

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/1255/2014

HYDERABAD, this the 7th day of December, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. K. Narsing Rao, Aged 53 years,
S/o (L) K. Swamy, working as
Beldar in CPWD, Hyderabad.
R/o. H.No.7-2-271, Ashok Nagar,
Takaru Basti, Secunderabad – 3.
2. Sri M. Moses aged 50 years,
S/o. (L) Soloman, working as Beldar,
In CPWD, Hyderabad
R/o. H.No.12.8.100, Mettuguda,
Secunderabad.
3. Sri U. Ch. Obaiah, aged 52 years,
S/o (L) Obanna, working as
Beldar in CPWD, Hyderabad
R/o H.No.2-14-78, Beerappagadda,
Hyderabad – 39.
4. Sri D. Mohan, aged 48 years,
S/o (L) D. Narashimullu working as
Beldar in CPWD, Hyderabad,
R/o. H.No.2-18-65, Ambedkar Nagar,
Uppal, Hyderabad – 39.
5. Sri R. Ramesh, aged 43 years,
S/o (L) Mallaiah, working as Beldar,
In CPWD, Hyderabad,
R/o. H.No.12.8.100, Mettuguda,
Secunderabad.

...Applicants

(By Advocate : Sri G. Pavana Murthy)

Vs.

UOI rep by its

1. The Director General,
CPWD, Nirman Bhawan,
New Delhi – 110 011.
2. Special Director General,
Southern Region, CPWD,
Rajaji Bhavan, Basant Nagar,
Chennai.
3. Dy. Director General (Hq),
Southern Region, CPWD,
Rajaji Bhavan, Basant Nagar,
Chennai.
4. Chief Engineer,
Southern Zone-2,
CPWD, Hyderabad.
5. Superintendent Engineer,
Hyd Central Circle-1,
CPWD, Hyderabad – 95.

....Respondents

(By Advocate : Smt. K. Rajitha, Sr. CGSC)



ORAL ORDER

(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

2. The OA is filed challenging the letter of the 3rd respondent dt. 23.04.2014 and the Office Memorandum of the 5th respondent dt. 16.10.2014 issued to the applicants, in regard to the continuance of the applicants in the respondents organization.



3. Brief facts of the case are that the applicants were engaged as casual labour during the years 1987 to 1989. They were issued temporary appointment orders on 04.12.2007 and after one year, their probation was declared. Their services were confirmed w.e.f. 05.12.2008 in the post of Beldar. After their confirmation, Sri B. Sattaiah and two others, working as Motor Lorry Driver in the respondents organization filed OA 839/2007 in regard to regularization and their seniority. The said OA was allowed by this Tribunal on 21.07.2010 with a direction to revise the seniority list issued on 31.11.2007 based on the number of days for which the casual labours were engaged considering the hand receipt/ work order. When the order of the Tribunal was not implemented, CP No. 110/2012 was filed wherein it was directed to revert the juniors to the applicant therein, if any, are working or creating supernumerary posts. The respondents issued a letter on 03.04.2014 expressing the intention to revert the applicants in the present OA. Consequently, the 5th respondent vide letter dt. 05.05.2014 issued a notice of termination to the applicants as per Rule 11 of CCs (CCA) Rules, 1965 on the ground that they were not eligible for initial appointment as Beldar in the respondents organization. In response, the

applicants submitted their representations on 15.05.2014 claiming that they are not temporary employees and action, if any, has to be taken in consonance with Article 311(2) of the Constitution of India. Aggrieved, the applicants filed OA No. 595/2014 challenging the show cause notice dt. 05.05.2014. The said OA was disposed of by directing the respondents to dispose of the representations of the applicants made on 15.05.2014. Pursuant thereto, the 5th respondent disposed of the representation by issuing a non-speaking order dt. 01.08.2014. Consequently, the applicants filed OA 920/2014 challenging the order dt. 01.08.2014 and the said OA was disposed on 08.08.2014 directing the respondents to address the specific grievance of the applicants raised in their representation dt. 15.05.2014 and gave two weeks time to the respondents to take an appropriate decision. After lapse of two months, the respondents issued termination order dt. 16.10.2014, which is again a non-speaking order.

