

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1159/88
T.A. No.

198

DATE OF DECISION 23.5.1990

Km. Veena Sharma

Petitioner

Shri B.K. Kamal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri Kapil Sibal, Additional
Solicitor General with Advocate for the Respondent(s)
Shri Arvind Nigam and Shri P.P. Khurana,
Counsel.

CORAM.

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 1159/88

DATE OF DECISION: 23.5.1990

Km. Veena Sharma

.... Applicant.

Versus

Union of India & Ors.

.... Respondents.

For the Applicant

.... Shri R.K. Kamal,
Counsel.

For the Respondents

.... Shri Kapil Sibal,
Additional Solicitor
General with Shri
Arvind Nigam and
Shri P.P. Khurana,
Counsel.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.
The Hon'ble Mr. I.K. Rasgotra, Member(A).

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

This Original Application has been filed challenging the termination of service of the applicant by an order dated 10.6.1988 under the provisions of Rule 5 of the C.C.S.(Temporary Service) Rules, 1965. Her grievance is that her earlier Application (O.A. No. 1635 of 1987) against an order of termination of service was allowed by the Division Bench of this Tribunal dated 10.5.1988 and the present order of termination had been passed within a month thereof. She had termed the order to be malicious and passed in colourable exercise of powers and not in accordance with the law. A few relevant facts are necessary in this case to appreciate the controversy that has arisen.

The applicant was appointed as Lower Division Clerk in the grade of Rs.260-400 on 4.11.1982 on temporary and

adhoc basis in the office of Joint Chief Controller of (JCCIE) Imports and Exports, Kanpur. Her name had been sponsored by Employment Exchange and her case is that she was selected after an Interview/Typing Test. The appointment letter at Annexure A-1 to the O.A. clearly stipulates that the appointment is ^{on} purely temporary and adhoc basis and can be terminated at any time without notice and ^{without} assigning any reason. She was later on transferred to the office of J.C.C.I.E., New Delhi on 4.7.1986. She continued to serve for more than 5 years and thereafter her services were terminated by Respondent No. 2, J.C.C.I.E., New Delhi by an order dated 13.11.1987. That order reads as follows:-

"PART II OFFICE ORDER NO.102/87 DT. 13.11.87.

Since Miss Veena Sharma LDC on adhoc basis has failed to qualify the SSC Examination for the post of LDC held in 1987 and within one year of her joining this office as per the condition imposed vide Part II Office Order No. 25/86 dt. 4.7.1986, her services are terminated w.e.f. 13.11.87(AN)."

This order was challenged in O.A. 1635/87 before this Tribunal. It was urged there that the order of termination was illegal, arbitrary, null and void since the applicant was governed by the Central Civil Services(Temporary Service) Rules, 1965 (C.C.S.(T.S.)Rules) and under Rule 5 thereof, the services of a temporary Government servant could be terminated only with a minimum of one month's notice or by payment of one month's pay in lieu of notice and further that the termination order was not in accordance with the proforma laid down by the Government of India under standing instructions. The respondents' case was that the applicant

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had been appointed on a purely temporary and adhoc basis and her services as per terms of the contract could be terminated without notice and without assigning any reason. It was further contended that the service of the applicant was governed by a contract and the terms of the contract were incorporated in the Memorandum dated 4.11.1982, which was sent to her before she was appointed and that she did not acquire the status of a temporary Government servant. It was also contended that the post of L.D.C. against which the applicant was appointed was required to be filled up on the recommendation of the Staff Selection Commission and that the applicant had failed to qualify in the Examinations in 1985 and 1987 and as such she could not be retained in service. Lastly, it was urged that even if the applicant was held to be governed by the CCS(TS)Rules, she could at the most claim one month's pay in lieu of the notice.

The Division Bench referred to the Memorandum dated 4.11.1982, which contained the terms of appointment, the Office Order dated 9.11.1982 issued by the Office of the J.C.C.I.E., Kanpur and the Office Order dated 9.11.1982, and held:

"We are unable to agree with the contention that the applicant was engaged on contract. As pointed out above, the appointment originating from a contract had fructified into a 'status'. The offer of appointment and the order of appointment clearly state that the service of the applicant was temporary and ad hoc and there being no fixed term of appointment and the applicant holding a civil post under the Union Government, she was clearly governed by the Central Civil Services (Temporary Service)Rules, 1965".

Several cases had been referred to by the learned counsel for the parties before the above Division Bench and one of them was Chander Pal Vs. Union of India & Others (C.A. No. 1053/87)

decided on 3.12.1987. In para 9 of the said judgement, the latter Division Bench had taken the view that-

"the obligation to give notice of one month to the applicant or pay wages in lieu thereof, flows out of the terms and conditions incorporated in the offer of appointment made to the applicant and it is mandatory in nature..... As the requisite notice was not given nor payment in lieu thereof made to the applicant, the memorandum dated 24.9.1986 is non est in the eye of law".

The Division Bench hearing the C.A. 1635/87 held that -

"We are in agreement that the substance of the rule has to be complied with where services are sought to be terminated either by giving one month's notice or one month's pay in lieu thereof. In the present case, the respondents did not consider the applicant to be a temporary employee and did not seek to terminate her services under the CCS(Temporary Service) Rules, 1965 and as such the question of adherence to the prescribed proforma does not arise".

The Division Bench further held -

"In the present case, the order is treated to be ab initio void and non-est in view of the findings we have given in the earlier paragraphs. In these circumstances, the impugned order dated 13.11.1987 is liable to be quashed and the applicant is entitled to reinstatement in service as if the order was not issued".

The Division Bench allowed the Application in part quashing the order dated 13.11.1987 with a direction that the applicant shall be reinstated in service within two weeks of the receipt of the order by the respondents and she shall also be paid arrears of salary from the date of termination of her services till the date of her reinstatement.

As a consequence, she was reinstated on 7.6.1988.

Learned counsel for the applicant stated that on 9.6.1988, the respondents had filed a Review Application against the aforesaid order in the Tribunal, which is pending. Thereafter, the order dated 10.6.1988 was issued terminating the services of the applicant on the basis of CCS(TS) Rules. He argued that the stand taken by the respondents during the course of

the first O.A. was that she was not governed by the CCS(TS) Rules, 1965. It was a contract of service and the appointment was purely temporary and adhoc and could be terminated at any time. The respondents, however, treated her to be a temporary government servant on the basis of CCS(TS) Rules. The respondents cannot be allowed to blow hot and cold. Their stand earlier was that the applicant was not a temporary government servant to whom CCS(TS) Rules apply. Now they have changed their stand and taken the plea that she is a temporary government servant to whom the CCS(TS) Rules apply. Learned counsel further contended that there was malice in terminating the services of the applicant. There were ~~available~~ posts and ten more persons had been appointed in the department after the termination order had been passed in her case. It was contended that the plea that there was no post available was false and malicious. After the Tribunal's order, she had to be reinstated and continued as if the earlier impugned order was non-est. Although she had not qualified two examinations but she was entitled to ^{get} further opportunity which has not been granted to her. He also referred to the following cases:-

- (1) S.R. Venkataraman Vs. Union of India (1979 SLJ 1).
- (2) Murlidhar Yeswant Mayenkar Vs. Union of India & Ors. (1982(1) SLJ 699).
- (3) Jetha Nand and Others Vs. Union of India & Ors. (1989(2)C.A.T. SLJ 657).

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Shri Kapil Sibbal, Additional Solicitor General, appearing for the respondents urged that once the Tribunal held that she was a temporary government servant to whom the provisions of CCS(TS)Rules apply, the respondents could not treat her otherwise. Thereafter having taken note of the fact that she had appeared twice in qualifying examination and had failed, she was served with a notice under Rule 5 of the CCS(TS)Rules. He contended that if she was a temporary Government servant then in that event a notice terminating her services was permissible under law and this exactly has been done in the present case. He, however, contended that the applicant herself believed that those rules apply to her. It is, therefore, not open to her now to say that the provision of Rule 5 of CCS(TS)Rules had no application in this case. She had urged that the order under Rule 5 of the CCS(TS) Rules could not be issued in view of the Tribunal's earlier judgement. He contended that this argument was fallacious and untenable. He, however, pointed out that there were 97 posts in all and 95 posts were filled. Thus, there were only two vacancies. And in both these posts, two persons ~~XXXXXX~~ were already working under Court orders. Consequently, there was no vacancy. She had appeared in the examinations twice, but failed. In the sequence, he urged that unless a person qualifies in the test, there was no way keeping her in ~~XXXXXX~~ service and regularising her services. The department was, therefore, justified in issuing the order. There was neither any malice nor any mala fide in terminating her services.

Shri Sibbal also referred to the decision of the Chandigarh Bench of the Tribunal in the case of Miss Rajni Arora Vs. Union of India & another (O.A. 860-CH-88). He urged that the applicant's seniority was wholly untenable. A person who has no right to continue in service cannot claim any seniority. As a matter of fact, he urged that the applicant has no grounds to challenge the order dated 10.6.1988.

