

PRINCIPAL BENCH AT NEW DELHI.

D.A. No. 982/87 & 217/88

DATE OF DECISION: 12-3-1991.

T.A. No.

Om Parkash & others

Petitioner.

Shri C. L. Dhawan

Advocate for the
petitioner(s)

Versus

Union of India through Secretary,
Min. of Communications & others

Respondent.

Shri P. P. Khurana

Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B. N. Jayasimha, Vice-Chairman (Admn.)
THE HON'BLE MR. Ram Pal Singh, Vice-Chairman (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes
4. Whether it needs to be circulated to other Benches of the Tribunals? Yes
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HRMS

HB NJ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
AT NEW DELHI

O.A. NOS. 982/1987 & 217/1988

DATE OF DECISION: 12-3-1991.

BETWEEN

1. Om Parkash
2. Satya Narain
3. Jittan Ram

Applicants in OA 982/87

Tej Pal Singh

Applicant in OA 217/88

Shri C.L.Dhawan

Advocate for the applicants
(in both the cases)

A N D

1. Union of India, through Secretary,
Ministry of Communications, New Delhi
2. General Manager (Maintenance)
Dept. of Telecommunications, New Delhi
3. Asst. General Manager (R&E),
Dept. of Telecommunications, New Delhi
4. Chief Superintendent,
Central Telegraph Office, New Delhi
5. Asst. Chief Superintendent (G-II),
Central Telegraph Office, New Delhi

Respondents
(in both the cases)

Shri P.P.Khurana

Standing Counsel for the Union Govt.

CORAM

The Hon'ble Shri B.N.Jayasimha, Vice-Chairman (Admn.)

The Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (Judicial)

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JUDGMENT

(of the Bench delivered by the Hon'ble Shri B.N.Jayasimha, V.C.(A))

The applicants in both these cases were appointed as Short Duty Telegraph Assistants at the Central Telegraph Office, New Delhi w.e.f. 26-4-83 pursuant to their selection from open competition.

The applicants are paid remuneration at Rs.2.75 per hour of duty performed. The Chief Superintendent, Central Telegraph Office, New Delhi brought out a circular letter No. STA-24/85/23 dated 23-11-85 stating that "Short Duty Telegraph Assistants" who have been approved and appointed as Telegraph Assistants in the unit, vide G.M.T. New Delhi Letter No.STR-16-1-83/58 dated 12-6-84 are placed under prescribed training for the period of three months w.e.f. 25-11-85 and during the training, they shall be paid training allowance @ Rs.195/- p.m.

Accordingly, the applicants 1 and 2 in OA 682/87 were discharged from the Central Telegraph Office and they joined the training on 25-11-85. After successful completion of training on 24-2-86 they joined duty again at the Central Telegraph Office, New Delhi. Simi-

larly, the applicant No.3 in OA 682/87 and the applicant in OA 217/88 underwent the 3-months training w.e.f. 27-3-86 to 26-6-86, pursuant to a similar circular letter dated 24-3-86, issued by the Chief Super-

intendent, Central Telegraph Office, New Delhi. After the training was over and off the duty, they also reported back for duty at the Central Telegraph Office, New Delhi. While they were working so at the Central Telegraph Office

New Delhi, the 5th Respondent, by his proceedings No. STA-24/86-87/41 dated 6-2-87 discharged all these applicants from service with immediate effect. The applicants have filed the present O.A.s. challenging the said termination order and seeking a direction for their re-employment and for the return of their unappropriated money.

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2. The applicants contend that the 5th Respondent has no authority and power to terminate their services, that the Respondents have not assigned any reasons for their termination, and that juniors to them are being continued in service and hence their termination order is arbitrary and illegal. In support, they rely on a decision of the Supreme Court reported in AIR 1985 SC 1046 (K.C.Joshi Vs. UOI). The applicant in O.A. 217/88 also contends that in the case of one other candidate, Shri Suresh Partap Singh whose services were also terminated by the impugned order dated 6-2-87, he was taken back to duty within hours of passing of the order of termination.

They contend further that one of the conditions stipulated in the letters dated 23-11-85/24-3-86 pursuant to which they were sent for the training, lays down that after the training the candidates have to serve the department for a period of five years whereas the Respondents have violated this clause by terminating their services prematurely.

3. The Respondents in their replies contested the claims of the applicants. Being Short Duty Telegraph Assistants, the employment of the applicants is purely of casual nature and their engagement was on hourly basis. They are liable to be discontinued at any time without notice and without assigning any reasons and mere completion of training does not confer any right for appointment in the regular cadre. The applicants in both these OAs were found to have indulged in misappropriation of government monies and it was subsequently made good when asked for by the office. As Short Duty Telegraph Assistants (hourly basis), they are not governed by statutory rules like CCS (Conduct) Rules and CCA (CC&A) Rules. The 5th Respondent is competent to pass the termination order. As regards the allegation that one of the discharged candidates was taken back to duty by the department, the Respondents say that there were two persons with identical name 'Suresh Partap Singh', one working as a regular Telegraph Assistant and the other engaged as a Short Duty Telegraph

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Assistant. While Shri Suresh Partap Singh, the regular Telegraph Assistant was involved in the fraud case, but due to identical names and error, Sri Suresh Partap Singh, Short Duty Telegraph Assistant as disengaged and as soon as the facts came in to light, Shri Suresh Partap Singh, Short Duty Telegraph Assistant was allowed to perform his duties while the other person, Shri Suresh Partap Singh, a regularly appointed Telegraph Assistant was charge sheeted under the relevant rules.

