

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

1.OA 2303/90 with CCP No.14/91

2. O.A. No.2302/90 with CCP No.13/91

T.A. No.

DATE OF DECISION 31.5.1991

1.Lekh Raj Sharma

2. Madan Singh

~~Petitioner~~ Applicants

Shri P.Chakravorty,

Advocate for the ~~Petitioner(s)~~ Applicants

Versus

Lt.Governor, Delhi & ~~ors.~~

Respondents

Mrs.Avnish Ahlawat,

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K.CHAKRAVORTY, 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? */m*
4. Whether it needs to be circulated to other Benches of the Tribunal? */m*

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. P.K.KARTHA, VICE CHAIRMAN)

Applicant No.1 has worked on ad hoc basis as

~~Accountant~~ and Applicant No.2 as ~~Cashier~~ in

the Departmental Canteen, M.A.M College and Associated J.P and G.B.Pant Hospital and their grievance relates to their reversion to the substantive posts of Counter Clerk by the impugned orders dated 28.8.90. As common questions of law arise for consideration, it is proposed to deal with the same in a common judgement.

2. The facts of the cases relevant to the issue are the following. Applicant No.1 was appointed as Counter clerk on 26.9.84 in the pay scale of Rs.825-1200 on temporary basis. He has given the following particulars in his application regarding his ad hoc

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promotions from time to time till he was reverted on
28.8.90:-

<u>Date</u>	<u>Particulars</u>
1.6.85	Ad hoc promotion as Accountant.
1.8.85	Ad hoc promotion as Store-keeper.
1.12.85	Reverted to counter-clerk.
4.1.86	Ad hoc promotion as Accountant vide order dated 15.1.86.
10.6.86	Reverted to Counter clerk.
5.12.89	Ad hoc promotion as Accountant vide order dated 11.12.89.
28.2.90	Reverted back to counter clerk.
3.3.90	Ad hoc promotion as Accountant.
1.6.90	Reverted back to counter clerk.
3.6.90	Ad hoc promotion as Accountant.
28.8.90	Reverted back to counter clerk."

3. Similarly, applicant No.2 has given in his application, the following particulars regarding his ad hoc promotion from time to time till he was reverted on 28.8.90:-

<u>Date</u>	<u>Particulars</u>
11.6.87	Ad hoc promotion as cashier.
5.12.89	Reverted in paper from the post of ad hoc cashier to counter clerk.
1.3.90	Reverted in paper from the post of ad hoc cashier to counter clerk.
3.3.90	ad hoc promotion as cashier
1.6.90	Reverted in paper from the post of ad hoc cashier to counter clerk.
3.6.90	ad hoc promotion as cashier.
28.8.90	reverted in paper from the post of adhoc cashier."

4. Applicant No.1 has sought for the following reliefs:-

(a) a declaration to the effect that the order dated August, 1990 passed by the respondent

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is arbitrary, illegal and violative of Article 14 of the Constitution of India and violative of the principles of Natural justice;

- (b) a direction be issued to the respondent to regularise the service of the applicant as Accountant with effect from 1984;
- (c) a further direction may be issued to the respondent directing to pay to the applicant with effect from 1984 the pay and allowances admissible to the Accountant and treat his seniority in the cadre of Accountant with effect from 1984; and
- (d) a further direction may be issued to the respondent restraining them from appointing any outsiders as Accountant without regularising the applicant during the pendency of the present application.

5. Applicant No.2 has sought for the following reliefs:-

- (a) a declaration to the effect that the order dated 28.8.90 passed by the respondents is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution of India, principle of natural justice and further amounts to exploitation of labour and unfair labour practice;
 - (b) a direction to be issued to the respondents to regularise the service of the applicant as cashier with effect from 11.6.87;
 - (c) a further direction be issued to the respondents to pay to the applicant with effect from 11.6.87 the pay and allowances admissible to the cashier and treat his seniority in the cadre of cashier with effect from 11.6.87; and
 - (d) a further direction may be issued to the respondents restraining them from appointing any outsiders as cashier without regularising the applicant during the pendency of the present application.
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6. The applicants have claimed for absorption and regularisation in their respective posts and have argued that their reversion is tainted with mala fides. This has been denied by the respondents in their counter-affidavits.

7. The applications were filed on 6.11.90. On 13.11.90, after hearing the learned counsel of the applicants, the Tribunal passed interim orders directing the respondents to maintain status quo as regards the continuance of applicant No.1 in the post of ~~Accountant~~ and of applicant No.2 in the post of ~~Cashier~~ in the Departmental Canteen of the L.M.J.P Hospital. On 27.11.90, after hearing the learned counsel for the respondents, the Tribunal modified the interim orders to the extent that the respondents shall maintain status quo in respect of the applicants and allow them to continue on the posts which they were holding as on 13.11.90. The version of the respondents is ~~that applicant No.1 had been reverted from the post of Accountant and applicant No.2 from the post of Cashier~~ with effect from 28.8.90. The version of the applicants is that they have not handed over the charge of their respective posts and that they were still working in the promotional posts on ad hoc basis.

8. We have gone through the records of the cases carefully and have considered the rival contentions. The respondents have contended by way of preliminary objection that this Tribunal has no jurisdiction in respect of the grievances of canteen employees and that the question whether such employees are Government servants or are servants of the cooperative society under the Cooperative Societies Act is still pending in the Supreme Court in W.P 6189-7044/83.

