

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.Nos. 3072/92, 110/93 & 34/93

the 17th day of January, 1994

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Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman (J)

Hon'ble Mr. B.K. Singh, Member (A)

In OA No. 3072/92

1. Shri S.P. Verma,
E-7, Krishna Nagar,
Delhi - 110051.
2. Shri P.K. Sarkar,
Parimal Karmakar Konnagar,
Hooghly (W.B.)
3. Dr. Ajay Mishra,
C-35, CSIR Scientists Apartments,
Maharani Bagh,
New Delhi.
4. Shri R.S. Verma,
DGTD Regional Office
3rd Floor, "B" Wing,
New Administrative Building
Madam Cama Road,
Bombay.
5. Shri T. Murthy,
DGTD Regional Office,
3rd Floor, "B" Wing,
New Administrative Building,
Madam Cama Road,
Bombay.
6. Shri Harpal Singh,
DGTD Regional Office
3rd Floor, "B" Wing,
New Administrative Building,
Madam Cama Road,
Bombay.
7. Shri Uma Shankar Mishra,
DGTD Regional Office,
3rd Floor, "B" Wing,
New Administrative Building,
Madam Cama Road,
Bombay.

Applicants.

In O.A. No. 110/93

Shri P. Venkatchalam,
19/204, Tulsi Dham, Complex,
Kapurwadi, Thane West,
Maharashtra

Applicant

In O.A. No. 34/93

Shri P.S. Gautam,
Technical Field Officer,
DGTD, Udyog Bhavan,
New Delhi.

Applicant

By Advocate: Shri G. D. Gupta.

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VERSUS

1. Union of India, through
The Secretary,
Directorate General of Technical Development,
Ministry of Industry,
New Delhi.
2. The Director General of Technical Development,
Government of India,
Ministry of Industry,
New Delhi.
3. The Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Government of India,
New Delhi. Respondents

By Advocate: Shri P.P. Khurana (For Resp. No.3)

O R D E R (Oral)

(Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman)

The controversy raised in the O.A. Nos.3072/92, 110/93 and 34/93 is similar. They have been heard together. Therefore they are being disposed of by a common judgment.

2. The petitioners were employed as Technical Field Officers in the Directorate General of Technical Development which is under the Ministry of Industry, Government of India.

3. By separate but similar orders, the Deputy Director terminated the services of the petitioners in the purported exercise of powers under sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 (hereinafter called as the rules). They were sent to the Surplus Cell under the Redeployment Scheme. The Ministry of Personnel, Public Grievance & Pensions took the stand that the petitioners were not eligible for re-deployment under the said scheme as, "...they have only been working on ad hoc basis for the last five years." The officer concerned in the Ministry of Personnel, Public Grievance & Pensions also felt that from the papers before him it was clear that

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the petitioners had been working only against ad hoc vacancies. At that stage, the petitioners came to this Tribunal. This Tribunal, by way of interim orders, directed the respondents not to terminate the services of the petitioners pursuant to the aforesaid orders. The interim orders continue to operate even today.

4. Initially two respondents were cited in these OAs. First was the Union of India, through the Secretary to Govt. of India, Ministry of Industry, and the second was the Director General of Technical Development, Ministry of Industry. The petitioners were permitted to amend the OAs with the result that the Union of India, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training was impleaded as the respondent No.3.

5. Counter affidavits from respondents 1 and 2 have been received. Shri P.P. Khurana appears for respondents No.3 in all these three applications.

6. The respondents No.1 and 2 have taken ^{the} stand that the respondents No.3 is not justified in refusing the benefit of redeployment to the petitioners. However, the respondents No.1 and 2 have taken a specific stand that the appointment of petitioners was ad hoc.

7. We are really concerned in these petitions with the stand taken by the Deptt. of Personnel & Training. We find that sometime in January 1992 Shri U.S. Pant, Deputy Secretary (SR) sent a communication to Shri Madan Mohan, Director (Admn.), Directorate General of Technical Development. We have already quoted the

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relevant portion of the contents of the communication of Shri Pant, as material. We have, therefore, to examine the primary questions as to what was the nature of the appointments of the petitioners.

8. On March 29, 1984, an order was issued by the Under Secretary to the Govt. of India stating therein that, "sanction of the President of India is hereby accorded for the creation of 16 temporary posts of Technical Field Officers in the Directorate General of Technical Development w.e.f. 1.4.84 and upto 28.2.85 for the purpose of setting up of infrastructure facilities to supervise and monitor the processing of imported Palm Stearline." A requisition was sent to the Employment Exchange by the Department concerned on 6th April 1984. In this requisition the nature of the posts was described as 'temporary'.

9. Separate but similar appointment letters were issued to the petitioners, S/Shri S.P. Verma being one of them. We are referring to the letter sent to Shri Verma. It is dated 27.6.84 and is described as 'Memorandum'. The subject of this memo is "Appointment as Technical Field Officer in DGTD on purely temporary and ad hoc basis".

10. The recital in the memorandum, as material, is:

'Shri S.P. Verma is hereby offered an appointment as Technical Field Officer in this Directorate of Technical Development. the appointment is purely temporary and on ad hoc basis upto 28.2.85. The appointment is liable to be terminated on one month's notice without assigning any reasons therefor'.

Before making any comment, we may now read the orders by which the services of the petitioners have been terminated:-

"In pursuance of sub-rule (1) of Rule 5 of the CCS (Temporary Service) Rules 1965, I, the undersigned is directed by the appointing authority to give notice to Shri S.P. Verma, TFO, that his services shall stand terminated with effect from 30.11.92 (AN)".

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As indicated, the power of termination of services have been clearly exercised under sub-rule (1) of Rule 5 of the Rules. We have already indicated that the letters of appointment used the expression, 'temporary and ad hoc'. While discerning the nature of appointment, we have to see the surrounding circumstances, the nature of the post on which appointments were made and the reason why the appointments were made. The President of India had accorded sanction for creation of 16 temporary posts. While doing so, he did not say that the posts were ad hoc. The purpose of appointment is also indicated in the President's sanction, namely, for setting up of infrastructure facilities to supervise and monitor the processing of imported Palm Stearline. The purpose could not be an experimental one. It appears to be, more or less, of a permanent feature. The appointments were not made for filling a vacuum. The arrangement was not a stop-gap one. It is not the case of the respondents that the appointments of the petitioners were made de-hors the rules. It is also not the case of the respondents that the appointments were made in anticipation of the enforcement of rules. In fact, at the relevant time no statutory rules were in existence. The appointments were made after due notification to the Employment Exchange concerned. We presume that applications were received through the Employment Exchange. All the candidates were interviewed and, thereafter, the best were selected. Taking the totality of the facts and circumstances, we come to the conclusion that it is a misnomer to term the appointments as ad-hoc. The appointments were, therefore, temporary and not ad-hoc.

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11. We referred to the aforesaid communication from Shri U.S. pant to Shri Madan Mohan. The basis of this communication, as already indicated, is that the petitioners have been working on ad-hoc basis against ad-hoc vacancies. Both these assumptions have been found incorrect by us. The result is that it has to be held that the view taken by Shri U.S. Pant in his communication to Shri Madan Mohan was based on non-existent facts. His communication is therefore not sustainable.

12. Amongst the petitioners all others except, S/Shri Harpal Singh, U.S. Mishra and P. Venkatachalam, had completed 5 years of service before the termination of their services. Shri Harpal Singh will complete 5 years service on 12.10.94.

13. Shri P.P. Khurana, learned counsel for Respondent No.3 has urged that the redeployment of the petitioners is governed by the rules framed under the proviso to Art.309 of the Constitution. These rules are called as CCS (Redeployment of Surplus Employees) Rules 1990. He relies upon the definition of "Surplus Staff or Surplus Employee or Employees" which means Central Civil Servants other than those employed on ad-hoc, casual, work-charged or contract basis), who are permanent, or, if temporary, have rendered not less than 5 years regular continuous service. In the first place, he has contended that the petitioners having been appointed on adhoc basis do not fall at all under the aforesaid definition. He contends that if the petitioners are to be treated temporary, at least three of them, namely, Shri Harpal Singh, U.S. Mishra and P. Venkatachalam,

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should not be given the benefit of the Scheme as the relevant statutory rules do not permit it. To meet this, Shri G.D. Gupta has contended that the requirement in the definition clause, that the permanent or temporary hands should have ~~been~~ rendered not less than 5 years continuous service, is hit by Art. ¹⁴ of the Constitution. His contention is that the classification is arbitrary.

14. We have already indicated the reasons given by the Ministry of Personnel for not giving the benefit of the scheme to the petitioners. They have not taken the stand that the petitioners or some of them do not fulfil the requirement of the rules. the controversy regarding the vires of the definition clause need not be gone into at this stage in view of the various decisions of the Supreme Court that such a question should be ^{decided} ~~discussed~~, if it is absolutely necessary.

15. Before parting with this case, we must indicate our view about S/Shri Harpal Singh, U.S. Mishra and P. Venkatachalam. They have been in employment for a considerable length of time and probably have become overage for government service. The purpose of redeployment, as indicated in the preamble to the Rules, is to regulate the redeployment against vacancies of civil service posts. We have no doubt that, keeping the purpose and the Directive Principles of State Policy, in view, the respondents will consider the cases of the said three persons sympathetically and give them the benefit of the scheme.

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16. In view of the foregoing discussion, S/Shri S.P. Verma, P.S. Gautam, P. Sarkar, R.S. Verma, Ajai Misra, N. Chandrasekhar, and T. Murthy, shall stand redeployed under the Ministry of Personnel, Public Grievance and Pensions. With respect to the remaining, we direct that the respondents No.1 and 2 shall not terminate their services so long a decision regarding their redeployment is not taken by the respondent NO.3.

17. The three applications are accordingly disposed of finally.

No costs.

(B.K. Singh)
Member (A)

(S.K. Dhaon)
Vice Chairman (J)

vpc

Original judgment is in
the Case File OA 3072/92

Attached two copy
Anil Kumar
Court Officer 17.1.94
Court No: 17
CAT. N.D.