4. The applicants in their rejoinder say that the 4th Respondent's letters dated 23-11-85 and 24-3-86 pursuant to which they were sent for the training, clearly state that they have been approved for appointment as Telegraph Assistants in the unit and the words "Short Duty" were not mentioned anywhere. They were not employed as Short Duty Telegraph Assistants on hourly basis after their training. They have been working continuously without any break for 8 hours a day, all the time, and the Respondents never turned them back from duty whenever they had gone for performing their duties as per duty charge made by the Respondents.

5. We have heard the arguments of Shri C.L.Dhawan, the learned counsel for the applicants in both the cases and Shri P.P.Khurana, learned Standing Counsel for the Union Government, on behalf of the Respondents. The arguments of the learned counsels are as follows:

6. The main arguments advanced by the learned counsel for the applicants Shri Dhawan are that as many of the juniors to the applicants are being continued, the Respondents could not have terminated their services without holding an enquiry into the misconduct. The applicants have a right to full fledged enquiry and their services have been terminated without any enquiry and without even calling for their explanation. In support, he relies on a number of decisions

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viz. AIR 1979 SC 429 (The Manager, Govt. Branch Press and another Vs. Belliappa), AIR 1984 SC 636 (Anoop Jaiswal Vs. Govt. of India and another), AIR 1985 SC 1046 (K.C.Joshi Vs. Union of India), AIR 1986 SC 584 (Surender Singh & Ors. Vs. Engineer-in-Chief, CPWD & Ors.), AIR 1986 SC 1626 (Jarnail Singh & Ors. Vs. State of Punjab & Ors.), AIR 1986 SC 1790 (Smt.Rajinder Kaur Vs. State of Punjab & another), II(1987) ATLT 216 (Parmatama Singh & Ors. Vs. Union of India), II(1987) ATLT 461 (Chandra Sekhar Raghunath Nazare Vs. The Supdt. of Post Offices, Pandharpur & another), II(1988) ATLT(HC)(SN) 43 (Ex.Capt.Ashwani Kumar Katoch Vs. UOI), I(1989) ATLC(HC) 438 (DB) (Kalipada Sarkar Vs. UOI) II(1989) ATLT (CAT) 157 (Dr.(Mrs.) Poonam Kaushik Vs. UOI & Ors), II(1989) ATLC(CAT)(SN) 15 (Chamruji Karnan Vs. UOI & Ors.), I(1990) ATLT(HC) 289 (Jai Parkash Jain Vs. UPSC Tribunal No.II & Ors.), I(1990) ATLT (CAT) 326 (M.Asirvatham Vs. UOI & Ors), I(1990) ATLT(HC) 572 (Putto Lal Misra Vs. UOI & Ors) I(1990) ATLT (CAT) (SN) 19 (PB) (Jai Pal Vs. UOI & Ors), II(1990) ATLT (CAT) 103 (PB) (Suresh Kumar Vs. UOI & Ors.), II(1990) ATLT(CAT) 236 (PB) (Abdul Khan Vs. UOI & Ors), II(1990) ATLT (SN) 16 (N.Girija Vs.DG CSIR and another), II(1990) ATLT (HC) 654 (Budhh Prakash Pandey Vs. State of UP & Ors). Shri Khurana, the learned Standing Counsel for the Respondents submitsthat in the terms laid down in the offer of appointment, it was clearly laid down that the appointments were purely temporary and liable to be terminated at any time without notice and without assigning any reason thereof. It was also stated that the employment will be purely of casual nature. They would be paid wages at Rs.2.75 per hour of duty performed. He contends that no rights have been conferred on the applicants and in support, he relies upon AIR 1979 SC 429 (Manager, Govt. Printing Press Vs. D.V.Belliappa) and (1990)12 ATC 874 (K.A.Singh Vs. Flag Officer). We have given our careful consideration to these submissions. The

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facts show, that the applicants were on the approved list of RTP Telegraph Assistants. They had also been sent for training as per their seniority and on completion of training, they would have been, in the ordinary course, taken into the regular cadre. Persons who are junior to the applicants as Short Duty Telegraph Assistants have been retained in service. It is also clear that the applicants who were alleged to have misappropriated government money, made good the money when they were asked to do so. The applicants were issued the following notices in Memo.No.1/Outstanding/Recovery/86-87 dated

16-10-1986:

"To the undersigned, the following notice is issued:

Sh. Om Parkash, CL

S/D 7/A, P.C.T.O. 1

Post Box No. 1000, New Delhi.

It has come to the notice of the undersigned that on several dates during 1985-86, you have claimed and drawn an amount totalling to Rs.268-80 which was not at all due to you. You are, therefore, called upon to credit back the amount within seven days from the date of receipt of this letter. This is without prejudice to the any other action that may be contemplated against you.

