

Central Administrative Tribunal  
Principal Bench, New Delhi

O.A.No.1660/94

New Delhi this the 10th Day of March, 1995.

Shri Hari Om  
House No 208A, Gali No.7  
All India Radio,  
Akashwani Bhavan,  
New Delhi.

....Applicant

(By Advocate : Shri B.S. Jain)

Versus

Union of India, through

1. The Director General,  
All India Radio,  
Akashwani Bhavan,  
New Delhi.
  2. The Chief Engineer, CCW,  
All India Radio,  
PTI Building, 2nd Floor,  
Parliament Street,  
New Delhi.
  3. The Superintending Engineer (E),  
CCW, AIR, 5th Floor,  
Suchna Bhavan,  
New Delhi.
  4. The Executive Engineer, (E), Elect. Divn. I  
Suchana Bhavan, CCW, All India Radio,  
New Delhi.
  5. Shri Shiv Shankar Yadav,  
Khalasi, C/o Executive Engineer (E),  
Elect. Divn. I, Suchna Bhavan,  
CCW, AIR, New Delhi.
  - (6) Shri Chander Pal Singh,  
C/o Executive Engineer (E),  
Elect. Divn. II,  
Suchna Bhavan, CCW, AIR,  
New Delhi.
- ....Respondents

(By Advocate : Shri M.M. Sudan)

Judgement

Hon'ble Shri B.K. Singh, Member (A)

This O.A. No.1660/94 has been filed against  
the Order of oral termination of the applicant's  
services as Casual Labour/Khalasi in May, 1993.



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2. The material averments of the case are these.

The applicant worked as Khalasi/Casual Labour in the office of Respondent No.4 during the year 1992 and 1993. During 1992 he worked for 25 days and was paid Rs.921/-. The payment was on daily wage basis. In 1993, he worked for 138 days in all and was paid in all Rs.1958/-. The services were terminated by Respondent No.4 in May,1993 on the ground that there was no work for him in the Office.

3. The reliefs prayed are to :

(i) direct the respondents to re-engage the applicant as Khalasi on muster roll with all consequential benefits w.e.f. May,1993.

(ii) direct the respondents to give benefits of the Ministry of Personnel, P.G. and Pensions O.M. No.51016/2/90-Estt.(C) dt 10.9.1993 to the applicant.

(iii) declare the acts of the respondents in not re-engaging the applicant as Khalasi and engaging his juniors and freshers as discriminatory & arbitrary and hence illegal.

4. A notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for.

5. Heard the learned counsel Shri B.S. Jain for the applicant and Shri M.M. Sudan for the respondents and perused the record of the case.

(Signature)

6. It is admitted that the engagement of the applicant was purely on temporary basis at Soochna Bhavan on a daily wage basis. The version of the applicant is that he was disengaged in May, 1993 whereas the version of the respondents is that he left the job on his own without informing the department.

7. During the course of the argument the learned counsel for the applicant pointed out that there are vacancies of Khalasi in the department and that some persons junior to the applicant have been sponsored from the Employment Exchange and have been appointed by the respondents against the vacancies of Khalasi. The learned counsel for the respondents pointed out that the vacancies which exist in the department are on work-charged establishment and as a result of the major Policy decision of the government, the fresh recruitment on work-charged establishment has been forbidden by the Government of India. It was further argued that the applicant is not entitled to any relief particularly the relief pertaining to regularisation since he was working on daily wage basis and the question of conferment of temporary status also does not arise because it is a government department where 5 day week is observed and the applicant has not completed 206 days as required in a year, and as such there is no question of even conferment of temporary status leave aside the question of regularisation. The respondents have also enclosed with the counter-reply government order banning the appointment of Casual Labour/Work-charge

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staff vide Annexure R-I enclosed with the counter. Since the work was suffering two posts were sanctioned purely on temporary basis vide Annexure R-2 enclosed with the counter for appointment and requisition was sent to the employment exchange and the name of Shri Shiv Shankar Yadav was sponsored and he was selected to work on casual basis.

8. As per the direction contained in O.A.No.1496/93 decided on 2.6.94 to consider the name of S/Shri Rajender Kumar and Sachdev Prasad Bera Vs Union of India, a DPC meeting was held on 27.6.94 and Shri Shiv Shankar Yadav was selected to work on a casual basis. The name from the employment exchange was also called to fill up the second post of casual labour and the name of the applicant was also sponsored by the employment exchange along with other candidates. The respondents have fairly conceded that they will have not objection in considering the name of the applicant along with those of other candidates to fill the temporary post for 90 days.

9. During the course of hearing the learned counsel argued that the applicant should be preferred to juniors and freshers. After hearing the rival contentions and going through the record we find that there is no proof that the applicant has worked for the month of April and May, 1993 and as such paying him any wages for that period does not arise. It is also admitted that he was engaged on purely temporary basis and according to respondents he left the job in March, 1993 without intimating to the department and

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the learned counsel for the respondents rebutted the statement of the learned counsel for the applicant that he attended the Office in the month of April and May, 1993. It is admitted by both the parties that the applicant was engaged "purely on temporary basis" and whether he left the job or his services were terminated is not very material to the facts in issue. The respondents have categorically stated that he neither filed a representation nor did he visit the Office seeking work. And since the sanction for engagement was purely on temporary basis the question of regularisation of the applicant, when there is no Group 'D' post available, does not arise. He has not completed 206 days as such conferment of temporary status on the applicant will not arise. We do not find any evidence to the effect that he had completed 206 or 240 days continuous service in a year. The details given by the applicant also does not work out to 206 days which is a pre-requisite for confirmation of temporary status.

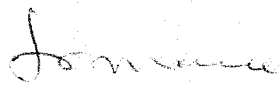
10. The termination of service is not a dismissal or removal. A termination of purely adhoc service brought about by the exercise of a contractual right is not per se dismissal or removal as has been held by the Hon'ble Supreme Court in Satish Chandra Anand Vs Union of India (Supra). If a right exists under the contract or the rules to terminate the service and the Administration terminates the services under Temporary Service Rules of 1965 without attaching any stigma no right is infringed. If the termination of service is founded on the right flowing from contract

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or the service rules then prima facie, the termination is not a punishment and carries with it no evil consequences and article 311 is not attracted. In the particular case the services were terminated under the terms of appointment itself and the right to terminate was there with the respondents. This being so no case is made out for issue of a direction to the respondents to give preferential treatment to the applicant. However, the learned counsel for the respondents fairly conceded that the case of the applicant would be considered along with others and if he is otherwise found suitable he will be considered for engagement. The application fails on merits and is dismissed leaving the parties to bear their own costs.

  
(B.K. Singh)  
Member (A)

  
(J.P. Sharma)  
Member (J)

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