

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 545
T.A. No.

1987.

(11)

DATE OF DECISION ¹⁴ 8.7.1988

Shri Nalan Kandan Bhaskaran, Petitioner

Shri G.C.Lal, Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

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

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (Judicial)

The Hon'ble Mr. S.P. Mukerji, Administrative 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*

S.P.
(S.P. Mukerji)
Administrative Member

P.K.
(P.K. Kartha)
Vice Chairman (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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Regn.No:OA-545/1987

Date of Decision: 14/8/1987

Shri Nalam Kandan Bhaskaran.

... Applicant.

Versus

Union of India & Others.

... Respondents.

For Applicant.

... Shri G.C.Lal,
Advocate.

For Respondents.

... Shri P.P.Khurana,
Advocate.

CORAM: HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN(J)
HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER

JUDGEMENT

(Judgment of the Bench delivered by
Mr. P.K. Kartha, Vice Chairman(Judl.))

The applicant who had worked as Inspecting Officer in the office of Development Commissioner (Handicraft), Ministry of Commerce filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order dated 30.10.1982 of termination of his services and the impugned order dated 2.4.1987 whereby he was relieved from the post of Inspecting Officer be quashed and that a declaration should be issued to the effect that he continues in service with all benefits of pay etc.

2. The applicant began his career in the Ministry of Defence as a temporary Supervisor Technical Grade III with effect from 25.11.1968. He continued in that post till 3.12.197. As certain posts were declared surplus, the applicant was absorbed as a Junior Scientific Assistant Grade II with effect from 4.12.1970 against a regular vacancy. He continued on the said post till 11.3.1980. Thereafter, he joined as Inspector in the office of Development Commissioner on 14.3.1980 and continued in that post till he was relieved on 2.4.87.

3. Thus, the applicant has worked in the Ministry of Defence for over 11 years and in the Ministry of Commerce for about seven years.

4. The applicant applied for the post of Inspecting Officer which was advertised by the Central Employment Exchange and he was selected for the post. By the memorandum dated 21.1.1980 issued by the respondents; the applicant was offered the post of Inspecting Officer. This memorandum stated that the post was purely temporary under 'plan scheme' and that his services were liable to be terminated at any time without notice or without any reason being assigned. After his acceptance of the offer, the respondents issued Office Order dated 13.6.1980 appointing him to the post of Inspecting Officer. The office order was in the following terms:

"The Development Commissioner for Handicrafts, All India Handicrafts Board, Ministry of Industry, hereby appoints Shri N.K. Bhaskaran as Inspecting Officer (General Central Service Group B) under Plan Scheme for Pre-shipment Inspection and Certification of India Items under the All India Handicrafts Board, Ministry of Commerce and Civil Supplies at Madras in the pay scale of Rs.550-25-750-30.900 with effect from 14th March, 1980 (F/N)

2. He will draw pay at Rs.550/- the minimum of the scale of Rs.550-900 plus usual allowances as admissible under the rules. He has been medically examined and found fit for Government Service."

5. It may be noticed that the office order did not mention that the appointment of the applicant was on ad-hoc basis or that it was only on stop-gap arrangement till a regularly appointed person is appointed to the post.

6. However, on 6.3.1981, the respondents issued another office order whereby seven officers including the applicant were informed that their appointment as Inspecting Officer was 'on ad-hoc basis till regular appointments are made'.

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7. It appears that at the time of appointment of the applicant as Inspecting Officer, the recruitment rules had not been issued. The All India Handicrafts Board (Gr.II) posts under Plan Scheme for PSICII recruitment rules, 1980 were made and notified on 25.2.1981. The Rules provide for filling up of the post of Inspecting Officer by direct recruitment in consultation with the U.P.S.C.

8. The applicant also appeared before the U.P.S.C. but he was not declared successful.

9. On 30.10.1982, the respondents terminated the services of the applicant by invoking the provision of Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965. This memorandum states that the applicant was Inspecting Officer (Ad-hoc).

10. The applicant moved the Jaipur Bench of the Rajasthan High Court by Civil Writ Petition No. 97/82 challenging the validity of the Office Order dated 6.3.1981 whereby he was informed that his appointment as Inspecting Officer was on ad-hoc basis. During the pendency of the petition he was served with the impugned memorandum dated 30.10.82 whereby his services were sought to be terminated under Rule 5(1) of the CCS (Temporary Services) Rules, 1965. Thereupon, he moved an application before the High Court urging that the impugned memorandum dated 30.10.1982 should also be quashed by the Court.

11. It is relevant to point out that the petitioner continued in service pursuant to the stay order passed by the High Court until he was relieved by the impugned order dated 2.4.1987. It may also be pointed out that the other Inspecting Officers similarly placed including those junior to the applicant were retained in service

though on next lower post but the applicant was not so retained.

12. The Writ Petition filed in the High Court was transferred to the Jodhpur Bench of the Tribunal. ~~by its judgement dated 2.3.87, or~~ The Jodhpur Bench of the Tribunal, ~~quashed the impugned order dated 6.3.1981.~~ In this context the Tribunal observed that the Government has the power to fill up the posts in the absence of recruitment rules in exercise of its executive powers. After considering the language of the Office order dated 13.6.1980 whereby the applicant was appointed as Inspecting Officer, the Tribunal observed that his appointment was not on ad-hoc basis. The mere fact that the authorities concerned wanted to make the appointment on ad-hoc basis would not derogate from this conclusion. It was also observed that "it would be extremely unfair and unjust to subsequently alter the status of a civil servant to his detriment as the same entails evil consequences." However, the Tribunal did not express any opinion on the validity or otherwise of the order of termination made by the authorities concerned in exercise of the powers under Rule 5(1) of the CCS(Temporary Services) Rules, 1965. The Tribunal noted that the operation of that order had been stayed by the High Court. The Tribunal gave liberty to the applicant to approach the Tribunal again in case any further action was taken by the respondents on the basis of the order of termination. The observations made by the Tribunal in this regard are as follows:

"In case any further action is taken by the respondents on the basis of the said order and the petitioner feels aggrieved from the same, he shall be at liberty to file a fresh application under Section 19 of the Administrative Tribunals Act, 1985. This issue is being kept open as this question does not form the subject matter of the Writ Petition but cropped up during

the pendency of the writ petition as a result of the order made during the pendency."

13. The applicant has filed the present application before us pursuant to the liberty given by the Jodhpur Bench of the Tribunal mentioned above.

14. The applicant has annexed to the application before us a copy of an application dated 18.11.1982 moved by him before the Jaipur Bench of the Rajasthan High Court whereby he had sought leave of the High Court to amend the grounds of the petition and the prayer for quashing the impugned order dated 30.10.1982. The said application would also have formed part of the writ petition which stood transferred to the Jodhpur Bench of the Tribunal. In view of these, it would have been open to the applicant to move Jodhpur Bench with a review application bringing out this aspect and praying for a decision. However, the applicant has filed the instant application before us in view of the liberty given to him by the Jodhpur Bench of the Tribunal.

15. The contention of the respondents in their counter-affidavit is that the words 'ad hoc basis' were not added in the Office Order dated 13.6.80 due to inadvertance. After the mistake was discovered, the same was rectified vide order dated 16.3.1981. As regards the judgement of the Jodhpur Bench of this Tribunal dated 2.3.1987, the respondents have contended that the Tribunal did not exercise any opinion on the validity or otherwise of the order of termination dated 30.10.1982 issued by the respondents in exercise of the powers under Rule 5(1) of the CCS(TS) Rules, 1965, although the same had been made an integral part of the petition. This goes to indicate that the Jodhpur Bench of the Tribunal did not find any prima facie ground to interfere on the issue of validity or otherwise of the termination order dated 30.10.1982 issued by the respondents. Even if the relief of the judgement delivered by the Jodhpur Bench of the Tribunal regarding quashing of order of 6.3.1981 is

taken by the petitioner, he is still governed by CCS(T.S) Rules, 1965. Since the Jodhpur Bench of the Tribunal, vide its order dated 2.3.1987, has vacated the stay granted by the High Court, the termination order dated 30.10.1982⁰² automatically became operative. The order dated 30.10.1982 was issued under the relevant rules and was legal. The respondents have further contended that the petitioner did not have any locus or right to hold the post of Inspecting Officer after being rejected by the U.P.S.C. for the said post. The respondents also could not have offered him a lower grade post on the same lines as was done for other colleagues as the petitioner was already holding the post of Inspecting Officer in view of the stay order granted by the High Court. The respondents have also contended that if the petitioner felt aggrieved from the order of the Tribunal, he could have filed a Special Leave Petition before the Supreme Court. According to them, the present application is barred by the provision of res-judicata and the mere circumstance that the Jodhpur Bench of the Tribunal remarked that the petitioner would be at liberty to file a fresh petition if aggrieved from the termination order, would not come to the rescue of the petitioner.

16. We have carefully gone through the records and have heard the learned counsel for both the parties. It is clear from the judgement of the Jodhpur Bench of the Tribunal dated 2.3.1987 that while quashing the impugned order dated 6.3.81, it gave liberty to the applicant to approach it again in case the respondents were to take any further action on the basis of the order of termination dated 30.10.1982 which had been stayed by the High Court. The Tribunal thus left the question open for decision in a fresh application, in case the impugned

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order dated 30.10.1982 were sought to be implemented by the respondents in future. In view of the above, there is no merit in the contention of the respondents that the applicant's remedy was by way of filing Special Leave Petition in the Supreme Court against the judgement of the Jodhpur Bench of the Tribunal.

17. The contention of the respondents that the present application is barred by the provisions of res-judicata is also legally untenable. 'Res-judicata' by its very words means a matter on which the Court has exercised its judicial mind and has, after argument and consideration, come to a decision on a contested matter. There should be a final decision. Where the Court merely leaves the matter in issue open for consideration and decision in another proceedings in future, on the ground that it was not necessary to go into the same in the proceedings before it and gives liberty to one of the parties to agitate the matter in a fresh proceeding, the doctrine of res-judicata will not apply. Before an earlier decision can be considered as res-judicata, the same must be heard and finally decided. In the instant case, the Jodhpur Bench of the Tribunal did not finally decide the issue of validity or otherwise of the impugned order of termination dated 30.10.1982.

