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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 246
~~TXAX~~No.

1986

DATE OF DECISION 9. 10. 86, 1986

Miss Sujata Oberoi **Petitioner**

Shri R. L. Sethi **Advocate for the Petitioner(s)**

Versus

Union of India & Others **Respondent**

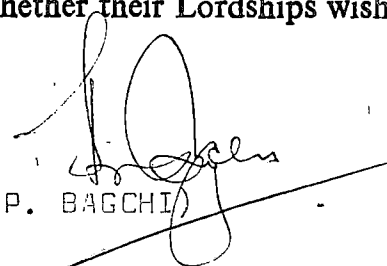
Shri N. S. Metha **Advocate for the Respondent(s)**

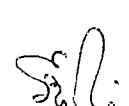
CORAM :

The Hon'ble Mr. S. P. MUKERJI, A.M.

The Hon'ble Mr. H. P. BAGCHI, J.M.

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


(H. P. BAGCHI)


(S. P. MUKERJI)

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OA No.246/86

DATE OF DECISION : 9.X.86

Miss Sujata Oberoi . . . Petitioner

Vs.

Union of India & Others . . . Respondent(s)

Shri R.L. Sethi . . . Counsel for petitioner

Shri N. S. Metha . . . Counsel for respondent(s)

CORAM :

THE HON'BLE MR. S. P. MUKERJI, ADMINISTRATIVE MEMBER
THE HON'BLE MR. H. P. BAGCHI, JUDICIAL MEMBER

JUDGEMENT :

The petitioner filed this application under section 29 of the Administrative Tribunals Act to restrain the respondent from terminating her services except through the due process of law. The relevant facts as emerged from the pleadings of the parties are that the petitioner, Miss Sujata Oberoi was appointed as a Telephone Operator with the respondent, Department of Environment in the scale of Rs.260-400 w.e.f. 9.11.84. The officer of appointment as given in the letter No.A-12023/8/81-Admn-I dated 7.11.84 on the basis of which she had agreed to join to the post of Telephone Operator contained the following conditions :-

- (1) That the appointment will be purely on ad-hoc basis till such time the appointment to the post is made on regular basis;
 - (2) The appointment could be terminated at any time without any notice and reason therefor.
- [Handwritten signature and flourish on the left margin]*

2. On the petitioner's accepting to work on the above mentioned conditions, the petitioner continued to work on purely ad-hoc basis for a period upto 31.12.84 or till the post was filled up on a regular basis whichever was earlier. The applicant's period of service on ad-hoc basis was extended from time to time and the last such extension was given upto 8.4.86 vide order dated 25.4.86 ~~passed~~ ^{passed} by the respondent. Finally by the order dated 8.4.86 the respondent, Department of Environment, terminated the services of the petitioner w.e.f. the afternoon of 8th April, 1986. The Registered A.D. by which the notice of termination of her services was issued was returned undelivered by the postal authorities with the remarks that she was deliberately avoiding to take the notice. However, the petitioner was duly served with the notice of termination of her services on 16.4.86 when she visited the department. The petitioner has taken the stand that since the appointment was through the Employment Exchange and on the basis of test and interview by the Board she was a temporary employee and her term has been extended from time to time and as such, her services could not be terminated without the compliance of Rule 5 of the Central Civil Service (Temporary Service) Rules and that the "Contemplated termination" was arbitrary malafide and against the principles of natural justice. It appears that when the application was filed the notice of termination was not received by the petitioner. However, as per the respondent's case the service of the petitioner had already been terminated w.e.f. the afternoon of 8th April 1986. The stand of the respondent is that the post of the Telephone Operator is a duty post of the Central Secretariate Clerical Service (CSCS) and it is to be manned by a lower division clerk belonging to the said

service. The services of the petitioner were terminated as the Department of Personnel and Training advised that the post be filled up by a L.D.C. of C.S.C.S. Accordingly, the post has since been filled up by the appointment of a L.D.C. belonging to the Central Secretariat Clerical Service. The petitioner was bound by the terms and conditions of her appointment and it was made specifically clear to her that the appointment was purely on ad-hoc basis till such time the appointment to the post is made on regular basis and that her services could be terminated without any notice and reason and as such it was in pursuance of these terms that the services of the petitioner were terminated on 8.4.86. The respondent has also averred that Rule 5 of Central Civil Service (Temporary Service) Rules is not applicable in the case of the petitioner as she was holding a post of Telephone Operator on a purely ad-hoc basis.

