

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.2110/2004

Thursday, this the 3rd day of February 2005

Hon'ble Shri D.R. Tiwari, Member (A)

Shri Vijay Kumar Yadav
R/o RZ-302/345, Siwpuri, Gali No.5
Sagarpur, New Delhi

..Applicant

(By Advocate: Shri S.C.Luthra)

Versus

1. Union of India through
the Secretary
Ministry of Personnel, Public Grievances &
Pensions, (Dept. Of Personnel & Training)
N. Block, New Delhi-1
2. Chairman
Staff Selection Commissioner
Block No.12, CGO Complex, Lodhi Road
New Delhi-3

...Respondents

(By Advocate: Smt. Promila Safaya)

O R D E R (ORAL)

By this OA filed under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- "(8.1) To hold & declare that the applicant is also entitled for the same treatment as given to Sh. Kanahiya Manjhi & direct the respondents to take back the applicant on duty forthwith.
- (8.2) To further direct the respondents to treat the applicant as if he was never terminated & pay him backwages etc as have been paid to Sh. Kanahiya Manjhi.
- (8.3) Any other relief or reliefs which this Hon'ble Tribunal may deem fit keeping in view of the facts & circumstances of the case."

2. Sworn of superfluities, the relevant factual matrix to decide the controversy is that the applicant was initially employed as a casual worker in the Staff Selection Commission (for short SSC) and by an

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order dated 24.11.1993 (Annexure A-1), he was granted temporary status in terms of the Scheme dated 10.9.1993. He was granted the scale of Rs.750-940/- . It has been submitted that on 23.11.1998, Under Secretary of the Commission lodged a complaint with SHO Lodhi Road Police Station to the effect that the strong room on the 7th floor was opened on that day and it was found that some of the answer sheets were found missing while some were tempered. A case under Section 380 IPC was registered against unknown persons. Later on the said case was transferred to CBI. The CBI arrested the applicant as well as one Shri Kanahiya Manjhi, a Peon in the SSC, on mere suspicion. After the arrest of the applicant, his services were terminated on 2.2.1999 w.e.f. 14.1.1999 whereas Shri Kanahiya Manjhi was suspended. The CBI took the house search of the applicant but nothing incriminating was found or seized. It has been submitted that even after six years of registration of the case and investigation by the local police and the CBI, the prime investigating agency of the country, no involvement of either the applicant or Shri Kanahiya Manjhi was proved and even a challan had not been put up against them till date. Shri Kanahiya Manjhi was reinstated on 27.10.2003 and has joined the duty on 28.10.2003.

3. The termination order has been challenged on various grounds mentioned in para 5 of the OA. It has been submitted that the applicant has been discriminated, as in the similar set of circumstances, Shri Kanahiya Manjhi was reinstated. It has also been submitted that one Shri T. Dominic, a casual worker with temporary status, has been terminated and against him also the case was filed. He was also tried in the criminal case and finally, he was acquitted. He has also been regularized. Another ground for assailing the termination order refers to the fact that on the date of the incident, the applicant left the SSC after office hours and had no key of the strong room, which is double locked. It is also pleaded that the case of the applicant is on a better footing than that of Shri Kanahiya Manjhi and Shri T. Dominic.

4. The respondents, on the other hand, have opposed the OA and filed a detailed counter affidavit whereby the contention/claim of the

applicant has been hotly contested. They have argued that the contention of the applicant regarding not filing the charge-sheet in the police station and putting him to trial cannot be accepted as true. They have submitted that they have not received the report from the CBI. On the question of Shri Kanahiya Manjhi, it has submitted that he was a regular employee and he is governed by the Central Civil Services Rules. Consequent on the arrest, he was suspended w.e.f. 14.1.1999 and after investigation, the allegations were not substantiated by the CBI and the competent authority, after reinstating him, treated the absence as unjustified and the period spent during the suspension was treated as period spent on duty. It has been argued that the applicant was a daily rated casual worker, who did not hold any civil post and the grant of temporary status to the applicant was as per provisions contained in the Department of Personnel OM dated 10.9.1993, which do not entitle him the service conditions as applicable to a temporary Government servant, who holds a civil post. As such, it has been submitted by the respondents that the OA is devoid of merit and is liable to be dismissed.

5. During the course of the arguments, counsel for the applicant almost reiterated the facts and legal pleas of the applicant. He also relied on the decision of this Tribunal in the case of *T. Dominic v. Union of India & others* (OA-439/1997) decided on 17.2.1998 to contend that in that case also, the applicant was a daily rated casual worker in the Staff Selection Commission. After the investigation, the case was tried by the criminal court and to contend that he was in a better footing as in his case no charge-sheet has been filed by the Police and no trial has even commenced.

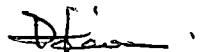
6. On the other hand, the counsel for the respondents contested the claim of the applicant and submitted that he was a daily rated worker and had a temporary status. It has also been submitted that the applicant has not given any ground to challenge the impugned order. His entire emphasis is on claiming the parity with Shri Kanahiya Manjhi and T. Dominic.



7. I have heard the rival submissions of the counsel from either side and have given very anxious considerations. I have also perused the pleadings on record.

8. The only question, which falls for consideration, is the validity of the termination order and claim of parity in respect of action taken by the respondents against Shri Kanahiya Manjhi and T. Dominic. It may be stated that there is no dispute about the status of the applicant that he has acquired only temporary status and was not holding a civil post. I think the action taken against Shri Kanahiya Manjhi and T. Dominic was in accordance with the relevant rules as those actions were permissible under the rules. In case of the applicant, since he was not holding any civil post, he was not entitled to the same treatment. In view of this, the OA is devoid of any merit and is liable to be dismissed.

9. In the result, I do not see any justification to interfere with the action taken by the respondents, which has been taken in accordance with the rules and provisions of law. Accordingly, the OA is dismissed. Costs easy.


(D.R. Tiwari)
Member (A)

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