Your explanation for such wrong claims and drawal of amount should also reach the undersigned within seven days from the date of receipt of this letter.

Sd/-

Permanent Secretary, and the undersigned Accounts Officer."

Similar notices were issued to other applicants also. The applicant with reference to the notice issued to the undersigned in Memo. No.1 in OA 982/87 (Om Parkash) gave a reply in Hindi, when translated reads as follows:

"Sir, I.D.Sharma has come to me and told me that

"Sir, Sri I.D.Sharma has come to me and told me that a bill for payment to me was pending and on seeing my name in the register, I gave application and took the payment. I do not well remember the payment pertains to which month and since when it was pending."

"I request you, Sir, to kindly show me the voucher so that I can give suitable explanation for the same."

Thanking you,

Dt. 28-10-86.

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Sd/-
Om Parkash
S.D.T.A."

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Thereafter, after examination of the relevant papers, the applicants deposited the amounts shown against them on the dates indicated below:

| Applicant | Amount | Date of deposit |
|--|-------------|-----------------|
| Om Prakash (Applicant No.1 in OA 982/87) | Rs. 268-80 | 25-10-86 |
| Satya Narain (" " No.2 in " ") | Rs. 1146-75 | 23-10-86 |
| Jitten Ram (" " No.3 in " ") | Rs. 1400-00 | 24-10-86 |
| | Rs. 342-15 | 30-10-86 |
| Tejpal Singh (" in OA 217/88) | Rs. 19-25 | 24-10-86 |

The impugned order of termination of the services of the applicants issued in Memo. No. STA-24/86-87/41 dated 6-2-1987 reads as follows:

"The services of the following short-duty telegraph assistants are no longer required with immediate effect:

1. Sh. Om Parkash s/o Sh. Charanji Lal
2. Sh. Satya Narain s/o Sh. Ram Dayal
3. " xxx "
4. Sh. Tej Pal Singh s/o Sh. Bhikari Singh
5. Sh. Jitten Ram s/o Sh. Sukhai Ram
6. " xxx "
7. " xxx "

Sd/-

Asst. Chief Superintendent."

The above order is indeed innocuous. In Beliappa's case, relied upon by both the learned counsel for the applicant and the learned Standing Counsel for the Department, it was noted "that the Government had adhered to the stand that there was no nexus between the show cause notice and termination of service and observed that it was perhaps open to the Government to say in view of the complaint alluded in the show cause notice against the integrity and fidelity of the employee that the former had lost confidence in the latter and considered him unsuitable to be continued in the post which was one of trust and confidence. But when the Government instead of taking any such plea has, with obdurate persistency, stuck to the position that termination of the employee's service has been terminated without any reason, it amounted to nearly admitting that the power reserved to the employer under the conditions of the employment, has been exercised arbitrarily." In this case, the respondents have stated that as the applicants

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were found to have made false claims and, therefore, found unsuitable for retention, their services have been terminated. The Hon'ble Supreme Court in R.K.Misra Vs. UP State Handloom Corp. Ltd. (1987(2) SCALE 766) observed that:

"Unless the termination is ordered because there is no need for the post, in the absence of reasons for termination, the action is open to challenge as arbitrary, particularly when other similarly situated employees are continued in service. When reasons are given, they are bound to disclose adverse features of the employee and disclosure of such features become the ground of the plea that termination is not innocuous. To meet this position, the distinction between 'motive' and 'foundation' has been adopted by the courts. As long as the adverse feature of the employee remains the motive and does not become transformed as the foundation of the order of termination, it is unexceptionable. No straight jacket test can be laid down to distinguish the two and whether 'motive' has become the foundation has to be decided by the court with reference to the facts of a given case. The two are certainly two points of one line-ordinarily apart but when they come together 'motive' does get transformed and merges into foundation. (para 9)"

In Misra's case, it was further observed:

"In several authoritative pronouncements of this Court, the concept of 'motive' and 'foundation' has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operating motive in terms of the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employee to assess the services of the temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary merely because the appropriate authority proceeds to make an assessment and leave a record of its views, the same would not be available to be utilised to make the order of termination following such assessment punitive in character." (para 6)

In this case, the applicant was found to have misappropriated government money and having regard to this conduct, the respondents terminated their services. This cannot be termed to be punitive and the applicants contention that their termination is arbitrary and violative of articles 14 and 16 of the Constitution has no substance.

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The respondents have a right to assess the services of the temporary employee with a view to find out whether he should be continued or whether his services should be terminated on the basis of his conduct during the period of his temporary service as envisaged in Misra's case. In the circumstances, therefore, we find that the applications have no merit and are, therefore, dismissed. There will be no order as to costs.

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(Ram Pal Singh) (B.N.Jayasimha)
Vice-Chairman(J) Vice-Chairman(A)

mhb/

RECORDED COPY
Date: 12.3.91
Signature: (P)
ललित अधिकारी (ला. ३-१)
Section Officer (J-1)
केन्द्रीय राजनीतिक कार्यालय
Central Administrative Tribunal
राजनीतिक कार्यालय, नई दिल्ली
New Delhi