

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1635/ 1987.
T.A. No.

DATE OF DECISION 10th May, 1988.

Kumari Veena Sharma Petitioner

Shri R. K. Kamal Advocate for the Petitioner(s)

Versus

Union of India & Others Respondents

Shri P. P. Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. S. Puttaswamy, Vice-Chairman.

The Hon'ble Mr. Kaushal Kumar, 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 to be circulated to other Benches? Yes


(KAUSHAL KUMAR)
MEMBER (A)
10.5.1988.


(K. S. PUTTASWAMY)
VICE-CHAIRMAN
10.5.1988.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1635/1987.

DATE OF DECISION: 10th May, 1988.

Kumari Veena Sharma Applicant.

V/s.

Union of India & Others Respondents.

CORAM: Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

For the applicant Shri R.K. Kamal, Counsel.

For the respondents Shri P.P. Khurana, Counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who was appointed as a Lower Division Clerk in the office of the Joint Chief Controller of Imports and Exports, Kanpur on 4th November, 1982, has called in question the order dated 13.11.1987 (Annexure A-3 to the application) terminating her services with effect from the same date. The learned counsel for the applicant has contended that the order of termination is illegal, arbitrary, null and void since the applicant was governed by the Central Civil Services (Temporary Service) Rules, 1965 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.

2. The case of the respondents is that the applicant was appointed on a purely temporary and ad-hoc basis and her services as per terms of the contract could be terminated without notice and without assigning any reason. The learned

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counsel for the respondents 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 (Annexure A-1 to the application), which was sent to her before she was appointed and that she did not acquire the status of a temporary Government servant. It is also contended that the post of the Lower Division Clerk 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 which were held by the Commission in 1985 and 1987 and as such she could not be retained in service.

3. Learned counsel for the respondents Shri Khurana also contended as an alternative argument that even if the applicant was held to be governed by the CCS (Temporary Service) Rules, 1965, she could at the most claim one month's pay in lieu of the notice which was required to be given in terms of Rule 5 of the CCS (Temporary Service) Rules, 1965.

4. It is necessary to examine the various documents concerning the appointment of the applicant to determine whether she could be considered a temporary Government servant. Memorandum dated 4.11.1982 (Annexure A-1 to the application) states in para 2 as follows: -

"2. The terms of appointment are as follows: -

- I) The appointment is purely temporary and ad-hoc basis and can be terminated at any time without notice and assigning any reason.
- II) Other conditions of service will be governed by relevant rules & orders in force from time to time."

The Office Order dated 9.11.1982 issued by the Office of the Joint Chief Controller of Imports and Exports, Kanpur (which

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is filed as Annexure-I to the counter-affidavit) whereby the applicant along with seven other persons was appointed as L.D.C. also states as follows: -

"The above appointments are on purely temporary and adhoc basis and can be terminated at any time without notice and without assigning any reason."

This Office Order dated 9.11.1982 also indicates that the vacancy against which the applicant was appointed was a resultant vacancy caused due to the sanction of 8 posts of L.D.C.s vide Ministry of Commerce, New Delhi circular letter No. A-11013/9/80-E-III dated 23.8.1982.

5. From the above documents, it is clear that the applicant was appointed against a regular vacancy and her appointment was temporary and ad-hoc. The Memorandum dated 4.11.1982 also makes it clear that her "Other conditions of service will be governed by the relevant rules & orders in force from time to time." Shri Khurana conceded that the applicant being a person appointed on contract, there were no other rules and orders by which the conditions of service of the applicant were sought to be governed apart from the terms of the Memorandum dated 4.11.1982 which formed the basis of the contract. We are unable to uphold the contention that the appointment of the applicant could be considered throughout her service as a contractual assignment which could be terminated without notice. Even though the initial appointment of a person through an offer of appointment and the acceptance thereof by the person concerned originates from a contract, once a person joins Government service, it fructifies into a status and the person is governed by the relevant rules and regulations applicable to him or her.



6. Learned counsel for the respondents Shri Khurana relied on two judgments in support of his contention that the applicant's services were to be treated as purely ad-hoc which could be terminated without notice and as not attracting the provision of CCS (Temporary Service) Rules. The first ruling which he relied upon is that of a Bench of this Tribunal in the case of Miss Sujata Oberoi v. Union of India and Others (A.T.R. 1987 (1) C.A.T. 178). The facts of the said case are clearly distinguished from the ones under our consideration. It has been brought out in para 1 of the said judgment that the terms of appointment of the applicant in that case 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."