We have heard learned counsel for the parties at some length. The stand of the department was that the applicant entered in service on the basis of a contract and it is being ended in accordance with that contract. This plea was negated, but held that she was a temporary Government servant, who comes under the purview of the CCS(TS)Rules. The Tribunal also held that since the applicant was governed by the CCS(TS)Rules and under Rule 5 thereof, the services of a temporary Government servant could be terminated only with a minimum of one month's notice or by payment of one month's pay in lieu of notice. She was ordered to be reinstated in the service and soon after her reinstatement, the said impugned order was passed. This time the order of termination was in accordance with the CCS(TS)Rules. The contention of the applicant that after the earlier order of the Tribunal, it was not open to the respondents to terminate her services under the CCS(TS)Rules. This contention is, in our opinion, without merits. Once it is held that she is a temporary Government servant and she is governed under the provision of CCS(TS)Rules, her services

can certainly be terminated under the said Rules. The correct legal position is that her services could be terminated under Rule 5 of the CCS(TS)Rules. The contention to the contrary by the applicant has no force and has to be rejected. Whatever may have been the stand of the respondents earlier, the legal position had been clearly laid down by the Tribunal in its earlier order dated 10.5.1988. It is not open to the parties to change their position after that judgement.

The next question is whether the order by the department was passed with malafide or malicious intention? It was pointed out on behalf of the applicant that she came to know three days after her reinstatement about her termination and that all acts of malafide were on the part of one Mr. S.K. Sood Joint Chief Controller of Imports and Exports, Indra Prastha Bhawan, New Delhi. It was urged that he was annoyed with the applicant because of the order of the Tribunal dated 10.5.1988 and he took steps to throw her out from the service. All these allegations are denied by the respondents. They have taken the stand that once the legal position has been corrected and that the plea that it was a contract/service ^{of} has been rejected and the applicant has been treated as a temporary Government servant under the CCS(TS)Rules, the position became clear and the same reasons which governed her earlier termination still apply. She had been taken in service after being sponsored by the Employment Exchange and after a preliminary test, but she had failed to pass the requisite test (held by the Staff Selection Commission) twice and no one could be appointed, regularised in service unless one had passed the test conducted by the above authority. The applicant having failed to qualify

the test could not be regularised in service. She had been given opportunity but she did not qualify. Consequently, she could not be retained in service and her services have accordingly been terminated under the provision of Rule 5 of the CCS(TS)Rules. We see much force in this line of reasoning. The applicant's services could not be regularised unless she qualified in the test conducted by the Staff Selection Commission. She had availed two chances but she did not qualify. She did not get a right to be regularised in service by virtue of the earlier judgement of the Tribunal dated 10.5.1988. In the case of Ms Rajni Arora(Supra), the Division Bench at Chandigarh held-

"....So, the mere fact that the applicant had been appointed by way of local arrangement although through the Employment Exchange and after some sort of selective process, pending appointment of a regular incumbent through the Staff Selection Commission, will not entitle her to claim regularisation on the said post as of right and appointment on ad hoc basis or stop-gap arrangement does not ripen into a substantive appointment merely by lapse of time especially when it is intended to operate only/time a regular appointment is made by the competent authority through proper channel. Hence, the submission made by the Counsel for the applicant is totally misconceived and devoid of any merit."

Another case decided by the Chandigarh Bench of the Tribunal, dated 11.11.1987 is of Hardeep Singh Vs. Union of India (O.A. No. 501 of 1987), in which it has been held-

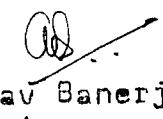
"This Court is of the view that since the applicant could not qualify the test conducted by the Staff Selection Commission for the post of Clerk and his name was not recommended by the said Commission, the persons who qualified the test and whose names were duly recommended by the Commission to the posts of Clerks cannot be ignored for appointment. The applicant has rightly been terminated from service in view of terms of his appointment letter dated 2-1-1985 which envisages that "the appointment is purely temporary and/or on ad hoc basis and can be terminated at any time without any notice and assigning any reason".

We are of the opinion that the view taken by the Chandigarh Bench of the Tribunal lays down the correct law and the same would be applicable in the present case. We have also considered the cases cited by the learned counsel for the applicant. In the case of Smt. S.R. Venkataraman Vs. U.O.I. (Supra), their Lordships considered the case of compulsory retirement in public interest. The facts of the present case are entirely different and the principles laid down in the above case have no application with the present case. The case of Murlidhar Yeswant Mayenkar Vs. U.O.I & Ors. (Supra) pertains to the termination of service of a work charge supervisor on account of misconduct by an innocuous order without following the procedure provided in Part IV of the Rules. The present case is entirely different. She was not working as a work charge person and a question of holding a regular enquiry did not arise. Reference has also been made to the case of Jetha Nand (Supra). That was a case of promotion from Group 'D' to Group 'C'. It was laid down that all such persons have to qualify in competitive examination. In the present case, the applicant failed twice, which is clear from the selection test. This case also does not help her case.

In view of the above, we find no merits in the present case and the Application must fail and is accordingly dismissed, but without any costs on the parties.


(I.K. Rangotra)
Member (A)

"SRD"


(Amitav Banerji)
Chairman