4. The contentions of the applicants are that the Tribunal order in CP 110/2012 in OA 839/2007 was to the effect that in case any of the juniors to the applicant therein are working, immediate action be taken to rectify the position either by reverting them or creating supernumerary posts. Instead of reverting the applicants from GP Rs.1800 to GP Rs.1300, the respondents took the decision to terminate the services of the applicants. Nowhere, this Tribunal did direct the respondents to terminate the services of the applicants. The respondents have made a mistake by terminating the applicants, whose services were confirmed. For the mistake of the respondents, applicants should not suffer. The applicants also contend that they have not submitted any false certificate to stake confirmation of their

services. The letters dt.01.08.2014 and 23.04.2014 issued by the respondents are illegal. Rule 11 of CCS (CCA) Rules 1965 does not apply to their cases because they had completed their probation period of one year and their services were regularized w.e.f. 05.12.2008. The applicants have not been terminated for any misconduct, but because of mis-interpretation of the orders of the Tribunal in OA No.839/2007 and CP110/2012. Further, as per the order of the Tribunal in OA 1206/2011, disposed on 24.04.2014, the juniors to the applicants were granted temporary status and their services were also regularized. Hence, the action of the respondents terminating the services of the applicants is contradicting the order in OA 1206/2011 which was implemented. The applicants cited judgment of the Hon'ble Supreme Court in 1998 SCC (L&S) 1601 wherein it has been laid down that the permanent employees cannot be terminated by issuing a simple notice. They also cited the judgment of the Hon'ble Supreme Court in 2000 SCC (L&S) 613 wherein a legal principle has been laid down stating that even temporary servants are protected under Article 311(2) of the Constitution of India. The applicants are working from 1987 and are dependent on the monthly salary paid by the respondents.

When the matter came up for admission, this Tribunal passed an interim order on 30.10.2014 staying the impugned order dt. 16.10.2014.

5. The respondents filed reply statement wherein they state that the Headquarters of the respondents organization sanctioned 10 posts for regularization of casual labours keeping in view the various court orders on the subject. Casual labours in the respondents organization were engaged

on the basis of hand receipt/ muster roll, work order/ through contract i.e. outsourcing services. Seniority list of the casual labours was prepared on 30.11.2007 keeping in view the above parameters. The names of the applicants do find place in the seniority list of 10 casual labours. The respondents admit that they made a mistake of issuing seniority list by considering the number of days for which the casual labours have worked by taking all those who were engaged based on the hand receipt/ muster roll and through outsourcing. One of the casual labours by name Sri Shaik Ali and two others filed OA NO. 839/2007 wherein this Tribunal quashed the seniority list dt. 30.11.2007 and directed the respondents to revise the seniority list by ignoring the work done through contract/ outsourcing basis. As a result, seniority list was revised wherein the applicants seniority goes beyond Sl. No. 10. As the applicants did not figure within the zone of consideration, their services could not be regularized. The applicants in OA No. 839/2007 filed CP No. 110/2012 wherein this Tribunal directed the respondents to revert the juniors and if need be, create supernumerary posts to accommodate them. The respondents took up the issue with the HQs of the respondents organization seeking creation of additional posts, but the same was turned down. Hence, notices were issued to the applicants by the 5th respondents on 05.05.2014. Challenging the said notice dt. 05.05.2014, the applicants filed OA 595/2014 and in response, the Tribunal disposed of the said OA on 06.06.2014 directing disposal of the representation of the applicants dt. 15.05.2014 and till such time a final decision is taken and communicated to the applicants, the applicants cannot be terminated from service. In compliance of the said order, representations of the applicants dt. 15.05.2014 was considered and final notice dt. 01.08.2014 was issued.



The applicants once again approached this Tribunal in OA 920/2014 challenging the letter dt. 01.08.2014 and the said OA was disposed of directing the respondents to address the specific issues raised by the applicants. Accordingly, the 5th respondent issued letter dt. 16.10.2014 and terminated the services of the applicants. The basis for the termination of the applicants is that they worked on contract basis.



6. Head both the counsel and perused the pleadings on record.

7 (I) It is not under dispute that the applicants were engaged as casual labours between the years 1987 to 1989. They have been granted temporary appointment on 4.12.2007 and their services were confirmed w.e.f. 05.12.2008 vide letters dt. 15.02.2010 and 11.03.2010. The respondents issued a seniority list on 30.11.2007 of all the casual labours wherein applicants names appear within serial 10. Respondents admit that they made a mistake in preparing the seniority list by considering the number of days for which the casual labours worked in the respondents organization in terms of hand receipt/ muster roll/ through contract on outsourcing basis. When Sri Shaik Ali and two others filed OA No. 839/2007, this Tribunal directed the respondents to revise the seniority list by taking into consideration only work done by engaging casual labour through hand receipt/ muster roll. The order of this Tribunal was to exclude the number of days for which the casual labour engaged on outsourcing basis. When the order of the Tribunal in OA No. 839/2007 was not implemented, CP No. 110/2012 was filed wherein this Tribunal passed an order on 14.03.2013, which reads as under:



“Mr. G. Jaya Pakash Babu, learned Senior Standing Counsel appearing for the respondents reports that the order of the Tribunal is being implemented and the applicants care being appointed in their turn as per the revised seniority list prepared in pursuance of the direction of the Tribunal. As such, the applicants cannot complain. In case, the grievance of the applicants are unjustly ignored, overlooking the directions of the Tribunal, they can approach the Tribunal by filing a fresh OA by making out a fresh case. This order shall not preclude the respondents from appointing the applicants in pursuance of the directions of the Tribunal in their turn. In case any of the juniors to the applicants are working, immediate action shall be taken up rectify the position, either by reverting them or by creating supernumerary posts.”