3. We have heard the arguments of the learned counsel for the parties and have carefully considered the material on record. At the outset, it may be stated that the application could be disposed of outright on the short question of maintainability. The sole relief claimed in the application is to restrain the respondent from terminating the services of the petitioner. The sequence of events however shows that the services of the petitioner have already been terminated w.e.f. the afternoon of 8th April, 1986. Thus the application has become infructuous as the cause of action no longer survives and the petitioner no longer holds the post. Evidently, it is apparent that the services of the petitioner already stood terminated before she filed the application. This apart, the application suffers from another fallacy. The post of the telephone operator has already been filled up by the Department of Environment as would appear from

the copy of the order dated 25.4.86 passed by the Under Secretary in the Department of Environment according to which one Smt. Sales Kerketta, an LDC has been posted to work as Telephone Operator in that Department with immediate effect. Thus for all practical purposes, the petitioner has ceased to have any link or interest with the post which she was holding and at least she cannot be reinstated in service on the basis of the present application in which she did not seek any such relief.

4. Coming to the legal aspect of the matter the basic question to which we have to address ourselves is as to the status of the petitioner. As would appear from the terms of her appointment, it is evident that the petitioner was appointed to the post of Telephone Operator purely on ad-hoc basis till such time a regular incumbent is appointed and that her appointment could be terminated any time without any notice and reason. The question for consideration is whether the petitioner has acquired any right as such to the post. An ad-hoc appointment by its very nature is a stop-gap arrangement made for a variety of reasons, particularly, when a regular incumbent is not available or a process of regular selection involves time and the exigencies of service are such that the post cannot be allowed to remain unmanned meanwhile. An applicant acquires a right to the post only as per terms of appointment. In that sense, an ad-hoc appointment does not by itself confer any right on the appointee ^{and} where therefore, an appointment is made purely on ad-hoc basis with the stipulation as aforesaid, the services of such an appointee could be terminated without any notice and the employer could put an end to the

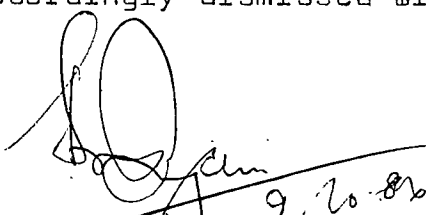
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employment by exercising the right to terminate the services. Reference in this regard could be usefully made to a Division Bench decision of the High Court of Punjab & Haryana in Om Parkash Vs. State of Haryana & others reported as 1981 (1) SLR 314. In that case the difference between an ad-hoc appointment and a temporary appointment was clearly brought out. It was observed in that case that broadly speaking ad-hoc appointments are made outside the rules whereas temporary appointments are made within the framework of rules of a service. In the instant case, it is not the case of the petitioner that she has been appointed under any statutory rules. Her appointment and continuation was nothing more than purely ad-hoc and as such she cannot be said to have acquired any vested right or interest in the post. It follows, therefore, that since the petitioner had no right to continue to the post either under the rules or under the terms of her appointment, the termination of her services was valid and legally in order. In the absence of any rules governing her appointment the petitioner was clearly bound by the terms and conditions of her appointment and consequently her services were rightly terminated. It was clearly held in Om Parkash case (supra) that the services of an ad-hoc employee can be terminated in accordance with the terms of employment without any prior notice and not necessarily for a valid justification known. In the circumstances, the challenge of the petitioner that her services could not be terminated without any notice or without proper justification has no legs to stand. The decision in the case of C.B. Dubey

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and another Vs. Union of India reported as 1975(1) SLR 580 sought to be relied upon by the learned counsel for the petitioner is distinguishable on facts inasmuch as the employees in that case were holding officiating promotional posts though termed as ad-hoc. Similarly, Rule 5 of the Central Civil Service (Temporary Service) Rules is not applicable in the present case in view of the admitted fact that the petitioner was only an ad-hoc employee and was not a temporary employee appointed under any statutory rules. In any case, the petitioner cannot be treated to be temporary employee by the reasoning that she had been working as Telephone Operator for about 1½ years when admittedly her appointment was not under any rules whatsoever. On this score, the analogy of Balliappa's case reported as 1979 (2) SCR 458 would not apply by any process of inverted logic or reasoning because that was a case where the services of a temporary employee were terminated and it was in that context that the Supreme Court observed that the services of a temporary employee could be terminated on the grounds of unsatisfactory work or the post being abolished or a regular incumbent has been appointed. None of these contingencies arise in this present case. It has already been noted earlier that the fate of the petitioner has been finally sealed with the appointment of a LDC to the post of Telephone Operator which is a duty post under the Central Secretariat Clerical Service.

6. In the result, the application fails and the same is accordingly dismissed with no order as to costs.


(H. P. BAGCHI)
JUDICIAL MEMBER


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER