

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 407/86
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DATE OF DECISION 23.10.1991

D.K.Dixit

Petitioner

Shri B.S.Charya

Advocate for the Petitioner(s)

Versus

Union of India, Ministry of Labour

Government of India, Shram Shakti Bhawan,

Rafi Marg, New Delhi

through its Secretary and another

Shri K.C.Mittal

CORAM

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. J.P. SHARMA, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 8.1.86 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as a Rehabilitation Officer in the office of Vocational Rehabilitation Centre, Sitamarhi, Bihar under the Ministry of Labour (Director-General of Employment & Training) has challenged the impugned order dated 24th May 1985 at Annexure-A1 by which his adhoc appointment was terminated with effect from 31.5.85. He has prayed that he should be deemed to have been continued in service without any break with full salary and allowances. The brief facts of the case are as follows.

2. In response to an advertisement published on 1.8.81 the applicant applied for the post of Rehabilitation Officer in the grade of Rs.650-1200. He was earlier working as a Teacher in a Deaf and Dumb School for about five years. The applicant

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was interviewed on 8.2.82 and was selected and appointed at Sitamarhi, Bihar with effect from 6.8.82 after resigning his previous post. In the terms of appointment dated 30th July 1982 (Annexure A3) communicated to the applicant and accepted by him the offer was made for "the post of Rehabilitation Officer in the Vocational Rehabilitation Centre for Physically Handicapped , Sitamarhi , on purely temporary and ad-hoc basis for a period of 3 months or till a regular incumbent becomes available, whichever is earlier. The appointment is liable to termination at any time on either side without reasons being assigned". The applicant accepted the offer and was appointed vide the order dated 30th July 1982 (Annexure-A2) "on purely adhoc basis for a period of 3 months or till the regular incumbent joins whichever is earlier ..." The services of the applicant continued even after 3 months expired and uninterruptedly since 6th August 1982 he was kept in service, ^{and} given two increments, till by the impugned order, his services were terminated with effect from 31.5.85. The contention of the applicant is that the termination of his services because his appointment was not made in consultation with the Union Public Service Commission is unwarranted as no consultation was necessary in accordance with Regulation 3 of the UPSC (Exemption from Consultation) Regulations, 1958. He has argued that no proper notice was given as required under Rule 5 of the CCS(Temporary Service) Rules and that with 3 years of service he was entitled to claim quasi-permanent status.

3. In the counter affidavit the respondents have argued that after interview and selection, the applicant

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was offered "purely temporary and ad hoc appointment for a period of 3 months or till a regular incumbent becomes available". The applicant accepted the offer and was appointed on "purely ad hoc basis for a period of 3 months or a regular incumbent joins whichever is earlier". They have, further, stated that the post of Rehabilitation Officer is a Group-B Gazetted post and in accordance with the Recruitment Rules for the post direct appointment is to be made by the UPSC. The respondents, however, have conceded that ~~the~~ initial period of ad hoc appointment of 3 months was continued through various orders for further specified periods from time to time and since the Commission did not agree to the continued adhoc appointment of the applicant his services were terminated with effect from 31.5.85 and also a regular candidate selected by the UPSC was to be accommodated. They have denied that the petitioner was given any kind of assurance that he will be regularised. They have further indicated that the applicant along with other candidates were considered by the UPSC for regular appointment and was interviewed but was not selected. Their argument is that no notice was required for terminating the services of an ad hoc appointee and an ad hoc employee is not covered by the CCS(Temporary Service)Rules .

4. In the rejoinder the applicant has reiterated that for regular appointment and selection, ^{the} UPSC need not be consulted and that he is entitled to quasi-permanent status.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents

carefully. A similar case of an ad hoc appointee was considered by the Principal Bench of the Tribunal in its judgment in *V. Sasidharan vs. Union of India and another*, A.T.R 1989(2) C.A.T 316. Relying upon the judgment of the Jabalpur Bench of this Tribunal in another case it was held as follows.

"5. It has been held by the Jabalpur Bench of this Tribunal in *Guruprashad v. Union of India* 1988(6) ATC 47 that procedure of termination prescribed in Rule 5(1) of the Central Civil Services (Temporary Service) Rules applies even to those employees who are categorised by Government as 'ad hoc' but virtually their appointment is a "temporary service" within the meaning of Rule 2(d). The Principal Bench of the Tribunal in *Dr. Mrs. Sangeetha Narang and others v. Delhi Administration etc.*, 1988(6) ATC 405 held that automatic termination of services of ad hoc employees on expiry of fixed period for which they were employed is not permissible so long as there is need for manning of posts. It was further held that termination can be ordered only if services are no longer required or the performance of the ad hoc appointee is unsatisfactory. The Tribunal further held that acceptance of an offer stipulating fixed period of ad hoc appointment does not validate such termination as such condition itself is invalid. In the instant case before us, though the respondents have advanced valid arguments that the post being reserved for Scheduled Tribes was filled up by a regular appointee on 6.11.87, they have not given any valid reason why the services of the applicant could not be retained beyond 3.7.87 till 6.11.87 when the regular appointment was made. The applicant however, cannot claim regularisation as a matter of right against the claim of regular appointee. This view has been held in a catena of judgments notably by the Punjab and Haryana High Court in *C.B. Dube v. Union of India*, 1975(1) SLR 580 and in *Omprakash Sharma v. State of Haryana and others* 1981(1) SLR 314, and *Mr. Savitha Ahuja v. State of Haryana and others*, 1988(3) SLJ 174."

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From the above it is clear that the applicant before us who had been offered the appointment "on purely ad hoc basis for a period of 3 months or till a regular incumbent becomes available whichever is earlier" has to be held to be governed by the CCS(Temporary Service) Rules even though he is considered to be an ad hoc appointee. The Temporary Service Rules provide for one month's notice or pay in lieu of notice before the service of a temporary employee can be terminated. In the aforesaid Sasidharan's case it was further held as follows:-

"6. Non-payment of notice salary before termination however cannot be held to be a fatal flaw in this case. In Union of India and others v. Arunkumar Roy, AIR 1986 SC 737 it was held that after the amendment of Rules 5(1)(b) of the Central Civil Services(Temporary Service)Rules 1965, the payment of notice salary did not remain a pre requisite for termination. It was also held in that case that a Government servant whose appointment originates in a contract, acquires status and thereafter is governed by his service rules and not by the terms of contract.

7. It has further been held by a Constitution Bench of the Supreme Court in Jagdish Mitter v. Union of India, AIR 1964 SC 449 that even though protection of Article 311 can be invoked by a temporary public servant, yet the appropriate authority "can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, it would be a straightforward and direct case of discharge and nothing more; in such a case Article 311 will not apply". Since in the instant case before us there is no stigma or element of punishment involved in the impugned termination of service, the applicant cannot claim protection under Article 311 of the Constitution."

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Since in the instant case before us the services of the applicant were terminated without any stigma and for accommodating a regularly selected candidate who was ^{to be} found by the UPSC more meritorious than the applicant, we do not find any fatal flaw in the impugned order except that the applicant was entitled to pay and allowances in lieu of ^{shortfall in} one month's notice. By the impugned order he was given a notice of only 7 days. Thus, he will be entitled to pay in lieu of notice for a period of 23 days.

6. As regards the question of regularisation, the applicant himself has conceded that in accordance with the Recruitment Rules for the post of Rehabilitation Officer consultation with the UPSC would be "as required under the UPSC (Exemption from Consultation) Regulation, 1958". The applicant himself has quoted Regulation 3 in his application, which reads as follows.

" save as otherwise expressly provided in the rules governing Recruitment to Civil Service or Civil Post concern, it shall not be necessary to consult the Commission in regard to the selection for appointment:-

- (a) ...
- (b) ...
- (c) to a Central Service Class II (Grade B) or to a post included in the Central Service Class I (Group B) of any Officer who is already a member of a Central Service Class II (Group B) or a Central Service Class III (Group C) or of any Officer in the Armed Forces of the Union."

Since the applicant did not belong to any of the exempted categories mentioned in clause (c) above, his selection in 1982 without consulting the UPSC will be 'de hors' the Recruitment Rules and his ad hoc cum temporary

appointment cannot be held to be a regular appointment. A similar view has been held by this Tribunal in Sasidharan's case in the observations as quoted earlier. Such an appointment 'de hors' the rules, however, was held to be irregular but not ab initio void by the Patna Bench of the Tribunal in Vidya Singh v. Union of India and another, (1990) 12 ATC 18. The Jabalpur Bench of the Tribunal in Guru Prasad vs. Union of India, (1988) 6 ATC 47 held that ad hoc appointment even though not made in accordance with normal process of Recruitment Rules, acquires the character of temporary appointment as defined in Rule 2(d) of the CCS(Temporary Service)Rules by efflux of time after ^{the} ad hoc continuous service ^{of one} _{exceeds} ^h year. The ad hoc appointee can be considered for declaration of quasi-permanency after a period of three years under Rule 3 of the CCS(Temporary Service)Rules. In case of Group-A and Group-B posts also, the Jabalpur Bench held the same view and observed as follows:-

"37. We might also add that as far as Groups 'A' and 'B' posts are concerned within the purview of UPSC (Exemption from Consultation) Regulations, 1958, under Regulation 4(i) the Government in exercise of their executive discretion can make initially ad hoc appointments up to a period of six months and for another six months with the knowledge of the PSC(UPSC) and beyond one year with their concurrence in the case of Central Government Employees. Thus in the case of such higher appointments also one year is the period as a cut-off point of making ad hoc appointments. The Supreme Court in the case of Narendra Chadha v. Union of India had taken a view that it was a mandatory constitutional necessity to consult the UPSC or the PSC as the case may be under the limitation of function

regulations for appointments not exempted, as it flows out from a constitutional requirement and necessity under Article 320(3)(b) of the Constitution although consultation with the Commission under the provisions of Article 320(3)(c) might not be mandatory."

7. From the aforesaid discussion the following points are clearly established:-

- a) The initial appointment of the applicant in 1982 was not in accordance with the Recruitment Rules. However it was not ab initio void because the competent authority had the power to make short-term appointment without consulting the UPSC.
- b) Ad hoc continuous appointment of the applicant acquired the status of temporary appointment under the Temporary Service Rules .
- c) The ad hoc temporary service of the applicant could have been terminated with a notice or pay in lieu of notice of one month .
- d) Non-payment of pay in lieu of notice does not invalidate the order of termination.
- e) Ad hoc temporary service 'de hors' the rules does not entitle the applicant to automatic regularization.
- f) Having been considered by the UPSC and not selected , the applicant cannot claim regularization.

8. In the conspectus of facts and circumstances, we allow the application in part only to the extent of directing the respondents to pay the applicant notice pay and allowances for a period of 23 days by which the notice fell short of one month. He will also be entitled to interest at the rate of 12% on the pay in lieu of notice from the date of termination of his

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service till the date of payment. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

J.P.Sharma

(J.P.SHARMA)
MEMBER(J)

S.P.Mukerji

(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j.