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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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C.A. NO.166/1987

DATE OF DECISION 5-7-91

SHRI PARKASH TAHILANI

.....APPLICANT

VS.

UNION OF INDIA

.....RESPONDENT

CORAM

SHRI P.H. TRIVEDI, HON'BLE VICE CHAIRMAN

SHRI T.S. OBEROI, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....SHRI R.L. SETHI

FOR THE RESPONDENT

.....SHRI P.P. KHURANA

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

J U D G E M E N T

(DELIVERED BY SHRI P.H. TRIVEDI, HON'BLE VICE CHAIRMAN)

In this application under Section 19 of the Administrative Tribunals Act, the applicant has sought the relief of declaring the verbal termination order dated 19.8.1986^k be set aside. His case is that he was appointed as Clerk Grade-II in the scale of Rs.26C-400 w.e.f. 7.1.1980 in the Ministry of Information and Broadcasting through the Employment Exchange after

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passing the prescribed tests. From the orders annexed at Annexure A-1, he was initially prescribed to hold the appointment provisionally and on ad-hoc basis, but this appointment has actually continued uninterruptedly without any break for about seven years. In 1982, the applicant's name was sponsored by the Ministry of Information and Broadcasting and he joined on 22.7.1982 in the post of Stenographer as per Government's letter dated 13.7.1982. His appointment was verbally terminated without giving any reasons by order dated 19.8.1986. He also impugns the order dated 22.12.1986 whereby his representation was rejected "in view of the instructions contained in Department of Personnel and Training's O.M. No.6/60/84-CS-II dated 22.5.1985." This O.M. is not on the file.

2. The respondents contend that the petitioner having been appointed in the post of L.D.C. on a purely ad-hoc basis derives no rights. He has been appointed as Stenographer Grade-D by fresh appointment also on ad-hoc basis and when he accepted that appointment, whatever rights he had as L.D.C., were not carried over to his new appointment. In terms

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of the C.M. cited, the petitioner has to make way for such appointees as the respondents may determine and no reasons are required to be assigned for termination.

3. There are two main challenges to the respondents' action of verbal termination:-

Is the applicant entitled to a ^{Written} ~~return~~ order of termination and can his appointment be terminated verbally?

On this, the learned Advocate for the respondents stated that if the respondents have a power to terminate the services, there is nothing to stop them from doing so verbally. After hearing the learned Advocate, we are unable to be persuaded by this plea. If the Government business is conducted in ^{normal} ~~per~~ course and if the appointment order is given in writing, it is not admissible that termination orders can be passed verbally and if exigency of service or on grounds of urgency, such orders are communicated, ^{they can} ~~take~~ be treated only as verbal intimation of written orders which are either passed or are being passed or which are to follow. Not passing any written order at all and merely verbally terminating the

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services of a person who has been appointed in writing, is not a normal course of Government business and, therefore, cannot be upheld.

4. The second challenge is on account of any action taken causing evil consequences to the applicant without giving reasons and thus frustrating natural justice. The learned Advocate for the respondents has contended, ^{but} whereas there was no penalty imposed, no reasons were to be given or grounds for passing the order to be explained in any communication obligatory upon the respondents. It has been held by this Tribunal in various judgements, citations on which need not burden the record that any adverse or evil consequence caused should be preceded by a notice so that the officer affected is given an opportunity to show cause. Admittedly, this has not been done and to that extent, the applicant has to be upheld.

5. The third ground taken by the applicant is that by virtue of his several years or so of service, he enjoyed rights of being regularised and treated as such and he has also a right of termination from

the post of Stenographer to be taken back in the post of L.D.C. He has cited the judgements of the Delhi High Court to which he has made reference in para 9.2 and 9.3 of the application. Learned Advocate for the respondents on the other hand states that the appointment being of a purely ad-hoc and temporary nature, the applicant has no right to the post of L.D.C. as it is not possible to claim the rights of being reverted to a lower post if the applicant is not appointed to it in a regular capacity. It is noted that the applicant is not terminated from the post of L.D.C. and whatever rights he has to that post, are not carried over as he was not regularised in it when he accepted the post of Stenographer. His grievance can only arise regarding the post of Stenographer and not to the post of L.D.C. on which he retained no lien or for which he claimed no rights regarding regularisation when he accepted the post of Stenographer. However, his claim for regularisation in that post requires to be examined by the respondents regardless of the applicant's right to be reverted to that post on account of the length of the service he has put in. In view of the

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judgements cited by the applicant, it is necessary that the respondents should examine his rights about regularisation in the post of L.D.C.

6. The learned Advocate for the petitioner stated that no regularly appointed person has reported for replacing the applicant. The O.M. referred to by the respondents in their reply and in the order dated 22.12.1986 refers to a situation in which a regularly selected nominee by the Staff Selection Committee is available for the post in which the ad-hoc appointment was earlier made. The learned Advocate for the respondents stated that they are not obliged to limit the termination of ad-hoc appointments to situation in which nominee by the Staff Selection Committee is made available. The applicant has cited cases in which it has been so held that if the ad-hoc appointment is terminated, it should be only in the circumstances of the appointee not being found fit to hold the posts or is returning to the post to which he has lien or a person senior or higher in merit replaces him in that post or when there are exigencies of public interest. None of these grounds are available to the respondents. The learned Advocate for the respondents

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states that he ~~has~~ not appointed to the post another person on ad-hoc basis and only if he does so, can his action be impugned? If it were the case of the respondents that the post is not required and is being abolished or surrendered, there would be no obligation on the respondents to retain the applicant in the post on ad-hoc basis. If it were the case of the respondents that regularly selected nominee is made available by the Staff Selection Committee in terms of the C.M. ~~has~~ referred to, the applicant also would have no case to be retained in an ad-hoc appointment. There is no ground otherwise for terminating the appointment. No order of termination without having some rationale or justification or explanation can be upheld. Learned Advocate for the respondents stated that the appointment was made only on 7th April, 1986 and was terminated on 19.8.1986 and the short period of his ~~termination~~^{appointment} points to the fact that the applicant had no rights to hold it beyond the period for which the respondents had allowed it. The very short period involved does not take away from the merits of the case of the applicant to continue holding that post unless circumstances or reasons ~~which~~^{are} must be explained by the respondents why that post cannot be continued to be ~~held~~^{held} by the applicant.

7. In the result, we find that the application has merit and quash and set aside impugned orders dated 22.12.1986 and 19.3.1986. The applicant be taken back in the post from which he was terminated. The respondents will be at liberty to issue fresh orders of termination giving a notice to the applicant of the ground for such an order.

8. There shall be no orders as to cost.

T.S. Oberoi 5.7.91
(T.S. OBEROI)
MEMBER (J)

P.H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN