

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.736/2000

This the 3rd day of March, 2006.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

Smt. Panjo Bala Gupta W/O Sunil Gupta,
R/O H. No.2434, Gali No.13,
Kailash Nagar,
Delhi-110031.

... Applicant

(By Shri G.D.Gupta, Sr. Advocate with Shri S.K.Gupta, Advocate)

versus

1. Union of India through
Secretary, Government of India,
Ministry of Textiles, Udyog Bhawan,
New Delhi-110011.
2. Development Commissioner (Handloom),
Ministry of Textiles, Udyog Bhawan,
New Delhi-110011.
3. Senior Director,
National Handicrafts & Handloom Museum,
Office of Development Commissioner (Handloom),
Ministry of Textiles, Pragati Maidan,
New Delhi-110001.

... Respondents

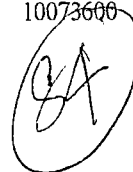
(By Shri B. S. Jain, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicant has challenged Annexure A-1 dated 26.4.1999 whereby services of applicant as Gallery Assistant have been discontinued with immediate effect. It is alleged that this order is based on certain unilateral findings on the allegations of misconduct and amounts to camouflage for the penalty of dismissal from service without an opportunity of hearing in accordance with Article 311 of the Constitution and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short CCA Rules). Applicant has also challenged respondents'

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orders dated 2.3.1993 (Annexure A-1/A) whereby applicant's appointment on temporary basis vide order dated 13.3.1992 (Annexure A-25) was treated as cancelled. Applicant has sought the following reliefs:

- “(i) quashing the impugned order dated 26th April, 1999 (Annexure A-1) terminating the services of the Applicant, and the order dated 2nd March, 1993 canceling the office order dated 12th March, 1992;
- (ii) declaring the appointment of the Applicant regular from the very beginning on the post of Gallery Assistant and even confirmed on the said post;
- (iii) further declaring the applicant entitled to be reinstated into service with retrospective effect from the date from which her services were illegally terminated with all consequential benefits;
- (iv) directing the respondents to treat the appointment of the Applicant as regular and even confirmed and consequently reinstate her into service with retrospective effect from the date her services were illegally terminated with all consequential benefits, like arrears of pay and allowances, seniority, further promotion, if any, to which she would have been entitled had her services not illegally been terminated;”

2. The facts of the case briefly stated are that applicant was initially appointed as a General Assistant on daily wages basis in May, 1987. She continued as such up to February, 1989. Thereafter, she was appointed as Receptionist on *ad hoc* basis in the pay scale of Rs.950-1500 (pre-revised) from 7.2.1989 till 23.5.1990 subject to the condition that her *ad hoc* appointment would not confer upon her any preferential claim for regular appointment etc. One vacancy of Gallery Assistant was advertised in the Employment News dated 28.4.1990 for filling up the post in scale Rs.1200-2040 (pre-revised) on temporary and *ad hoc* basis for a period not exceeding one year or till filled up on regular basis, whichever was earlier. Subsequently, applicant was offered the post of Gallery Assistant on *ad hoc* basis for a period of one year or till such time the post was filled on regular basis, whichever was earlier, on the following terms and conditions:





- (i) Her services can be terminated at any time without assigning any reasons/notice.
- ii) Her appointment as Gallery Assistant is purely on ad-hoc basis for a period of one year only.
- iii) She will be entitled to pay and allowances at the minimum of the scale i.e. Rs.1200 p.m. plus usual allowances in the pay scale of Rs.1200-2040 (pre-revised) attached to the post of Gallery Assistant.
- iv) The adhoc appointment will not confer upon her any right for regularization, claim for seniority and any other preferential treatment."