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9. The Central Government has made the Departmental Canteen Employees(Recruitment and Conditions of Service) Rules, 1980. The expression " departmental canteen" has been defined in Rule 2(3) to mean " a canteen or a tiffin room run departmentally in a Central Government office or establishment." L.N.J.P Hospital is a Central Government establishment and we are of the view that this Tribunal has jurisdiction ^{/the matter} to adjudicate/before us. We, therefore, overrule the objection raised by the respondents.

10. The rules relating to Departmental Canteen prescribe the qualifications for appointment of Clerks and Accountants. The posts are filled by direct recruitment. The minimum educational qualification for the post of Clerk(Copen, Kitchen, Office, Accounts and General Duties) is Matriculation while for the post of Accountant, it is pass in B.Com. examination. The respondents have stated that the applicants do not fulfil the minimum educational qualifications, Applicant No. 1 being only Middle Pass and Applicant No. 2 being only Matriculate. This has not been controverted by the applicants in their counter-affidavits. Their contention, however, is that having worked in their respective posts for several years, though on ad hoc basis and with casual breaks, they are entitled to absorption and regularization in accordance with the judicial pronouncements of the Supreme Court.

11. The applicants have relied upon the decision of the Supreme Court in the case of Daily rated casual labourers of P&T Department Vs. Union of India, AIR 1987 SC 2342, U.P. Income Tax Department contingent paid

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Staff Welfare Association Vs. Union of India,
AIR 1988 SC 517, D.R. Mim Vs. Union of India & others,
AIR 1967 SC 1301 and Bhagwati Parshad Vs. Delhi Minerals
Development Corporation, AIR 1990 SC 371. They
have also referred to Rule 30 according to which
" where the Central Government is of the opinion
that it is necessary or expedient so to do, it may,
by order, for reasons to be recorded in writing, relax
any of the provisions of the rules with respect to any
class or category of persons."

12. In Bhagwati Parshad's case, the Supreme
Court observed that " once the appointments were
made as daily rated workers and they were allowed to
work for a considerable length of time, it would be
hard and harsh to deny them confirmation in the respective
posts on the ground that they lack the prescribed
educational qualifications."

13. In the instant case, the applicants were
~~appointed on ad-hoc basis as Accountant/Cashier.~~ As
they do not fulfil the educational qualifications
prescribed under the rules, they cannot be absorbed
and regularised unless the Central Government decides
to relax the rules. In our opinion, whether or not the
rules should be relaxed in the case of the applicants
is a matter for the Central Government to decide and
it would not be appropriate to issue any directions to
them in this regard.

14. As regards the reversion of the applicants
from their promotional posts, they have relied upon
numerous rulings* and we have duly considered them.

Authorities relied upon by the applicants:
State of U.P. Vs. Sughar Singh, 1974(1) SLR 435;
1974(1) SLR 195; 1982(3) SLR 12;

The Supreme Court has observed in Union of India Vs. B.S.Bhatt, 1981 SCC (L&S) 460 at 464 that "even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the authority to terminate the service of the employee on probation, such termination cannot be termed as penalty or punishment (see also ONGC V. Dr. Md. S.Sikander Ali, 1980 SCC (L&S) 446).

15. In the instant case, the respondents have stated that applicant No.2 failed to carry out day to day duty of Clerk and applicant No.1 failed to carry out day to day duty of Accountant despite three chances given to them, that within a short period, they started misappropriation of Government funds due to which the institution has incurred losses of Rs.one lakh approximately, that their work and conduct have not been found satisfactory due to which relaxation could not be granted to them, that both of them are facing disciplinary action and are not efficient in their work and that it is not in the interest of service to regularise them. They have also contended that due to the ban orders issued by the Government of India, vacancies do not exist for continuing the applicants in their promotional posts.

16. The applicants have denied the above allegations in their rejoinder-affidavits.

17. In our opinion, though misconduct may have been the motive for the reversion of the applicants from their promotional posts, the impugned orders cannot be termed as penalty or punishment. In view of this, we hold that the applicants are not entitled to the

reliefs sought in these applications. Accordingly, DA 2303 of 1990 and DA 2302 of 1990 are dismissed. The interim order passed on 13.11.90 and modified on 27.11.90 is hereby vacated. There will be no order as to costs.

CCP Nos. 13 and 14 of 1991

18. In these petitions, the petitioners have alleged that the respondents have wilfully disobeyed the interim orders passed by the Tribunal on 13.11.90 and 27.11.90. The respondents have stated in their reply that the applicants stood relieved on 28.8.90 though they have not handed over charge. According to the respondents, they have not committed any contempt of the orders passed by the Tribunal.

19. We have carefully gone through the records of the cases and have heard the learned counsel of both parties at length. The Tribunal cannot go into disputed questions of fact while adjudicating upon a contempt petition. In our view, the facts mentioned by the applicants do not establish that the respondents have wilfully disobeyed the interim orders passed by the Tribunal. We, however, refrain from expressing any opinion about the correctness or validity of the actions taken by the respondents subsequent to the filing of DA 2303 of 1990 and DA 2302 of 1990. Accordingly, CCP 13 of 1991 and CCP 14 of 1991 are dismissed and the notices of contempt are discharged.

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20. Let a copy of this order be placed
in both the case files.

(D.K.CHAKRAVORTY)
MEMBER(A)

(P.K.KARTHA)
VICE CHAIRMAN(J)