

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 820/88

Gama Ram

Date 7 December 1-10-93
Applicant

O.A. No. 821/88

Mool Chand & Anr.

Applicant

Vs.

Union of India & Others

Respondents.

Shri G.D. Bhandari, Counsel for applicants.

Shri K.K. Patel for Shri Gama Ram in O.A. No. 820/88 and

Shri D.P. Kshatriya for Mool Chand & Anr. in O.A. No. 821/88
for Respondents.

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1. Hon'ble Mr. C.J. Roy, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

The O.A. No. 820/88 in ^{the matter of} Gama Ram as applicant Vs. Union of India & Ors. through General Manager, Northern Railway, New Delhi and Divisional Railway Manager, Bikaner has been filed against the impugned order dated 28.2.86 vide annexure A-5 annexed with the petition. Shri Gama Ram ^{was} appointed as Artisan/Black Smith/Pipe Fitter on daily wages basis (casual labour) on 28.11.75 under Inspector of Works, Delhi in Civil Engineering Department Northern Railway. He was given temporary status w.e.f. 31.12.77. The respondents held ^{trade} a/test on 22.9.87 and 18.10.87 for the post of Artisans i.e. Carpenters and Pipe Fitters in the grade of Rs.950-1500. The applicant appeared in the test and was declared selected vide letter No. P-4/Trade Test dated 19.11.87 which is marked as Annexure A-7 annexed with the petition. The impugned office order No. P-3/1 dated 19.11.87 through which the applicant was promoted reads as under:

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"The following staff who have been declared passed in the Trade Test for the post of Pipe Fitter in scale 950-1500 are appointed to officiate as officiating Pipe Fitter on purely temporary adhoc basis and after expiry of sanction they will automatically be reverted to their substantive post and they will not claim for their permanent retention on present post :

1. Shri Ram Bharose.....
2. Shri Gama Ram s/o Shri Gopi Ram appointed to officiate as P/Fitter in scale 950-1500 (RPS) on Rs.1110/- and posted under CIOW/DEE against vacancy on TLA. He was getting Rs.1110/- prior to posting as G/Man in scale of Rs.950-1500as such his pay has been fixed Rs.1110/-.
3. Shri Damodar Prasad....."

The petitioner in the light of the appointment letter was reverted to his original post of Gang Man vide letter No.P-3/1 dated 25.4.88.

2. The other O.A. No.821/88, Mool Chand and Prabhu Dayal as applicants and Union of India through G.M. Northern Railway and Divisional Railway Manager, Bikaner as respondents, has been filed against respondents' office order No.P-3/1 dated 25.4.88 reverting the applicants from the post of Masson in the grade of Rs.950-1500 (RPS) to the post of Gateman/Gang Man in PWR Sarai Rohilla. This is marked as Annexure A-I enclosed with the petition. These two applicants were allowed to join as parties vide M.P. No.862/88 under Rule 4(5) of Central Administrative Tribunal Act 1985, Since they have a common interest and are seeking common relief^{and}, this is true about Shri Gama Ram in O.A. No.820/88 also. The only difference is that in case of Shri Gama Ram a separate appointment letter wherein two more persons were appointed, was issued, whereas in case of Mool Chand and Prabhu Dayal in O.A. No.821/88 a separate appointment letter was issued. The letters of appointment in case of all the three applicants in O.A. 820/88 and 821/88 have been issued on the

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same date i.e. 19.11.87 and in all the three cases they were reverted on 25.4.88. All the three applicants included in the two OAs have been continuing in the higher grade of pay on the basis of interim order passed by this Tribunal on 6.5.88. All the three applicants ^{are} ~~were~~ working under Inspector of Works, Delhi in Civil Engineering Department of Northern Railway. In para 7 of the O.A. No.821/88 there is a slight mistake in the sense that Shri Prabhu Dayal was appointed as casual labour on 11.9.78 and as such he could not have been given temporary status as stated in paragraph 7 as a casual labour on 13.12.77. This is a mistake of facts.

3. It is admitted by both the parties that the respondents held trade test on 22.9.87 and 19.10.87 and all the three candidates were declared successful. In both the petitions this is Annex-7.