3. Applicant agreed to the abovesaid terms and conditions and was appointed as Gallery Assistant in scale of pay of Rs.1200-2040 (pre-revised) on *ad hoc* basis for a period of one year, i.e., from 24.5.1990 to 23.5.1991. Thereafter *ad hoc* appointment of applicant was continued from time to time till 25.4.1999. Applicant had been appointed on *ad hoc* basis against a lien vacancy of General Assistant caused as a result of the regular Gallery Assistant having been promoted as Guide Lecturer. On 29.1.1994 one of the art objects stated to be under her custody was found missing. She was placed under suspension w.e.f. 28.9.1994. A case of theft was registered against her at Tilak Marg Police Station which was later on handed over to the Crime Branch. Disciplinary proceedings were initiated against her. The enquiry officer completed the proceedings. Applicant as the charged officer, and the presenting officer were required to submit their written briefs by 30.3.1999. Applicant submitted her brief on 30.3.1999 to the enquiry officer.

4. The learned counsel of applicant submitted that it is not known whether the enquiry officer submitted his report to the disciplinary authority and whether the disciplinary authority passed final orders in the enquiry. However, applicant's services were terminated by the impugned orders Annexure A-1. He further submitted that the criminal proceedings have also not reached any conclusion so far. He contended that without giving any opportunity to applicant to show cause or hearing, applicant's services have been terminated against law and the





principles of natural justice. The learned counsel made the following contentions in support of applicant's claims:

- (1) Appointment of applicant as Gallery Assistant was on the basis of her selection in open competition by the method of direct recruitment as the post was duly advertised in newspapers and applicant was appointed after her selection in open competition on merit. The epithet of '*ad hoc*' before her 'appointment' is simply a misnomer. Her appointment was termed as '*ad hoc*' as the person who was working on the said post at the time when the appointment of applicant was made in May, 1990 was already promoted to the higher post of Guide Lecturer on *ad hoc* basis and the department contemplated that the post was not lien-free and as such applicant's appointment was termed as *ad hoc*, otherwise applicant's appointment had all the characteristics of a regular appointment. Later on applicant's predecessor was promoted to the higher post of Guide Lecturer and further promoted to the post of Exhibition Officer, and subsequently he even resigned from the post in 1992. Thus, the post in question became lien-free. From this point of view applicant's appointment as Gallery Assistant has to be treated as regular and applicant's services could not have been terminated by treating her appointment on *ad hoc* basis vide order dated 26.4.1999. He supplemented that applicant had been continuously working on the said post right from May, 1990, i.e., for the last more than nine years.
- (2) The termination of the services of applicant is rendered punitive as is evident that applicant's services were terminated on the basis of unilateral finding of certain allegations of misconduct which are subject matter of the departmental enquiry and the criminal case.



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- (3) While on the one hand, the disciplinary enquiry was held and no final orders seem to have been passed by the disciplinary authority after submission of the written briefs on closure of the case by the enquiry officer, applicant's services have been terminated on 26.4.1999 without affording a reasonable opportunity of hearing before passing orders of termination of her services.
- (4) Vide Annexure A-25 dated 13.3.1992, among others, applicant was appointed as Gallery Assistant on temporary basis up to 30.9.1992. These orders are stated to have been cancelled by respondents vide Annexure R-7 dated 2.3.1993 without supplying a copy of the same to applicant at the relevant time. These orders have been filed by respondents only with their counter reply to the amended OA on 1.7.2004.
- (5) Vide various orders applicant's services were extended by respondents till 31.3.1992. Thereafter no orders for further extensions were made and she was continued in service for a long period of about seven years. Then suddenly vide order dated 20.7.1998 (Annexure A-12) she was said to have been allowed to continue on *ad hoc* basis up to 30.9.1998. The said order was stated to have been issued in continuation of the earlier office order dated 10.6.1991. The learned counsel submitted that applicant's continuance on the post for such a long time in this manner has to be treated as a regular appointment as the concerned post did not remain a lien vacancy any more after the promotion of applicant's predecessor, who ultimately resigned.

5. The learned counsel in support of his contentions relied upon the following:

- (1) Order dated 31.1.2003 in WP(C) No.2110/1990 (High Court of Delhi) – *Subhash v Lt. Governor of Delhi*;
- (2) *Anoop Jaiswal v Government of India* [AIR 1984 SC 636];

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- (3) *Jarnail singh v State of Punjab* [AIR 1986 SC 1626];
- (4) *Smt. Rajinder Kaur v Punjab State & anr.* [AIR 1986 SC 1790];
- (5) *Apar Apar Singh v State of Punjab & Ors.* [1971 (2) SLR 1971];
- (6) *Madan Mohan Prasad v State of Bihar & Ors.* [1973 (1) SLR 639].

