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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 773
T.A. No.

1987.

DATE OF DECISION 11.7.88

Shri Kodai Ram, Petitioner

~~In person.~~ ^{By} Shri P.P. Oberoi ^{By} Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent


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

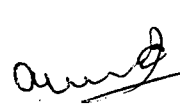
CORAM :

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. Mukerji)
Administrative Member


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

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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-773/87

Date: 11.7.1988

Shri Kodai Ram

.... Applicant

Versus

Union of India & Ors.

.... Respondents

For the Applicant

.... *Shri R.R. Oberoi*
~~In person~~

For the Respondents

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

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri S.P. Mukerji, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who had worked as Skilled Worker Grade II in the Small Industries Services Institute, Meerut, under the then Ministry of Industry and Civil Supplies, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order dated 20.11.1984 issued by the respondents whereby his services were terminated, be quashed.

2. The facts of the case are somewhat peculiar. The applicant began his career as a Helper in the Small Industries Service Institute which has its offices at Kanpur and Meerut. According to him, he ~~has~~ worked as a Helper for about 11 years from 1969 to 1980. The respondents, while admitting in their counter-affidavit that he had been engaged as a daily-wage Helper as and when the necessity arose and intermittently, have denied that he has worked continuously for 11 years. In the rejoinder, the applicant has reiterated that he worked at Kanpur from 21.10.1969 to 18.6.1972 and at Meerut from 1.7.1972 to 16.9.1980 as a

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daily-wage Helper continuously (except for leave periods) till his regular appointment as Skilled Worker Grade II.

3. The next promotion grade in the service is Skilled Worker Grade II. A Selection Committee was constituted for the purpose of selecting a suitable candidate for the said post which was lying vacant. The applicant, along with some other ^{departmental candidates} appeared for the interview. He was recommended for appointment to the post in preference to the other Helpers working in the same Institute whose candidature also had been considered by the Selection Committee.

4. The offer of appointment was sent to the applicant on 27.8.1980 wherein it was provided, inter alia, that the appointment was temporary and would not confer any title to permanent employment that the appointment will be on trial for a period of two years which is liable to be extended or curtailed at the discretion of the appointing authority and that on completion of the trial period, the appointment may be cancelled at any time on a month's notice given by either side.

5. It is relevant to mention that the offer of appointment was addressed to the applicant as Casual Worker, Extension Centre, Meerut. This would indicate that the applicant was working as a Casual Worker on 27.8.1980.

6. On 30.10.1980, the Institute issued an Office Memorandum whereby the applicant was appointed as a Skilled Worker Grade II in a temporary capacity w.e.f. 16.9.1980 until further orders as per the terms and conditions laid down in the offer of appointment dated 27.8.1980. It was also mentioned that he will be on probation for a period of two years.

7. The applicant worked in the post of Skilled Worker Grade II from 16.9.1980 to 20.11.1984 when the impugned order was passed. The impugned order reads as follows:-

"In terms of decision taken by the Development Commissioner (SSI), New Delhi in court case No.449/30 Shri Ram Das & Others Versus Union of India conveyed under their letter No.C. 18013/14/84/A(NG) dated 31.10.1984, advising us to implement the judgement of Addl. Munsif, Meerut declaring the appointment of Shri Kodai Ram with effect from 27.8.1980 as illegal, the services of Shri Kodai Ram, Skilled Worker Grade II, Extension Centre, Meerut, are terminated, with immediate effect."

8. It is also relevant to mention that thereafter, the applicant was again appointed as a Casual Worker (Helper) at the Extension Centre, Meerut on 20.2.1985. According to the applicant, he worked in that capacity till February, 1987 when his services as a Helper were terminated without any notice or ^{written} communication giving the reasons for termination. The respondents have admitted this in their counter-affidavit but have denied that he worked continuously and without any break.

9. It will be noticed that the impugned order dated 20.11.1984 refers to the judgement of Addl. Munsif, Meerut, declaring the appointment of the applicant as illegal. The background to this is as follows. The seniority and eligibility of the applicant for appointment as Skilled Worker Grade II was challenged by some of his colleagues who were also considered but not recommended for appointment by the Selection Committee, in the Court of Munsif, Meerut, in 1981. The suit was decreed declaring the appointment of the applicant as invalid and ineffective. The Court of Munsif also directed that fresh appointment may be made on the basis of seniority and eligibility. The applicant as well as the Union of India filed appeals before the

District Judge, Meerut. These appeals were dismissed by the District Judge on 9.7.1984. Following this, the respondents issued the impugned order terminating the services of the applicant.

