

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1090/86

Date of decision: 1.9.82

Shri Harish Kumar ..Applicant

Vs.

Union of India Ors. ..Respondents.

CORAM:

Hon.ble Mr. Justice Ram Pal Singh, Vice Chairman(J)

Hon.ble Shri I.P. Gupta, Member(A)

For the applicant .. Shri S.K. Shas

For the respondents .. Shri M.L. Verma

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

Shri S.K. Sharma for the applicant and Shri M.L. Verma for the respondents. Both the counsels concluded their arguments.

2. In this case, the applicant was appointed as Assistant Manager in the scale of 260-400, consequent upon selection by the Selection Board, with effect from 25-9-1985. He was placed on probation for a period of six months. According to the Rule 8 of the Departmental Canteen Employees (Recruitment and conditions of service) Rules 1980, the service of a member of the service may be terminated by the appointing authority before he completes the period of probation including extended period of probation, if any, without assigning the reasons and without giving any proper notice. The respondents did not find the performance of the applicant satisfactory and his services were accordingly terminated within the prescribed period of probation. The termination was done on 31.12.1985 i.e. within three months of his appointment on probation.

3. The respondents issued another letter to the applicant dated 2.1.1986 saying that he was appointed in the scale of 260-400 from 2.1.1986 on adhoc basis for one month or till the regular incumbent takes over the charge which ever is earlier. The learned counsel for the respondents contended that when the applicant's probation was terminated for unsatisfactory performance, the respondents were keen on filling the post on adhoc basis and had infact written to the Employment Exchange on 17.1.1986 itself for sending nominees. However, the finalisation of the regular appointment took sometime and ultimately on 24.11.1986, a regular candidate was selected and he was asked to join the duty on 8.12.1986. The applicants adhoc service was terminated by order dated 7.11.1986 after giving him one month's time.

4. By virtue of interim order dated 5.12.1986, the order of the termination dated 07.11.1986 was stayed. This stay has been extended from time to time and is still continuing. (10)

5. The learned counsel for the applicant argued that

- i) no provision in the canteen rule for adhoc appointment exists;
- ii) the adhoc appointment dated 2.1.1986 should infact be deemed to be a continuance of his appointment on probation and therefore the period of probation of six months has been crossed by the applicant long ago.

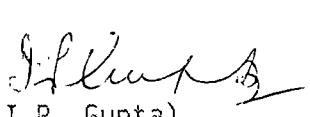
6. On analysis we find that the applicant was appointed on probation. The services were duly terminated during the period of probation. After such termination, the applicant was taken on adhoc basis, which was not consistent with the rule. It is clear that this was not the case of a regular appointment as stipulated under the rule. The appointment letter, which was dehors the rules, clearly stated that it was on adhoc basis for one month or till the joining of regular incumbent. The law is settled on the point that such an adhoc appointment dehors the rule gives no right. Therefore, when the regular incumbent was available, the services of the applicant were terminated. We find no illegality or arbitrariness in the matter. The OA is, therefore, dismissed with no order as to costs. However, we have no hesitation to add before we pass the order, that the applicant has continued for nearly six years by

(11)

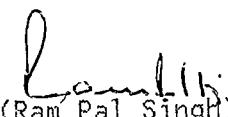
virtue of interim order. The interim order naturally gets vacated with the passing of the order of dismissal of the O.A., but, we expect a review of his case by the respondents regarding his suitability or otherwise since they had an adequate period to watch his performance, and more so, when the regularly selected candidate, selected in 1986 could not join because of the interim order and he may not be interested in the post at this distant time. However, this is an observation and not a direction for the respondents.

(11)

7. The O.A. is dismissed.


(I.P. Gupta)

Member(A)


(Ram Pal Singh)

Vice Chairman(J)