6. In the case of *Subhash* (supra), though the petitioner's services were terminated taking recourse to the provisions of rule 5 of the Temporary Service Rules, in fact the action taken against the petitioner was on the basis of the report of the enquiry held into the allegations leveled against him. In that case reliance was placed on the judgment of the Hon'ble Supreme Court in *Chandra Prakash Sahi v State of Uttar Pradesh & Ors.* [JT 2000 (5) SC 181]. It was held that if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the services passed on the basis of that enquiry, the order would be punitive in nature, as the enquiry was held not for assessing the general suitability of the employee for the post in question but to find out the truth of allegation of misconduct against the employee. The order of termination was held to be punitive in nature and was set aside. The petitioner was directed to be reinstated with continuity of service and all consequential benefits.

7. In *Anoop Jaiswal* (supra) *ad hoc* services of the petitioners were terminated. It was found that their services were terminated as no longer required while the authorities had retained other Surveyors who were juniors to the petitioners. The impugned orders of termination of services of the petitioners were held to be illegal and bad being in contravention of Fundamental Rights guaranteed under Articles 14 and 15 of the Constitution.

8. In *Appar Apar Singh* (supra) motive behind the order and foundation of the order of reversion from officiating post passed by a simple order of

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reversion was explored. It was held that officiating and temporary government servants are also entitled to protection of Article 311(2) in the same manner as permanent government servants if the government takes action against them by meeting out one of the punishments, i.e., dismissal, removal or reduction in rank.

9. The issue of termination of services of a temporary employee in terms of appointment was considered in the light of Article 311(2) in the matter of *Madan Mohan Prasad* (supra). Termination of such services stating to be not satisfactory was held to be illegal holding that it did cast a stigma on the petitioner's character.

10. Discharge in respect of a lady constable on ground of inefficiency in the case of *Smt. Rajinder Kaur* (supra) was held to be an order of discharge though apparently innocuous amounting to dismissal on ground of misconduct violating Article 311 (2) of the Constitution.

11. Respondents have produced copies of records relating to the enquiry against applicant as also those leading to the issuance of impugned orders.

12. The learned counsel of respondents stated that applicant had been appointed on *ad hoc* basis against a post on which lien was held by an *ad hoc* Guide Lecturer. Applicant's appointment was not made on regular basis. Such appointment has to be made only by Staff Selection Commission or employment exchange. Applicant's appointment was made on *ad hoc* basis as per an advertisement in the newspapers. When the vacancy became lien-free, applicant was not appointed as a regular Gallery Assistant against the said post. Respondents have further submitted in their reply to the amended OA that the enquiry against applicant was not contemplated under CCS (CCA) Rules but to ascertain the correct factual position, and since applicant was working against a post on *ad hoc* basis, it was decided to discontinue with her services in accordance with the terms of appointment and respondents did not proceed further



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with the enquiry against applicant. Criminal case is still pending against applicant. Respondents had cancelled vide Annexure A-1/A dated 2.3.1993 applicant's temporary appointment made vide order dated 13.3.1992 up to 30.9.1992.

13. In support of his contentions, the learned counsel of respondents relied upon Delhi High Court's decision dated 9.4.2001 in *Delhi State Industrial Development Corporation Ltd. v J. K. Thakur* [2002 (2) SLJ 29] wherein it was held that the respondent was not holding a post and as such did not have a right of protection under Article 311 (2); he was liable to be sent out on the terms of his appointment/contract.