18. The respondents did not stipulate in the advertisement issued through the Employment Exchange or in the offer of appointment sent to the applicant that the appointment was subject to sanction by the Union Public Service Commission.

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19. The admitted factual position is that the vacancy in the post of Inspecting Officer arose when the Central Employment Exchange had advertised these posts and the applicant was appointed to one of these posts on 13.6.1980. He has worked in that post for nearly seven years, though the major part of the service was pursuant to the stay order issued by the High Court. The crucial question arising for consideration is whether an appointment made by the Government in exercise of its executive powers would become invalid in view of the promulgation of the recruitment rules at a subsequent point of time.

20. In B.N. Nagarajan and Others, etc. Vs. State of Mysore, AIR 1966 SC 1942 at 1944-1945, the Supreme Court observed that it is not obligatory under proviso to Article 309 to make rules of recruitment, etc. before a service can be constituted or a post created or filled. The Government has the executive powers to act in this regard. One of the contentions raised in that case was that if the executive is held to have power to make appointments and lay down conditions of service without making rules in that behalf under proviso to Article 309, Articles 15 and 16 of the Constitution would be breached because the appointments in that case would be arbitrary and dependent on the mere whim of the executive. Rejecting this contention, the Supreme Court observed as follows:-

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"If the Government advertises the appointments and the conditions of service of the appointments and makes a selection after advertisement there would be no breach of Art.15 or Art.16 of the Constitution because everybody who is eligible in view of the conditions of service, would be entitled to be considered by the State."

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21. In Sant Ram Sharma Vs. State of Rajasthan, AIR 1967 SC 1910 at 1914, the Supreme Court has observed that till statutory rules are framed by the Government, it can issue administrative instructions regarding the principle to be followed in the matter of promotion. The Court relied upon its earlier decision in Nagarajan's case.

22. In Ramesh Prasad Singh Vs. State of Bihar, 1978 SCC (L&S)23, the Supreme Court observed as follows:-

"As is well known, the process of rule-making is a protracted and complicated one involving consultation with various authorities and compliance with manifold formalities. It cannot also be disputed that exigencies of administration at times require immediate creation of service or posts and any procrastination in that behalf cannot but prove detrimental to the proper and efficient functioning of public departments. In such like situations, the authorities concerned would have the power to appoint or terminate administrative personnel under the general power of administration vested in them as observed by this Court in B.N. Nagarajan v. State of Mysore and T. Cajee v. U. Jormanik Siem. It follows, therefore, that in the absence of rules, qualifications for a post can validly be laid down in the self-same executive order creating the service or post and filling it up according to those qualifications."


22. In the present case, the respondents should have, consistent with the principles of natural justice and fairplay, informed the applicant before offering him appointment as Inspecting Officer that the appointment is purely on ad hoc basis till regular appointments are made under recruitment rules then under consideration, if that were their intention. If he had been put on notice and after due consideration, he had accepted the appointment, there would be no justification for him to feel aggrieved. In the instant case, this was not done by the respondents. The applicant had also left his previous service to join

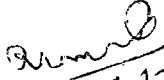
the new service. The Jodhpur Bench of this Tribunal considered this aspect while quashing the impugned order dated 6.3.1981. The effect of the quashing of the said order is that the earlier order dated 13.6.1980 will remain in force and effective. The respondents have not contended that the termination of the services of the applicant was due to his unsatisfactory performance or due to any other reasons. The implication of the impugned order dated 30.10.1982 is that the applicant will be out of employment though he has served for about 11 years in the Ministry of Defence and about 7 years in the Ministry of Commerce. To our mind, as the vacancy in the post of Inspecting Officer had occurred before the promulgation of the recruitment rules and the petitioner having been duly appointed to that post, it will not be just and proper to terminate his services by invoking the powers under Rule 5(1) of the C.C.S. (Temporary Services) Rules, 1965.

23. In Satish Kumar Vs. Cane Commissioner, U.P., Lucknow & Others, J.T. 1988(1) S.C. 63, the Supreme Court has in a similar case ordered reinstatement of the applicant. In that case, the applicant was appointed in 1976 and had been in service for more than five years. The Supreme Court deemed it just and proper to set aside the order of termination made on 28th December, 1981 and directed that the respondents should reinstate the appellant and regularise his services.

24. In the facts and circumstances of the present case, we quash the impugned orders dated 30.10.1982 and 2.4.1987 and direct that the applicant should be reinstated in

service as Inspecting Officer within a period of three months from the date of communication of this order. In the facts and circumstances of the case, we do not make any order regarding back wages. The parties shall bear their own costs.


14/7/88
(S.P. Mukerji)
Administrative Member


14/7/88
(P.K. Kartha)
Vice-Chairman(Judl.)