10. The applicant has prayed that the impugned order dated 20.11.1984 should be quashed and that he should be reinstated as Skilled Worker Grade II with full back wages. There is also an alternative prayer to the effect that the respondents should be directed to appoint him as Helper, which post he was holding at the time of his appointment as Skilled Worker Grade II. He has also claimed arrears of pay and allowances for the month of January, 1987 amounting to Rs.460/- which have not been paid to him.

11. The respondents have contended in their counter-affidavit that the termination order was issued in terms of the decree passed by the competent court of law. Since the appointment was declared illegal and ineffective by a court of law, no right accrued to the applicant by working as Skilled Worker Grade II from 27.8.1980 to 24.11.1984. Therefore, the termination of his services in compliance of the Civil Court decree, was legal and valid.

12. The learned counsel for the applicant contended that termination of the services of the applicant without following the prescribed procedure and/or giving no notice to him, was illegal, arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution. The attack was not on the implementation of the judgement of the Civil Court, but on the manner of its implementation. The post of Skilled Worker Grade II was the promotional

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post from that of Helper. The applicant worked in the promotional post for over four years after he had been selected by a duly constituted Selection Committee. In the circumstances, it was argued that the applicant had acquired the status of a temporary government servant to whom the provisions of C.C.S. (Temporary Service) Rules, 1965 (hereinafter referred to as 'the 1965 Rules') were applicable. The impugned order of termination was illegal as it was not in accordance with Rule 5(1) of the 1965 Rules. Rule 5(1) provides, inter alia, that the services of a Government servant who is not in quasi-government service, shall be liable to termination at any time by a notice in writing given by either the Government servant to the appointing authority or by the appointing authority to the Government servant. According to the proviso under sub-Rule(1), the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

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13. The terms of appointment also contained a provision that the appointment is liable to be terminated at any time by a month's notice given by either side. In the instant case, no notice was issued to the applicant as envisaged in Rule 5(1) of the 1965 Rules, or in the terms of appointment.

14. In this context, the learned counsel for the applicant referred to the decision of this Tribunal in Sanjiv Kumar Aggarwal Vs. Union of India & Others, A.T.R. 1987(2) C.A.T. 566. In that case, certain persons had obtained appointments by fraud on the basis of fake nominations by Staff Selection Commission. Their services were terminated by invoking Rule 5(1) of the 1965 Rules. This was challenged in the application before the Tribunal. Upholding the validity of the termination, the Tribunal observed as follows:-

"We are, therefore, clearly of the view that the appointments of all the applicants were temporary appointments. Their services could, therefore, be terminated by an order simpliciter both under the terms and conditions of offer of appointment as well as under CCS(TS) Rules, 1965."

15. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. There can be no doubt that the applicant's appointment as a Skilled Worker Grade II was in the nature of a promotion from the post of Helper. The Civil Court, while holding that the appointment of the applicant was illegal, has directed that fresh appointment may be made to the post of Skilled Worker Grade II on the basis of seniority and eligibility. The Civil Court did not hold that the services of the applicant should be terminated with immediate effect. When the appointment as Skilled Worker Grade II has been held to be illegal, the effect is that there was no order of appointment, that is, promotion as Skilled Worker Grade II, in the eye of law. From this, it would follow that the applicant would stand automatically reverted to the original post of Helper which he had been holding at the time of his promotion as Skilled

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Worker, Grade II on 16.9.1980. In this context, therefore, the order of termination of his service in its entirety is neither legal nor is necessary for the implementation of the judgement of the Civil Court which referred to the applicant's appointment as Skilled Worker Grade II and had nothing to do with his appointment as Helper. However, since the applicant has actually worked in the post of Skilled Worker, Grade II upto 20.11.1984, when his services were terminated by the impugned order, he cannot be denied salary as a Skilled Worker Grade II for this period. Therefore, though his reversion to the lower post of Helper would be from 16.9.1980, he has to be paid salary as Skilled Worker Grade II upto 20.11.1984. The impugned order dated 20.11.1984, in any case, is not legally sustainable.

16. In the facts and circumstances of the case, we order and direct that the impugned order dated 20.11.1984 be quashed. The applicant should be deemed to have been reverted to the post of Casual Worker (Helper) w.e.f.

16.9.1980 and that he should be deemed to be in service from that date. *of He should be allowed to join duty immediately. Dy* No recovery of salary as a Skilled Worker Grade II can, however, be made from him. He would be entitled to back wages as admissible to Casual Workers as Helper under the Rules for the period subsequent to 20.11.1984 if his juniors have worked. The respondents should pay the arrears of pay and allowances to the applicant within a period of three months from the date of communication of this order. There will be no order as to costs.

S.P. 11.7.88
(S. P. Mukerji)
Administrative Member

P.K. Kartha
11/7/88
(P. K. Kartha)
Vice-Chairman (Judl.)