It is also stated in para 2 of the judgment that -

"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 3.12.1984 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 8.4.1986 vide order dated 25.4.1986 passed by the respondent. Finally by the order dated 8.4.1986 the respondent, Department of Environment, terminated the services of the petitioner w.e.f. the afternoon of 8th April, 1986."

7. From the facts stated above, it is clear that the word "temporary" was not used in the terms and conditions of the appointment in the said case and further the

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appointment of the applicant was on a fixed term basis. Even the extensions that were given from time to time were for fixed terms and it was precisely on the expiry of the last extended term that the services of the applicant were not continued. It is also clear from the facts of the said case that the post of L.D.C. held by the applicant, which belonged to the cadre of the Central Secretariat Clerical Service was required to be filled up by a member of that Service and that the applicant therein did not belong to that Service; she was appointed to work as a Telephone Operator on an ad-hoc basis. In the case under our consideration, the offer of appointment contained in the Memorandum dated 4.11.1982 and the order of appointment dated 9.11.1982 clearly envisage that the appointment was not only ad-hoc but also temporary. There was no fixed term of the appointment as such since the period of appointment was not indicated at any stage, nor was the period of service of the applicant extended from time to time and she continued to work for a period of more than five years without any break. The case is clearly distinguished from the facts on which the judgment in the case of Miss Sujata Oberoi v. Union of India & Others is based.

8. Another case on which the learned counsel for the respondents relied was that of B.R. Kumar and Others v. Government of India and Others decided by the Ahmedabad Bench of this Tribunal (1987 (3) Administrative Tribunals Cases 702). The learned counsel referred to the observation of the Bench in para 4 of their judgment which reads as follows: -

"4. We have to construe the nature of the appointment from the facts and circumstances giving rise to them and not merely from the word ad hoc used or omitted in the relevant

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orders. The facts and circumstances of these cases are distinguishable from those in the cases cited by the learned advocates for the petitioners in support of their contentions that the petitioners have quasi-permanent status or have a right to be appointed as regular employees. There was never any doubt about the appointment being for fixed period in the case of the petitioners, while in the cases cited in one instance promises were held out about regular absorption, and eligibility for regular appointment was recognised and the initial appointments were not ad hoc. In the case of the petitioners not only the initial appointment is for fixed period and therefore no notice was required for termination and although the term ad hoc was used at the time of extension the nature of the appointment being purely temporary was never in any doubt." (emphasis supplied).

It is clear that in the aforesaid case also, the appointment of the petitioner was for a fixed term and, therefore, the facts are clearly distinguishable from those giving rise to the present application before us.

9. Shri Khurana also referred to the Central Civil Services (Temporary Service) Rules, 1965 and stated that sub-rule (4)(c) of Rule 1 made it clear that these Rules were not applicable in the case of Government servants engaged on contract. However, sub-rule (3) of Rule 1 reads as follows: -

"(3) Subject to the provisions of sub-rule (4), these rules shall apply to all persons -

(i) who hold a civil post including all civilians paid from the defence services estimates under the Government of India and who are under rule-

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making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government;

(ii) who are employed temporarily in work charged establishments and who have opted for pensionary benefits."

10. In view of the said Rule, if a person holds a civil post (the post of L.D.C. held by the applicant is obviously a civil post) under the Government of India and is under the rulemaking control of the President but who does not hold a lien or a suspended lien on any post under the Government of India or any State Government, the Central Civil Services (Temporary Service) Rules, 1965 would apply. That, of course, is subject to sub-rule (4) of Rule 1 of the aforesaid Rules. 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.

11. In this connection, it is also relevant to refer to the order passed in O.A. 1484/87 (filed by the same applicant) dated 27th October, 1987 to which one of us (Shri Kaushal Kumar) was a party. The said order is reproduced below: -

"In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant apprehends that her services are likely to be terminated any time without any notice according to the terms of the appointment. At present no

Sh. Kaushal Kumar

termination order has been issued and the application has been made only under an apprehension. The application is *prima facie* pre-mature and is accordingly dismissed.

"2. The appointment letter issued to the applicant shows that she was appointed temporarily on an ad hoc basis and in case her services are terminated, the termination will have to be regulated in accordance with Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

"3. Anything said herein will not stand as a bar to make a fresh application if the applicant gets any fresh cause of action / grievance."

12. It will be seen that in the aforesaid order, it was held that "The appointment letter issued to the applicant shows that she was appointed temporarily on an ad-hoc basis and in case her services are terminated, the termination will have to be regulated in accordance with Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965." Even though the said order was passed *ex parte* at the admission stage, still we hold that para 2 thereof correctly sets out the legal position in so far as the status of the applicant is concerned.

