugned orders and without following the procedure provided in Article 311 (2) of our Constitution. The other important planks of attack on behalf of the counsel are:

(a) The facts and circumstances of the case lead to the conclusion that the impugned order is passed by way of punishment on the basis of certain allegations of misconduct for which the petitioners were given no opportunity to prove their innocence.

(b) Where irregularities had been committed in the selection proceedings, which related to particular candidates, the proper course should be to take action against those candidates and not cancel the entire selection proceedings and that for lapses of others applicants could not be penalised. According to counsel, it not at all a case of mass copying. The complaints are only against one Mr. Anil Kumar who was working as UDC in ASRB and selected as Assistant alongwith his brother and sister-in-law who were also selected as deposed by Government

Counsel before the Hon'ble Tribunal on 14.2.97. Since the complaints are not against the applicants and they were issued offer of appointment as Assistants by a Competent Appointing Authority and allowed to join the duties on 2.12.96 by the same Authority, when the penal was very much alive, subsequent scrapping of the panel is not applicable in the case of applicants. There were no such mal practices in Delhi Cantt. Centre where the applicants appeared. In other words, when mal practices have been pinpointed with respect to particular candidates, it could not be applied generally. This is evident from the news report published on 3.11.96.

(c) That para 4 of the offer of appointment dated 2.12.96 under which the services of the applicant have been terminated is contradictory to para 5 of the same offer of the appointment. That whereas para 4 has been added in the offer of the appointment as a measure of administrative instrument and para 5 is a regular service condition under Rule 5 of CCS (Temporary Services) Rules, 1965, for termination of the service of a temporary employee. Para 4 cannot over-ride the constitutional and statutory provisions, envisaged in Rule 5 of CCS (Temporary Service) Rules, 1965. Such an order is unsustainable in law.

(d) That scrapping of panel, as published in employment news of 1-7, Feb 1997, can't legally follow terminations dated 10.1.97. That apart, scrapping would apply only to the candidates then available in the Panel and not to those who have already been appointed and allowed to join duties by the competent authority, before the panel was scrapped. It is a well settled rule of law that any order/ notification is prospective unless it is expressly or by necessary implication made to have retrospective effect. As such, scrapping of Panel on 1-7 February, 1997 cannot have retrospective in the eyes of law.

(e) It is not a case termination simpliciter. The form of order is inconclusive. The substance of matter behind the order which really determines termination is very important. The allegations against the applicants for securing employment by unfair means is casting serious stigma at the threshold of their career. The order has to be construed as punitive, carrying aspersions of misconduct and stigma attracting Araticle 311(2).

(f) Other contentions like non-application of mind by respondents in handling the present case of "Complete appointment" and issuing an order involving adverse civil consequential have also been raised.

5. In support of her abovequoted submissions, the learned counsel have cited as many as 39 case laws. But only those that support her above contentions and have been mainly relied upon are listed here. They are: Bhopa Ram Vs. Union of India (ATC 1988 Vol.8 page 918), Pradib Deb Vs. Director of Census Operation, Arunachal Pradesh (ATC 1987 Vol.2 page 750), B. Appa Rao Vs. Additional Collector of Customs Visakhapatram (ATC 1993 Vol.23), S.S. Sharma & Ors. Vs. Delhi Administration & Another (ATC 1993 Vol.23 page 616), Ratti Ram & Ors. Vs. UOI & Ors. (ATC 1991 Vol. 18 page 417), Director General of Police Vs. Mrityunjoy Sarkar (AIR 1997 February part SC page 249), Tagil Litin etc. Vs. State of Arunachal Pradesh & Others (SLJ 1996(3) SC page 57), Central Inland Water Transport Corporation Vs. Brejonath Ganguli and another (AIR 1986 SC page 1571), Kanhiya Lal Vs. UOI (ATC 1987 Vol.4 page 83), Naginder Ram & Others Vs. UOI (ATC 1994 Vol.28 page 677). Den Singh and Others Vs. UOI and Another, 1991(2) AT, 458, Swamy's CL Digest 1995/1 Calcutta Bench - page 242 Dipak Kumar Das Vs. UOI & Others.

6. In the counter, it has been vehemently argued by the learned counsel for respondents Sh. A.K. Sikri that since the appointments to the post in respect of

both the applicants are an offshoot of manipulated selection, none of them can claim to have any right to be heard before being terminated or entitled to claim retention in service. In the eyes of law, none of them can be presumed to have acquired authoritatively and legally any right to the alleged status. Reliance in support of above argument has been placed in the case of Shankar Sharan Das Vs. Union of India (1991(2) SLR 779(SC)) & Ahit Sen Gupta & Ors. Vs. Union of India (1978(4) SLJ (CAT) 830. The respondents have categorically averred that the possibility of the entire process of selection having been vitiated cannot be ruled out because of the involvement of an official who was himself a candidate alongwith others who were also candidates in the said selection. On the strength of decisions of the above Court in the case of Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and others (1996) 5 SCC 365), the respondents contended that in the case of manipulation in the selection, there is no need for issuing a show cause notice. Sh. Sikri drew our attention to the relevant portion of the judgement in the aforequoted case which is reproduced below:-

> "In a case like mass malpractice as noted by the Tribunal, as extracted hereinbefore, the question emerges:whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment."