4. The learned counsel for the applicant 1 asserted that the applicants were regularly appointed against the permanent vacancies and were given all the benefits and privileges admissible to a permanent employee of the Railway but he dramatically changed his assertion later by saying that there is a general practice in Railways to appoint employees on officiating basis for 18 months for purposes of watching their performance and conduct. He argued that the applicants were reverted on complaint from the Union of Northern Railway Men at the level of G.M. without giving any notice or opportunity to the applicants and without following the principles of natural justice. It was contended that their appointments were described as irregular by respondents and as such reversion was by way of punishment attaching stigma and as such Art.311 (2) of the Constitution gets attracted in cases of all the three applicants.

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The learned Counsel for the respondents, Shri K.K. Patel in O.A. No. 820/88 and Shri D.P. Kshatriya in O.A. 821/88 argued ^{that the contention of the applicants is not correct.} Since there were no regular vacancies and ~~as such~~ there was no question of appointing the applicants against regular vacancies of Masons/Artisans/Fitters. As per the office order dated 19.11.87 it was a purely stop gap arrangement and it makes it abundantly clear in case of both the OAs. In case of Pool Chand and Prabhu Dayal the ^{terms and} condition of appointment have been laid down in ^{para 1} office order dated 19.11.87 which reads as under:-

"The following staff who have been declared passed in the Trade Test for the post of Mason in the scale 950-1500 (RPS) are appointed to officiate as ^{officiating} ~~assistant~~ Mason on purely temporary adhoc basis against sanction and after expiry of sanction they will automatically be reverted to their substantive post and they will not claim for their permanent retention on present post."

5. Since the facts of the case and the legal issues involved are the same in case of all the three applicants, it would be better to deal with these issues together. From the first para of the two ^{appointment} ~~xxxxxxx~~ letters quoted above it is clear that it was a stop gap arrangement and all the three applicants were appointed on purely temporary adhoc basis. It was a local arrangement for completion of some short-term assignments whose expenditure is normally borne out of sanction given to various Divisions in respect of their contingency funds or in the head for miscellaneous expenditure. As such the sanction orders are issued in a routine fashion in the exigencies of public service. Divisional Railway Managers are also competent to make such local arrangements within their own delegated powers. The Divisional Railway Managers

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according to Indian Railway Establishment Manual are not vested with any power to create any regular post. It is vested with the Railway Board and in case of some categories of staff it is vested with the G.M. in exceptional circumstances with the approval of the Railway Board. The learned counsels for the respondents, Shri K.K. Patel and Shri D.P. Kahatriya invited our attention to the wording of the appointment letters in the case of all the three applicants.

6. The very wording of the appointment letter reveals that no regular posts were available and as such the question of making appointments against regular vacancies does not arise. The learned counsel Shri K.K. Patel who represents the Ministry of Railways categorically stated that all the three applicants were appointed by letter No.P/3/1 dated 19.11.87 and they continued ~~and~~ in their posts till 25.4.88. Thus they worked hardly for 5 months against contingency posts where no right or claim could accrue to them. To the query of the learned counsel for the applicants as to how they were continuing if there were no vacancies, the learned counsel for respondents Shri K.K. Patel remarked that they were continuing because of the interim order passed by the Principal Bench of the CAT vide their order dated 6.5.1988. The orders of the Hon'ble Tribunal virtually amount to extension of the sanction which had lapsed and that this is not within the domain of the Administrative Tribunal to create a post or to abolish a post or to extend it. In support of his argument Shri Patel ~~also~~ cited a ruling from Judgment Today JT 1992(6) SC 124 :

"Union of India & Ors. Vs. Bigyan Mohapatra & Ors.
Lalit Mohan Sharma, S. Mohan & N. Vankatachala, JJ.
Dt. 21.10.92.

Service and Labour Law

Reversion - Respondents promoted on ad hoc basis to officiate as Junior Clerks in 1984 - Post abolished in 1989 and respondents reverted to their substantive posts - Order of reversion upheld and decision of Tribunal set aside."

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This judgment of Division Bench comprising three Hon'ble judges of Supreme Court clearly establishes the ratio that it is not within the domain of the Judiciary ^{to interfere} if persons appointed on ad hoc basis are reverted as a result of abolition of posts or as a result of its non-extension or sanction having expired. The ratio is the same in case of non-extension or abolition of a post and appointment being ~~temporarily~~ ^{an} of an ad hoc nature. This is ^{an} obiter dicta and will hold good in case of the two O.As. with the three applicants who are similarly placed. There was no sanction for these posts beyond 25.4.88 and as such their reversion was in terms of their own appointment which they accepted. The learned counsel for the respondents, Shri K.K. Patel said that it has already been established in the form of a ratio in case of ^{The Division Bench Ruling in the matter of Shri K.K. Patel vs. Union of India, 1968 (1) 1089 AIR 1089, 1090 SC 1089, 1090} ~~State of Punjab vs. Brijram Mahipal~~ Sukhranj Bahadur (1968) 3 SCR 234 at 244 AIR 1968 SC 1089 by Shri Ramaswamy and Mitter, J.J.:

The same principle was laid down in

Termination of service of the temporary servants or reversion of government servant ^{on} ~~during~~ purely ~~an~~ ad hoc basis flows from ~~from~~ the terms and conditions of the employment and once the appointments are made on purely temporary and ad hoc basis and the services are terminated or a temporary government servant is reverted these do not attract the operation of Art. 311 of the Constitution.

This was further clarified in cases of Dhaba, Dhingra, and Champak Lal, and I.N. Saxena. In all the three judgments of the Hon'ble Supreme Court it was established that, "Government servant who is given an officiating post has no right to hold it for all time and the government servant who is given an officiating post holds it on the implied term that he will have to be reverted if his work was found unsuitable. .. It cannot be treated as reduction in rank by way of punishment."



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It was further stated that when there are no express words in the impugned order itself which throws stigma on the government servant, the court is not expected to delve into the Secretariat files to discover whether some kind of stigma could be inferred on such research.

7. In all the aforesaid judicial pronouncements of the Hon'ble Supreme Court the ratio has been established that reversion in terms ~~of the terms and conditions of the~~ ^{ad hoc basis} appointment is not per se reduction in rank and as such no stigma attaches to it and no evil consequences ~~flow~~ ^{follow} from such a reversion and as such the principles of natural justice are excluded and Art.311(2) of the Constitution does not get attracted.

8. It is well settled both in England and in India that, "The principles of natural justice yield to change with the exigencies of the different situations but do not apply to all situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait jacket. They are not immutable but flexible and can be adapted, modified or excluded by a statute and statutory rules." If the instances of a situation like the present one can exclude the principles of natural justice, Art.311 of the Constitution does not get attracted and as such there is no question of giving an opportunity to the applicants to show cause or to observe the principles of natural justice which are excluded by the terms and conditions of the appointment letter issued to the three applicants. Where no stigma is attached and no evil consequences follow and the reversion is perfectly in tune with the terms and conditions of the appointment letter, there is no scope for interference. Once the applicants opted for the appointment which was purely ~~on~~ ^{on an} temporary and ad hoc basis and which also stated that they will have no right or claim for

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permanency and that they could be reverted to their substantive posts any time, we do not find any scope for challenging the orders of the respondents reverting the applicants. The reversion being in terms of appointment letter is neither arbitrary nor malafide.

9. The stay order has made in-roads in the domain of the executive because it is tantamount to extension of the sanction of the post which had lapsed. The creation, abolition or extension of posts are strictly within the domain of the Executive and it is in this light that the Hon'ble Supreme Court in the matter of Union of India Vs. Bigyan Mahapatra dated 21.10.1992 has set aside the orders of the Hon'ble C.A.T., Cuttack Bench. This Tribunal is duty-bound to follow the ratio of judicial pronouncement of the Hon'ble Supreme Court. The judgment of Hon'ble Chief Justice, Mr. Chagla in Srinivas Ganesh Vs. Union of India, is extremely relevant where it sums up the ratio established by the Hon'ble Supreme Court. It lays down that if removal/reversion is in terms of specific rule or in terms of a contract, there is no scope for observance of principles of natural justice since Art. 311 (2) of the Constitution is not attracted.

10. In the light of the observations contained in the foregoing paragraphs, we find no merit or substance in the O.A. 820/88 and O.A. 821/88 and accordingly the applications are dismissed. The interim stay granted on 6.5.88 in respect of O.A. No. 820/88 and 821/88 will stand vacated.

There will be no orders as to costs.


(B.K. Singh)
Member (A)


(C.J. Roy)
Member (J)

11/10/93