13. The next question which arises for consideration is as to whether the termination order dated 13.11.1987 is liable to be quashed in the event it is held to be illegal and the applicant would be entitled to reinstatement in service or the applicant can only claim one month's notice which is required to be given under Rule 5 of the CCS (Temporary Service) Rules, 1965. In this connection, Shri Khurana referred to the judgment of the Patna Bench of this Tribunal in *Ashok Kumar v. Union of India and Othrs* (1987 (2) Administrative Tribunals Cases 69) and relied on the observations made in paras 23, 24 and 41 of the judgment. These are extracted below: -

"23. Thus it is evident that the services of a temporary Government servant can be terminated

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forthwith but he will be entitled to pay for one month from the date of termination of his services.

"24. Mr. B.P. Pandey has submitted that Rule 5(1) of the said Rules will prevail against the contract Annexure I. Annexure I only shows that appointment of the petitioner is purely temporary and his services may be terminated at any time without assigning any reason. This can be done even under Rule 5(1) of the said Rules and so there is no contradiction between Annexure I and Rule 5(1) of the said Rules.

"41. The petitioner has only prayed for quashing Annexures 6 and 11 which cannot be quashed for the reasons mentioned above. However, in view of the proviso to Rule 5(1)(b) of the said Rules the plaintiff will be entitled to one month's pay for the month of September 1981, as his services were terminated on 31-8-1981 and the services of the petitioner were terminated forthwith, but the petitioner may claim this relief from the department."

14. From the facts of the aforesaid case, it would appear that the respondents did treat the applicant as being governed by the CCS (Temporary Service) Rules, but they had failed to give one month's notice or one month's pay in lieu of notice. The applicant therein had contended that he was entitled to quasi-permanent status having put in more than three years service and, therefore, he was entitled to three months' notice. The plea of the applicant that he was a quasi-permanent employee and he was required to be given three months' notice was rejected by the Bench, but they held that he was governed by the Central Civil Services (Temporary Service) Rules, 1965 and the respondents were required to give one month's salary in lieu of notice and they gave a direction accordingly. In the present case, the facts are clearly distinguishable inasmuch as the respondents did not treat the applicant as a temporary employee, nor did they seek to terminate her services under

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the CCS (Temporary Service) Rules, 1965. This is clear from the impugned order dated 13.11.1987 itself. The learned counsel for the applicant referred to the proforma of notice required to be given in case her services were sought to be terminated under Rule 5 of the CCS (Temporary Service) Rules, 1965. The proforma referred to is not a part of the main Rules. It has been prescribed under the Government of India, Ministry of Home Affairs Memo. No. 4/1/65-Est. (C), dated the 13th October, 1965 as amended by Memo. No. 4/1/65-Est (C) dated the 30th March, 1967. He also referred to a judgment of a Bench of this Tribunal in Chander Pal v. Union of India & Others (O.A. No. 1053/87) dated 3.12.1987. Para 9 of the said judgment reads as follows: -

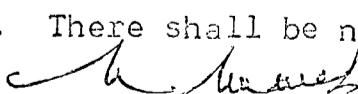
"9. In our view, the obligation to give notice of one month to the applicant or pay wages in lieu thereof, flows out the terms and conditions incorporated in the offer of appointment made to the applicant and it is mandatory in nature. Such a notice is envisaged by rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, and the Central Government has also prescribed a proforma for giving notice in which it is clearly mentioned that a temporary employee whose services are terminated, is entitled to payment of wages for one month in lieu of notice period if no such notice is given. Actual payment of wages for one month need not be made simultaneously with the order terminating the services of a temporary employee, but it should be made within a reasonable period thereafter, if the order of termination does not conform to the proforma prescribed as in the present case. As the requisite notice was not given nor payment in lieu thereof made to the

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applicant, the memorandum dated 24-9-1986 is non est in the eye of law."

15. 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. It is not as if the order terminating the services of the applicant had been passed under the CCS (Temporary Service) Rules, 1965 and there was merely an irregularity notice in not giving one month's/or one month's pay in lieu thereof. In the event of such an order having been passed under the provision of the CCS (Temporary Service) Rules, the irregularity could have been cured by ensuring compliance with the provision regarding payment of one month's salary. 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.

16. In view of the above discussion, the application is partly allowed. The order dated 13.11.1987 is hereby quashed with the direction that the applicant shall be reinstated in service forthwith not later than two weeks of the receipt of this 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. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER (A)
10.5.1988.


(K.S. PUTTASWAMY)
VICE-CHAIRMAN
10.5.1988.