

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 1291/1988
T.A. No.

199

DATE OF DECISION 25.1.1991.

<u>Shri Bhagwat Singh</u>	Petitioner
<u>Shri M.K. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. Oberoi, Judicial Member

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


 (I.K. RASGOTRA)
 MEMBER (A)


 (T.S. OBEROI)
 MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1291/1988

DATE OF DECISION: 25.1.1991.

SHRI BHAGWAT SINGH

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

..RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI M.K. GUPTA, COUNSEL

FOR THE RESPONDENTS SHRI M.L. VERMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Bhagwat Singh has filed this application under Section 19 of the Administrative Tribunals Act, 1985 calling in question the order of the respondents dated 1.7.1987 (Annexure A-7 of the application), rejecting his representation for relaxation of the condition that only adhoc Lower Division Clerks (LDC) who were sponsored by the Employment Exchange can appear in the Special Examination, 1986 to be held by the Staff Selection Commission (SSC). He has further challenged the order terminating his services w.e.f. 9.1.1988 vide order dated 14.12.1987.

2. The relevant facts of the case are that the applicant was appointed as LDC with effect from 9.5.1984 for a period of one month. His registration No. with the Employment Exchange, Darya Ganj, New Delhi is DC/1378/85 N.C.D.324.10/01.10/5.1.84 F.1290/84. He was later appointed in the same capacity on purely temporary and adhoc basis vide order dated 22.6.1984 for a period of three months with effect from 19.6.1984 to 18.9.1984. With technical breaks of one or two days on

completion of the period of appointment, he continued to work as LDC upto 8.12.1985. On 18.9.1985 he was transferred to the Cash Branch where he continued to work till January, 1988 with technical breaks of one or two days after every three months. In September, 1986 the Staff Selection Commission invited applications for conducting special qualifying examination for regularisation of service of adhoc LDCs. The applicant also submitted his application on 22.10.1986 to respondent No.2 for being forwarded to the SSC. The examination was not held in 1986 and the last date for receiving applications was extended to 31.1.1987. The application of the applicant was forwarded by the department to the SSC. He appeared in the said examination held on 8th and 9th March, 1987. On 10.3.1987, however, he was advised that his candidature for the said examination was cancelled, as at the time of appointment he had not been sponsored by the Employment Exchange. The applicant made a detailed representation to the respondents for relaxing of the rule which was rejected vide impugned order dated 1.7.1987. Consequently, the result of the special qualifying examination, 1987 in respect of the applicant has not been declared by the SSC. The contention of the applicant is that the sole ground for withholding his result in the said examination held in 1987 is that he was not sponsored by the Employment Exchange. He submits that he is registered with the Employment Exchange and, therefore, withholding of his result is illegal and violative of Article 14 and 21 of the Constitution of India as other adhoc LDCs who have qualified in the Special Examination have been regularised.

He further contends that he has acquired the status of a temporary employee as he had worked for

about 5 years when his service was terminated in January, 1988. He has, therefore prayed that the order dated 14.12.1987 may be quashed to the extent that it terminates the services of the applicant. He has further prayed that the Tribunal may direct the respondent No.3 to declare the result of the applicant and regularise his service with all consequential benefits.

3. Shri M.K. Gupta, the learned counsel for the applicant to fortify his case drew our attention to the case of **Shri Swami Nath Sharma and Another v. Union of India & Ors. ATR 1988 (1) CAT 84** where the Tribunal had held that:-

"In the overall balance of public equity also we think that the applicants who had admittedly been registered with the Employment Exchange cannot be discharged on the basis of alleged violation by the respondents, which is of some administrative instructions. The applicants have been in service for two to three years and even more and some of them have become over-aged for recruitment to Govt. service. They have acquired experience in their respective fields and it will be a sheer waste if they are suddenly thrown out and new hands are inducted. It will also cost them great economic injury if they are removed from service."

The learned counsel also relied on the case of **Dr. (Mrs.) Sangita Narang & Others v. Delhi Admn. etc. 1988 (6) ATC 405**. The crucial question which came up for consideration in this case was Whether even as ad-hoc appointees the petitioners can be shunted out unceremoniously just on the expiry of a total period of 180 days with an intermittent break of day or so on the expiry of first 90 days.

Conceding that the Government has the right to make short-term appointment, the Tribunal held that it will not be just and fair on the part of the Government to terminate the service of a temporary/adhoc employee who has been appointed for a specified period when there is still need for manning such posts upto the time it is occupied by a regular appointee.

The learned counsel also cited the case of 1988 **(6) ATC 47 CAT Jabalpur Guru Prasad v. Union of India & Ors.** and the decision of the Tribunal in OA-1635/87 decided on 10.5.1988 in the case of **Kumari Veena Sharma v. Union of India & Ors.**

4. The respondents in their written statement have submitted that the applicant was employed from May, 1984 upto 8.1.1988 for specific periods mentioned in the appointment order on adhoc basis. They have further clarified that the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide OM No.6/14/86-CS II dated 12.11.1986 had notified the scheme for holding Special Qualifying Examination on 8th and 9th March, 1987 to be conducted by the SSC for regularisation of services of adhoc LDCs etc. working in the various Central Government Offices. One of the conditions of eligibility was that the candidates must have been recruited through the Employment Exchange. As the applicant did not fulfil this condition, his application was forwarded to SSC on provisional basis on the undertaking given by him in his letter dated 13.12.1986. In the certificate furnished to the SSC it was also clearly mentioned by the respondents that the applicant was not appointed through the Employment Exchange and that his application is being forwarded provisionally. The applicant was clearly

informed that his claim for regularisation will not be entertained even if he qualifies the examination unless the department of Personnel and Training relaxed the prescribed condition viz. sponsored by the Employment Exchange at the time of adhoc employment.

Shri M.L. Verma, the learned counsel for the respondents referring to the reliefs prayed for by the applicant submitted that the applicant has asked for quashing of the order dated 14.12.1987 to the extent it relates to termination of his services on 8.1.1988. The learned counsel submitted that the said order is the order of his appointment for the period 14.12.1987 to 8.1.1988. The order also states that his service would stand terminated automatically on 8.1.1988. The said document cannot be quashed in part; at the same time quashing the whole document would render his appointment invalid. The learned counsel emphasized that the appointment of the applicant vide Annexure R-1 annexed to the counter was a contract specifying the period of appointment, the emoluments to be paid etc. The appointment letter clarified that no termination notice would be required as the service would automatically stand terminated on 8.1.1988.

He further submitted that although the case of the applicant was recommended for relaxation of the condition of eligibility of sponsorship through Employment Exchange at the time of adhoc appointment through the Department of Revenue, the same was not agreed to by the Department of Personnel and Training. In view of these facts the applicant has no case and, therefore, the application merits dismissal.

5. The learned counsel for the applicant, Shri M.K. Gupta at this stage pointed out that although the representation for relaxing the eligibility condition

was rejected on 1.7.1987, yet the applicant was allowed to continue in employment till 8.1.1988.

6. We have heard the learned counsel of both the parties. We are of the view that the appointment of the applicant was not made after duly following the rules i.e. obtaining the names of the candidates from the relevant Employment Exchange. The applicant is registered with the Employment Exchange. It was, therefore, the duty of the respondents to ensure that adhoc appointment is made after declaring the vacancies to the Employment Exchange and after obtaining the names of the suitable candidates. The question of condition of eligibility for the applicant would not have arisen, had the respondents followed the Government instructions in this regard. We cannot penalise the applicant for the lapse of the respondents and deny him his livelihood on the basis of the violation of the rules framed by the respondents themselves in appointing the applicant without his having been sponsored by the Employment Exchange. Admittedly, he is registered with the Employment Exchange. We are, therefore, of the view that if the applicant has passed the special qualifying examination, 1987 conducted by the SSC on 8th and 9th March, 1987 in which he appeared on a provisional basis, his service should be regularised. Accordingly, we order and direct that:

- (i) The provision of automatic termination of his service w.e.f. 8.1.1988 as contained in the order dated 14.12.1987 is quashed;
- (ii) the result of the applicant withheld by the SSC, respondent No.3 should be declared immediately and in case he has qualified in the examination he should be reinstated in service and his service regularised in accordance with the rules;

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(iii) as he was not appointed to the service initially in accordance with the rules, the benefit of counting adhoc service for seniority shall not be available to him. He shall, however, be entitled to proforma fixation of pay w.e.f. 8.1.1988 - the date on which his services were terminated. He shall not be entitled to any back wages.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)

MEMBER(A)

T.S. Oberoi
(T.S. OBEROI)

MEMBER(J)

'SKK'