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7. The learned counsel submitted that some clerical administrative and procedural lapses, non-observance of standard procedure and norms in the conduct of this examination have come to light particularly relating to registration of applications, allotment of roll nos. and association of an employee of the Board who was a candidate himself, in the examination process. Some specific instances of lapses have also been referred. Respondents have strong apprehension, backed by scrutiny of records that even higher officials are involved and have colluded in the matter. The fact that the very recruitment agency (ASRB) is under attack and needs protection speaks volume, the counsel for respondent contended.

8. We have given our anxious thought to the rival contgentions advanced by the learned counsel for the respective parties and have examined in detail the materials placed on record.

9. We have to examine the authorities cited by the learned counsel for the parties and evaluate whether in the circumstances disclosed in these applications, the applicants can claim an inherent right of being heard before termination. None disputes the need to adhere to the principle of natural justice. But as observed in the case of A.K. Kraipak & Ors. Vs. Union of India & Ors. (1969 SLR 445 (SC)), the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case. When a complaint is

made before a court/Tribunal, that some principle of natural justice has been contrayed, the court has to decide whether the observance of that rule was necessary for ensuing justice in the facts of that case. Facts available in the instant applications are entirely different, originating from some actions which are antecedent in point of time of the applicants' joining the department. It may be mentioned here that termination of the appointments is not the result of any misconduct on the part of the applicants while in service but are outcome of some acts which occured earlier and hence antecedent in point of time. In other words, before the applicants could actually take up their assignments with the Organisation, the alleged malpractices had occured.

10. Applicants and respondents agree that malpractices did take place. The divergence of opinion is only with regard to the extent and involvement of some personalities. Applicants would say that it is limited to only four persons and that too in a different centre, whereas the respondents would assert that the vices that flow from the involvement of interested parties and administrative lapses are stamped on the forehead of the entire process.

11. Thus, in the facts and circumstances, the fate of these applicants would hing on determination of the following vital issues:-

(i) Whether the case on hand could be treated as one of mass-copying or malpractice of a few persons without involving the rest or a case where some other lapses and malpractices (other than mass copying) have plagued the process?

(ii) Whether the impugned order casts a stigma against the applicants?

(iii) Whether the services of a temporary Government servant, like the present one, can be terminated without complying with requirements under Article 311(2)?

We shall now proceed to examine the above questions in seriatim.

12. As observed by their Lordships in the case of A K Kraiya Pok & others Vs. UOI & Others (Supra) "the aim of rules of natural justice is to secure justice or put it negatively to prevent miscarriage of justice. These rules operate only in areas not covered by any law. In other words, they do not supplant a law of the land but suppliment it".

To ascertain the truth, we called for the official records. The perusal of these papers leave us with no doubt that the entire atmosphere was vitiated and the possibility of unfair practices having been resorted to, could not be ruled out. Termination ordered on 10.1.97 was actually preceeded

by formal order of scrapping on 8.1.97. In terms of time, the scrapping took place after the unstarred question was replied in Parliament. We also find that the decision was backed by due application of mind at the appropriate level alongwith reasons recorded. Despite the administrative lapses quoted in para 7, no action was taken to ensure that none of the employees of the ASRB dealing with the examination did have any relation appearing in the examination. Similarly, Shri Anil Kumar Malik (Roll No. 8877) should have been shifted atleast temporarily from the Examination Section to disassociate him from the process since he himself was a candidate for the examination and yet he had carried out the responsibilites of registration of applications, allottement of Roll Nos. and other works in the Examination Section itself. What has emerged out is that certain candidates have used unfair means and indulged in malpractices to secure their success in the said examination. When whatever is visible is tainted, there is no assurance that whatever preceded was not tainted. The suspicion of the respondents that malpractices have crept in to the process cannot be ignored based on the materials made available to us. If the Tribunal or the Court making judicial review is in the dark as regards the transperancy of the process and draws independent conclusion about lack of impartiality and yet assents to the process of selection, that will open the floodgate of arbitrariness in the areas of public employment referable to Article 14 and 16. In the background of the details above quoted, we hold the view that though it is not exactly a case of

mass-copying, the process of selection before appointment did get polluted to warrant its cancellation.