The order very clearly states that the juniors have to be reverted or if required, supernumerary posts to be created to rectify the position. Respondents went ahead and issued letter dt. 05.05.2014 to show cause as to why applicants' services should not be terminated as per Rule 11 of CCS (CCA) Rules, 1965. The applicants replied on 15.05.2014 claiming that they are permanent employees and if any action has to be taken against them, it shall have to be in consonance with Article 311(2) of the Constitution. The applicants filed OA 595/2014 against 05.05.2014 wherein the Tribunal directed the respondents to dispose of the representation of the applicants dt. 15.05.2014. Respondents disposed of the same by an order dt. 01.08.2014. Applicants again filed OA 920/2014 which was disposed on 08.08.2014 directing the respondents to address the specific issues raised by the applicants in their reply dt.15.05.2014. Thereafter, respondents issued the impugned order dt.16.10.2014 terminating the services of the applicants. In this context, if we examine the order of the order of the Tribunal in CP No. 110/2012, it is clear that the applicants can be reverted, but nowhere the Tribunal directed the respondents to terminate the applicants. Besides, it is evident from the letters dt. 15.02.2020 and 11.03.2010 that the services of the applicants have been made permanent. Once applicants were made permanent

government servants, then any action to be taken against the applicants has to be taken as per Article 311(2) of the Constitution by instituting a regular inquiry. The respondents without doing so, on the basis of show cause notice, issued the order of termination on 16.10.2014, which is irregular and arbitrary. The respondents claim that the number of posts sanctioned was only 10 and due to revision of seniority list, the applicants did not come within the zone of consideration and therefore there was no alternative except to terminate services of the applicant. They also stated that they did take up the matter with the Central HQs of the respondent organization to grant additional posts, but the same was turned down. This can be no reason to terminate the services of the applicant when the tribunal order was to revert or create supernumerary posts to adjust them.

II. Learned counsel for the respondents submitted that the reversion would mean removal from service. We do not agree with this submission for the simple reason that reverting the applicants in regard to their seniority, and terminating their services are totally different aspects. The action of the respondents is definitely not in consonance with the order of this Tribunal in CP No. 110/2012 cited supra. The respondents had an option of creating supernumerary posts and adjust them against the same. Without doing so, they have violated the orders of this Tribunal in CP 110/2012. An order of the court, whether good or bad, has to be implemented or at the most, the respondents could have pursued alternative remedies to get the order stayed. Respondents have not done so. Hence, the action of the respondents in terminating the services of the applicant is illegal. In addition, applicants also stated that pursuant to the order in OA

1206/2011 dt.24.04.2014, the juniors to the applicants were granted temporary status and their services were also regularized. This was not effectively countered in the reply statement. Respondents could have created supernumerary posts in the context of the applicants having been made permanent in the respondents organization vide orders referred to above till the process of creating regular posts was completed. Head quarters of the respondents organization is not above law and it has to abide by the court order lest it would mean contempt of court.

We also notice that the respondents have not come up with any adverse comments against the applicants nor did the applicants indulge in any misconduct which calls for termination of their services. It is clear that the services of the applicant have been terminated because of the wrong interpretation of the order of the Tribunal in CP 110/2012. The mistake lies with the respondents and the applicants should not suffer for the mistake of the respondents, as observed by the Hon'ble Supreme Court as under:

*The Apex Court in a case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.*

*In yet another case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*

*It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”*

The applicants have cited the judgment of the Hon'ble Supreme Court in 1998 SCC (L&S) 1601 wherein it has been held that the permanent employees cannot be terminated by issuing a simple notice. Applicants



also cited the judgment of the Hon'ble Supreme Court in 2000 SCC (L&S) 613 wherein it was held that even temporary servants are protected under Article 311(2) of the Constitution of India. The action of the respondents in terminating the services of the applicants thus goes against the observations of the Hon'ble Supreme court cited supra.



III. Therefore, as can be seen from the above, respondents have violated the orders of the Tribunal and subjected the applicants to an illegal order of termination. Hence, the impugned orders dt. 23.04.2014 and 16.10.2014 are quashed and set aside. Interim order dt.30.10.2014 is made absolute. The respondents are directed to consider regularizing the services of the applicants from the date they become eligible as per relevant rules and law on the subject and grant consequential benefits thereof. Arrears of pay, if any, shall be confined to 3 years prior to the filing of the OA, as observed by the Hon'ble Supreme Court in ***Union of India & Anr vs Tarsem Singh in Civil Appeal No.5151-5152 of 2008.***

With the above directions, the OA is allowed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/