14. We have considered the respective contentions of parties as also the material on record.

15. Applicant had been appointed on the post of Gallery Assistant on 28.4.1990 on temporary and *ad hoc* basis for a period not exceeding one year or till filling up on regular basis in pursuance of respondents' advertisement dated 28.4.1990. She had been so appointed against a lien vacancy caused as a result of the regular Gallery Assistant having been promoted as Guide Lecturer on *ad hoc* basis. As such she had been appointed on a lien vacancy. Later on applicant's predecessor was promoted to the higher post of Guide Lecturer and further promoted to the post of Exhibition Officer and subsequently he even resigned from the post in 1992. Obviously on the promotion of applicant's predecessor to the post of Exhibition Officer, the post held by applicant became lien-free. It is not disputed that she had been continuously working on the said post since May, 1990. It has been contended on behalf of applicant that her services were extended till 31.3.1992. Thereafter though no orders for further extension were made, however, she was allowed to continue in service for a long period of seven years thereafter. Respondents have not produced any documentary proof regarding further extension of applicant till 20.7.1998. Vide Annexure A-12 dated





20.7.1998 applicant was allowed to continue on *ad hoc* basis up to 30.9.1998. It is stated in the order that these orders were issued in continuation of respondents' order dated 10.6.1991. Obviously, formal orders of extension were not issued after 31.3.1992 till Annexure A-12 was issued on 20.7.1998. Respondents have stated that regular appointment on the post of Guide Lecturer has to be made by SSC or employment exchange. The recruitment rules of the post in question have not been produced. The contention made on behalf of respondents implies that regular appointment could be made even on sponsorship from the employment exchange. Applicant had been appointed on the basis of an advertisement in the employment news. It has been held in *Excise Superintendent Malkapatnam A.P. v K.B.N. Visweshwara Rao & Ors.* [1996 (6) SCC 216] that restricting the selection only to the candidates sponsored by the employment exchange is not proper. The selection should be given wide circulation by publication in newspapers etc. The plea of respondents that applicant's appointment has to be treated as *ad hoc* as she had been appointed against a lien vacancy and that too not through the employment exchange cannot be accepted as the advertisement had been made in the newspaper and wide publicity of the recruitment had been made. It has not been denied on behalf of respondents that applicant was continued on the post till 30.9.1998, i.e., for a long period of over seven years. It has also not been denied that applicant's predecessor had received two promotions whereafter he resigned. This too shall imply that the post on which applicant had been working for a long time became lien-free on the further promotion of applicant's predecessor and later his resignation in 1992. In the absence of any action by respondents to fill the post held by applicant beyond 1992 on regular basis through the agency of SSC, it has to be viewed that applicant's appointment had acquired some but not all the characteristics of a regular appointment. However, whenever respondents decide to fill the post on a regular basis, applicant has also to be invited to appear in the selection to be undertaken by SSC.



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16. Respondents have stated that while Annexure A-25 dated 13.3.1992 applicant was appointed as Gallery Assistant on temporary basis up to 30.9.1992, these orders were cancelled by Annexure R-7 dated 2.3.1993. It has been admitted on behalf of respondents that the orders of cancellation of applicant's appointment on temporary basis vide Annexure R-7 dated 2.3.1993 were not served upon applicant at the relevant time. Admittedly, these orders have been filed by respondents only with the counter reply to the amended OA on 1.7.2004. The *modus operandi* adopted by respondents in this connection is unfair, arbitrary and cannot be supported. This document, therefore, cannot lend any strength to the case of respondents.

17. It has been stated on behalf of respondents that the enquiry against applicant was not contemplated under the CCS (CCA) Rules but was in the nature of a preliminary fact-finding enquiry to ascertain the correct factual position. The documents available on record do not support the contention of respondents. Vide Annexure A-21 dated 10.12.1998 it is evident that regular disciplinary proceedings had been initiated against applicant under CCS (CCA) Rules, 1965. It has been stated on behalf of respondents that since applicant had been working against the post on *ad hoc* basis, it was decided to discontinue with the services of applicant in accordance with the terms of appointment. We have perused the records relating to the enquiry and those leading to issuance of the impugned orders. It is found that the enquiry officer after recording evidence and submission of written briefs by both sides closed the case. Thereafter the records do not speak about submission of the enquiry report to the disciplinary authority nor is there any evidence regarding submission of any enquiry report by the enquiry officer to the disciplinary authority. These records also do not reveal anything about the fate or stage of the criminal proceedings against applicant. Obviously, after reaching the advanced stage where the enquiry officer had to submit his report and the disciplinary authority was required to provide a copy of

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the same to applicant and on submission of her representation thereagainst pass final orders, the enquiry was suddenly kept aside and the impugned orders were passed without giving any opportunity to applicant of representation and hearing.

