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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1688 198 7
T.A. No.

DATE OF DECISION 18.1.88

Miss Anita Kumari Sood & another Applicants
Petitioner

Shri B.K. Aggarwal, Applicant
Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Communi- Respondents
cation & another

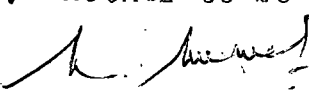
Shri P.H. Ramchandani, Sr. Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member.

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 all the Benches ? No


(Kaushal Kumar)
Member


(K. Madhava Reddy)
Chairman

18.1.88

CENTRAL

ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. NO. OA 1688/87

Date of decision: 18.1.88

Miss Anita Kumari Sood &
another

Vs.

Applicants

Secretary,
Ministry of Communications &
another

Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member.

For the Applicants

--- Shri B.K. Aggarwal,
Counsel.

For the Respondents

--- Shri P.H. Ramchandani,
Sr. Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy, Chairman)

The applicants herein were appointed by the Secretary P&T Board as Stenographer Grade 'D' on^{an}/ad hoc basis, the first applicant on 6.4.1984 and the second on 17.12.1984 respectively. The first applicant was appointed upto 30.6.1984 and the second applicant upto 30.6.1985. In the appointment letters issued to both the applicants, it was mentioned that the appointment will be on ad hoc basis or till the regular candidates become available, whichever is earlier. Obviously because no regular candidates were available even by those dates, both the applicants were allowed to continue as Stenographer^{Grade} 'D' until the impugned order dated 19.11.1987 was served on them by which their services were terminated with immediate effect. The impugned order reads thus:-

" The services of the following Stenographers
Gr. 'D' (ad-hoc), recruited through
Employment Exchange, are hereby terminated
with immediate effect:-

(1) Miss Anita Sood

(2) Miss Neelam Khanna

Sd-

(K. K. Arora)

Assistant Director General (Admn)".

2. These facts are not in dispute. It would be noticed that while the applicants were appointed by the Secretary, P&T Board, their service were terminated

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by the Assistant Director General(Administration), Department of Posts. It is not shown to us that the Assistant Director General(Administration) was competent to appoint or terminate their services. The applicants having been appointed by the Secretary, in the absence of any valid statutory Rules, their services could be terminated only by the authority which had appointed them i.e. Secretary, P& T Board. It is, however, pleaded in the Reply filed by the Respondents that the Secretary, P&T Board had ordered the termination and it is that order which was communicated by the Assistant Director General(Administration). The order itself does not state that the order of termination was made by the Secretary, P&T Board. However, the original file, copies of which were filed along with the Reply, has been produced before us to show that upon a note put up by the Department, the Secretary had directed termination of the services of the applicants with immediate effect on 19.11.1987. Obviously, in pursuance of the said order of the Secretary, the Assistant Director General(Administration) had issued the impugned order. But as already noticed, the order itself does not indicate that the termination was ordered by the Secretary, P & T Board. Reliance is placed on Rule 2(31) of the Authentication(Orders and other Instruments) Rules, 1958 which empowers the Secretary, Posts and Telegraphs Board, Deputy Director General, Director, Assistant Director General, Chief Engineer, Deputy Engineer, Assistant Chief Engineer, or Controller in the Posts and Telegraphs Directorate to authenticate orders and other instruments relating to the Posts and Telegraphs Department made by the President. This Rule does not empower the Assistant Director General(Administration) to authenticate any order of the Secretary. This Rule can have no application to an order made by the Secretary, much less has it any relevance to the one which is not authenticated by anyone. The impugned order reads as if it is made by the Assistant Director General(Administration) himself. Admittedly, the Assistant Director General(Administration) is not competent to terminate the services of the applicants. The Secretary may have recorded an order but that was not communicated or ordered to be communicated to the applicants. An uncommunicated order can have ^{no} validity. The Assistant Director General(Administration) who is not competent to terminate the services of the applicants, does not purport to communicate the order of termination made by the Secretary who was the Appointing Authority and was competent to terminate the services of the applicants. In the absence

[Signature]

6

of any such authenticated order, the order issued by the Assistant Director General(Administration) cannot be deemed to be a valid order. Nor now can it be argued that since there is an order made by the Secretary on the file, this order must be deemed to be the order of the Secretary authenticated by the Assistant Director General(Administration) and given effect to.

3. The Supreme Court in Bachhittar Singh Vs. State of Punjab and another(1) held:-

"..... to make the opinion amount to a decision of the Government it must be communicated to the person concerned. It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication, the order cannot be regarded as anything more than provisional in character."

The Supreme Court in Kedar Nath Bahl V. State of Punjab and others(2) while referring to the order of the Chief Minister in that case observed as under:-

"..... could not give rise to any right in favour of the appellant as it was not expressed in the name of the Governor as required by Article 166 of the Constitution and was not communicated to the appellant."

An uncommunicated order of the Governor/President, unless duly authenticated and communicated, cannot be deemed to be an order of the Governor and would not be effective.

4. The impugned order, therefore, does not validly terminate the services of the applicants and must be quashed.

5. There is also another equally weighty reason why this order cannot be sustained. After the initial specific period of appointment, both the applicants were allowed to continue in service as Stenographer Grade 'D'. Such continuation of an appointment could only ^{be} deemed to be temporary appointment within the meaning of sub-rule(3) of Rule(1) of the Central

(1) AIR 1963 Supreme Court 395.

(2) AIR 1979 Supreme Court 220.



Civil Services(Temporary Service)Rules, 1965. That Rule reads as under:-

"(3) Subject to the provisions of sub-rule(4).

these rules 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 the rulemaking 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."

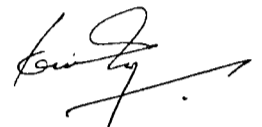
In view of this Rule, if a person holds a civilian post - and the post of Stenographer Grade 'D' in the Central Civil Services is a civilian post under the Government of India - and is under the rulemaking control of the President but does not hold a lien under the Government of India, Central Civil Services(Temporary Service) Rules, 1965 would apply. That, of course, is subject to sub-rule(4) of Rule (1) of the aforesaid Rules. It was argued that the Central Civil Services(Temporary Service)Rules, 1965 do not apply to the Government servants engaged on contract as mentioned in sub-rule(4)(c) of Rule(1) of the said Rules and that the applicants cannot seek benefit of these Rules. We are unable to agree with this contention. As is evident from the order referred to above, their appointments were in pursuance of the order made by the Secretary, P&T Board, they cannot, therefore, be deemed to be Government servants engaged on contract. Since both the applicants hold civil posts and are subject to the rulemaking control of the President and do not hold a lien, Central Civil Services(Temporary Service)Rules, 1965, would apply. If these Rules apply, termination of their services could only be ordered under Rule 5 of the Central Civil Services(Temporary Service)Rules, 1965. For termination under Rule 5, notice in writing is required to be given by the appointing authority to the Government servant or in lieu of notice a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his services has to be given. Admittedly, neither one month's notice nor pay and allowances in lieu thereof were offered to the applicants.



The termination is in violation of Rule 5 of the aforesaid Rules. It is, therefore, not valid. We however, express no opinion whether in the facts and circumstances of the case, the services of the applicants could be validly terminated for no such order of termination is before us. The validity of any such order would have to be judged in the light of Articles 14 & 16 of the Constitution of India and the several pronouncements of the Supreme Court. The impugned order is accordingly quashed and the application is allowed. Pursuant to the interim orders of this Tribunal, the applicants are continuing in service. They will accordingly continue and will be entitled to all consequential benefits, if any.



(KAUSHAL KUMAR)
MEMBER



(K. MADHAVA REDDY)
CHAIRMAN

18.1.88