13. It is now settled that stigma in an order of discharge of a temporary Government servant constitutes a penal consequence attracting provisions under Article 311 (2). Stigma means that there is some aspersion or reflection on the conduct, efficiency or the like made in the order, which would adversely affect the applicants' future relating to employment or promotion. If the order itself contains no express words throwing any stigma on the Government servant, the Court cannot delve into the Secretariat files to discover whether some kind of stigma could be inferred (see State of UP Vs. Madan Mohan-AIR 1976 SC 1260). Applying this principal, a three Judges Bench of the apex Court (State of UP Vs. Ram Chandra AIR 1976 SC 2547 Para 24) refused to hold that there was any stigma while there was no express word of aspersion in a simple order of discharge of a temporary Govt. servant, even though it was preceded by recommendation of a superior officer. However, the fact that the order of termination does not contain any express word of stigma is not conclusive of the matter. It may be an issue for finding out if the order was made by way of punishment or administrative routine. The entirety of circumstances preceding or attendent on the impugned order must be examined and the overriding test will be whether misconduct is a mere motive or is the very foundation of the order. The order will be set aside if the form of the same is

a mere cloak for an order based on finding of misconduct. Even if there is no stigma on the face of the order and the order purports to be an order of termination simpliciter and the employee succeeds in establishing, from materials on record together with attendent circumstances, that the authority intended to punish the employee for misconduct, the order of termination would attract provision under Article 311 (2). We have already discussed this aspect in para 9 and observed that the termination herein is not due to any misconduct but is an offshoot of an antecedent fact. Merely because an employee makes an allegation that the authority intended to punish him or her the Court should not take cognisence unless the allegations are established. The petitioners have not produced any records to show what was the foundation of the order i.e. some misconduct on the part of the employee or mere unsuitability. In the instant case there is no express word about the stigma in the order but simply states that the service of the temporary Govt. servant is terminated " under Para 4 of the Memorandum No. 6 (5) of 95-Estt. II dated 2.12.96 with the approval of competent authority..". There is no case for invoking Article 311 (2). This view of ours is supported by the decisions of the Hon'ble Supreme Court in the case of Khandeker Vs. Rajan AIR 1981 SC 965 - para 9). We therefore, hold that the allegation of stigma against the applicants remain unsubstantiated.

14. As regards the third issue on the need for issuing a show cause notice to Government servant holding a temporary post in the situation like the applicants herein, the law has been laid down by the Hon'ble Supreme Court in the case of Biswa Ranjan Sahoo and Others Vs. Sushanta Kumar Dinda and Others (1996) 5 SCC 365. It has been held that in the case of mass malpractice, nothing would become useful by issuance of a notice. Nobody would come forward to bear the responsibility. Under these circumstances, the Administrative Tribunal was right in not issuing the notice to the persons who were said to have been selected and appointed.

15. That apart, none of the case-laws cited by the applicants stand on the foundation that even in the case of manipulated or tainted selection, the aggrieved persons are entitled to the right of application of "Audi Alteram Partem".

16. In the case of Asit Sengupta & Ors (supra), wherein there was fraudulent appointment of candidates sponsored by Employment Exchange was found to be fake. On the facts therein it was held that a suitable letter of termination was enough to terminate services. We find no valid basis to take a different stand in the present case.

17. In such cases, the proper course would be to order a re-examination. In Pritpal Singh Vs. State of Haryana, 1994 (5) JT SC 245, the Supreme Court had occasion to consider a situation though not entirely

similar, but similar in the sense that the conduct of the examination and declaration of results created suspicion. There were allegations of manipulation of results. In view of the suspicious circumstances, the Court ordered cancellation of the examination. Though the facts of the case on hand are slightly different, the basic allegations are same. We are aware that a re-examination may cause hardship specially to those candidates who had obtained appointment on merits, we cannot help it because there is no other way of salvaging the situation. Such a situation arose in the above case before the Supreme Court also.

18. In the result, the applications deserve to be dismissed on merits and we accordingly do so with the following directions:-

(A) We quash the selection and direct the competent authority to make fresh selection considering the candidature of those who participated in the disputed selection.

(B) The two petitioners appointed already will remain in position until the selection process is completed.

(C) Respondents shall consider providing facilities of age relaxation in deserving cases of candidates who had participated or are in the panel or appointed, if so required and demanded.

(D) The respondents shall also initiate steps, as per rule, to identify officials responsible for failure to take actions in ensuring impartial selection as also take appropriate discriplinary actions against them.

(E) The respondednts shall pay Rs.2000/- (Rupees two thousand) to each of the applicants. They will be free to recover the said amount from those officials found responsible as per measures to be taken by them on the lines hereinabove.

(S.P. Biswas)
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairman(J)

/vv/