18. Respondents have relied on the case of *J. K. Thakur* (supra) to the effect that when an employee is not holding a post and even when a case where a regular disciplinary enquiry is started, a charge memo issued, reply obtained and an enquiry officer appointed - if at that point of time the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That case related to a person who had worked as a daily rater for seven years and whose services were terminated for taking bribe. It was held that protection of rules is available to those who enjoy a status and not otherwise. In that case a complaint was received against applicant and no enquiry into bribe charge had been conducted. The present case is different than that case. Applicant was not a daily rater. She was initially appointed on *ad hoc* basis against a lien vacancy. The post became lien-free. Applicant was continued in temporary capacity for a number of years. She had been recruited on the basis of a selection in pursuance of advertisement in the newspapers. Respondents had ordered a regular enquiry under the CCS (CCA) Rules. Evidence had been recorded. The enquiry officer closed the case but did not submit the enquiry report. There is no evidence that the enquiry was dropped. The facts of this case are different than those of the case of *J.K.Thakur* (supra). Although the services of applicant had not been regularized, it cannot be said that she was not working on a regular post. She was working on a regular post on temporary basis for long many years.

19. In the present case, the enquiry against applicant was into the allegation of misconduct under the CCS (CCA) Rules and not for assessing the general suitability of applicant for the post in question. Thus, the ratio in the case of *Subhash* (supra) would certainly be applicable to the facts of the present case

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and it has to be held that the impugned termination of applicant's services is punitive in nature. The motive behind the impugned orders and its foundation is clear from the enquiry held against applicant. The enquiry officer had completed recording of evidence. The enquiry officer was to write the enquiry report whereafter the disciplinary authority was to supply a copy of the enquiry report to the charged officer who was then to submit his representation and the disciplinary authority was to pass final orders. All this implies that the enquiry had reached a very advanced stage. Respondents instead of taking the disciplinary enquiry against applicant to its logical conclusion, decided to adopt an easier course by issuing the impugned orders under the pretext of an order simpliciter. In this backdrop it has to be held that not taking the disciplinary enquiry to its logical end had an ulterior motive; that the termination of the services of applicant in the manner adopted by respondents is not an order simpliciter as it certainly casts a stigma on applicant's character. In the facts and circumstances, respondents have issued the impugned orders though apparently innocuous amounting to termination of services on the ground of misconduct violating Article 311(2) of the Constitution. For holding this view, we draw support from *Jarnail Singh*, *Rajinder Kaur*, *Appar Apar Singh* and *Madan Mohan Prasad* (supra).

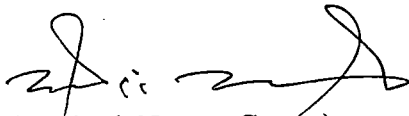
20. Having regard to the facts and circumstances of the case as discussed above, Annexure A-1 dated 26.4.1999 and order dated 2.3.1993 (Annexure A-1/A) canceling office order dated 13.3.1992 are quashed and set aside. Respondents are directed to reinstate applicant into service forthwith with retrospective effect from the date from which her services were terminated, however, applicant shall not be entitled to back wages. It is further directed that respondents should take appropriate action as per relevant rules for filling up the post expeditiously on a regular basis as also to provide opportunity to applicant to participate in such selection considering her eligibility as ^{on 16} per the date when the

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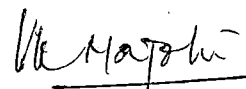
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post held by her became 'lien-free' on promotion of her predecessor to the post of Exhibition Officer.

21. The OA is allowed in the above terms.


(Mukesh Kumar Gupta)
Member (J)

/as/


(V. K. Majotra) 3.3.06
Vice-Chairman (A)