CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(5)

O.A.No.2509/92. AND

O.A.No.2619/91

New Delhi, this the 24th day of December, 1993.

Hon'ble Mr Justice S.K.Dhaon, Vice Chairman.
Hon'ble Mr B.N.Dhoundiyal, Member(A).

Km.Aruna Pandey
Daughter of Shri B.C.Pandey
Ex. Casual Labour, R/O 2890,
Sant Gali No.4, Multani Dhanda,
Paharganj, New Delhi-110 055. -- -- -- Applicant.
(in O.A.No.2509/92)

Smt.Manjulika,
Ex.Civilian Switch Board Operator(Casual)
R/O No.184 Vikaspuri,
New Delhi. -- ---- Applicant.
(in O.A.No.2619/91).

(through Mr G.D.Bhandari, Advocate).

vs.

1. The Union of India through
the Secretary,
Ministry of Defence

2. G.O.C.-in-Chief(Central)
Army Headquarters
South Block
New Delhi.

3. Commanding Officer
U.P.Area Sig.Regd.
Bareilly, U.P.

4. Officer Commanding
Meerut Sub-Area Sign.Company,
Meerut, U.P. ---- -- Respondents.
(in both the O.As.)

(through Mr M.L.Verma, Advocate).

ORDER

B.N.Dhoundiyal, Member(A)

The issues raised in both these O.As are similar. Both the applicants were working as Civilian Switch Board Operators in the

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Army Exchange, Meerut on casual basis and both are aggrieved by termination of their services after having worked for more than 240 days. Both these O.As are being disposed of by a common judgment.

2. Smt.Manjulika, applicant in O.A.No.2619/91 was sponsored by the Employment Exchange, Meerut and selected by a selection board to work as Civilian Switch Board Operator on 24.12.1986. She worked upto 21.2.1987 but has not been paid wages for this period and again an appointment letter was issued on 27.7.1987 for her engagement as Switch Board Operator on casual basis for a period of 60 days in the grade of Rs.260-400. Though she kept on working continuously, the respondents on expiry of each spell of 60 days issued a fresh appointment letter for a term of 60 days only by giving her short technical breaks. Such spells lasted on 18.4.1988. She was again appointed on 13.2.1989 when another selection board selected her and continued to work till 15.11.1989 when her services were terminated with effect from 16.12.1989 by the impugned order. Thus, she had worked continuously from 1986 to 1989 with purely technical breaks. She is aggrieved that even though her services have been terminated, as many as 10 freshers have been appointed thereafter.

3. Similarly, Kumari Aruna Pandey, applicant in OA No.2509/92 claims to have worked for 290 days in two spells during 1989, as under:

a) 13.7.1989 to 13.4.1989 -59 days
b) 27.4.1989 to 25.6.1989 -59 days
c) 18.10.89 to 16.12.1989 -59 days

Total -177 days

d) 26.6.1989 to 17.10.1989 -113 days

G.Total -290 days

Her services were terminated on 17.12.1989 by a verbal order.

4. In the counter filed by the respondents in both the O.As., the above facts have been admitted but they have stated that Casual Switch Board Operators were employed for a specific period of 60 days only at a time with the sanction of GOC-in-C, Central Command. The applicants never applied for regular appointment made at Bareilly and their names were never forwarded by the Employment Exchange or Zila Sainik Board. They were told about the terms and conditions of employment to which they agreed. They were given one month's termination notice, as required under the rules. They never completed more than 240 days.

5. We have heard the learned counsel for the parties and gone through the records. The learned counsel for the applicants has relied on the judgments of this Tribunal in OA No.707/89(Sh.Satya Pal Singh vs. G.D.Bhandari), O.A.2103/92(Miss Kiran Devi vs. Union of India and others), O.A.No.201/90 (Parmanand Prasad vs. Union of India and others), O.A.No.452/92(Rishi Pal Singh vs. Union of India and others) and O.A.No.2103/92(Kiran Devi vs. Union of India and others). In Satya Pal's case (supra) it was held:

> "in our opinion, the termination of the services of the applicant while providing for engagement of outsiders as Switch Board Operators is not legally sustainable and is violative of the provisions of Articles 14 & 16 of the Constitution."

The respondents have cited another judgment of this Tribunal consisting of Hon'ble Mr J.P. Sharma Member(J) and Hon'ble Mr B.K.Singh, Member(A) decided on 5.11.1993 in O.A.No.1441/88(Anoop Sharma and others vs.Union of India and others), in which it was held that where there was no stigma attached to the petitioners in the letters of termination of their services under Section 5(1) of the CCS(Temporary Service)Rules, 1965 or in termination of contract and where the termination takes place under the terms and conditions of appointment or under a contract, there is no scope of interference by the Courts. Once the petitioners opted for such terms and conditions of employment or contract, they are bound by the rules, terms and conditions for which they opted. However, in this case, the applicants were working as Production Assistants in Doordarshan and having applied in response to an open advertisement, given appointments on probation after their selection. Their contracts were initially to be for a period of two years and thereafter for a period of three years were to be renewed by mutual agreement for further periods. However, due to allegations of favourtism and nepotism, these selections were cancelled and the authorities decided to have fresh selections. The applicants in that case came to the Tribunal challenging their termination orders as well as the fresh selections. In the facts of that particular case, the Tribunal rightly re-iterated that the a termination simplicitor was sustainable even though while parting they observed that the respondents should give a chance to the applicants

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by providing relaxation of age whenever they go for a fresh selection. It was usual practice in Doordarshan to appoint casual artists on limited contract basis for ten days in a month. Howeover, the cases of Switch Board Operators are somewhat different. They have been appointed for a short period of 60 days and continued for long periods with artificial breaks. The Supreme Court has held in G.M.Govt.Branch Press and another vs. D.B.Belliappa 1979-SCC(L.S.)-39 that services of Senior employees cannot be terminated to accommodate juniors and this Tribunal has held in case of Dr.Mrs Sangeeta Narang & others vs.Delhi Administration and others AIR 1988(1) CAT-556 that the practice of showing technical breaks to escape the legal responsibility is violative of Articles 14 and 16 of the Constitution. It is clear that each case has to be examined on merits. In this case, we hold that the applicants are entitled to succeed and the application is disposed of with the following directions:

a) The impugned termination orders dated 16.12.1989 and 17.12.1989 are hereby set aside and quashed.

b) the respondents are directed to re-engage the applicants in service as Switch Board Operators within a period of three months from the date of communication of this order by either of the petitioners.

5. There shall be no order as to costs.

(B.N.Dhoundiyal)
Member(A).

(S.K.Dhaon)
Vice Chairman.

December , 1993.
/sds/

Original orders in OA 2509/92
Attested true copy
Anil Kumar Jain
Co. CAT
24-12-93