CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/00599/2019 & MA 268 of 2021

Date of CAV: 19.03.2021

Date of Pronouncement: 29.03.2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

P. Shekar, S/o. late P. Venkaiah,
Aged 51 years, Occ: Group C, Beldar Working in
O/o. EE, HCD III, CPWD,
Nirman Bhavan, Sultan Bazar,
Koti, Hyderabad.

...Applicant

(By Advocate: Mr. G. Pavana Murthy)

Vs.

1. UOI, Rep. by its
The Director General,
CPWD, Nirman Bhavan, New Delhi – 110011.

2. Special Director General,
Southern Region, CPWD,
Rajaji Bhavan, Basant Nagar, Chennai.

3. Additional Director General (HQ),
Southern Region-I, CPWD,
Rajaji Bhavan, Basant Nagar, Chennai.

4. Chief Engineer, Southern Zone-2,
CPWD, Sultan Bazar, Hyderabad.

5. Superintendent Engineer,
Hyd Central Circle-1, CPWD, Hyderabad-95.

....Respondents

(By Advocate : Mr. B. Siva Sankar, Addl. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA is filed challenging the termination from service/ reversion as casual labour vide order dt.05.07.2019, passed by the 5th respondent.

3. Brief facts of the case are that the applicant was engaged as casual labour in 1986 as Beldar on the basis of hand receipt/ work order/ contract basis. 10 regular posts were permitted to be filled up by charged employees by the 1st respondent for the years 2003-04 & 2004-05. Accordingly a seniority list dated 30.11.2007 was issued, wherein the applicant figured at Sl. No.1. The applicant was regularly appointed on 4.12.2007 and his services were confirmed w.e.f. 5.12.2009 (Annexure A-5). Applicant was granted 1st MACP in 2018. However, Sri B.Sataiah and ors filed OA 839/2007 challenging the seniority list released on 30.11.2007 and the Tribunal ordered to revise the seniority list based on Hand receipt/work order basis and when the order was not complied CP 110/2012 in OA 839/2007 was filed which was closed by observing that if juniors are working they should be reverted or adjusted against a supernumerary post. As Sri B.Sataih could not be accommodated in the 10 sanctioned posts, he filed another OA 877/2013 which allowed. Consequently applicant was issued a show cause notice on 23.04.2019 for reverting him as casual labour based on letter dated 4.4.2014 of R-1 which was not communicated to the applicant. Challenging the show cause notice applicant filed 488/2019 wherein it was directed to take into consideration the orders of the Tribunal in OA 839/2007 and the representation of the applicant before passing

orders on the show cause notice issued. Respondents reverted the applicant as casual labour on 05.7.2019. Aggrieved the OA is filed.

4. The contentions of the applicant are that since he has been confirmed in service against a sanctioned post by a competent authority, he cannot be reverted without taking disciplinary action under relevant rules and that too after a decade of regularisation of his services. Tribunal order in CP No.110 of 2012 to adjust juniors in supernumerary posts was not implemented. Principles of Natural justice were violated. Services of the applicant have been terminated by invoking Rule 11 of CCS (CCA) Rules 1965, which is incorrect. Article 311 (2) of the Constitution was violated. As per Hon'ble Supreme Court in ***2000 SCC (L&S) 613*** even a temporary employee is entitled for protection under Article 311 (2) of the Constitution. The decision of reversion is violative of the Uma Devi judgment. The removal of the applicant based on a mere notice is illegal and arbitrary.

5. Respondents in their reply statement state that the seniority list of casual labour was issued on 30.11.2007 by considering casual labour engaged by any mode i.e. hand receipt/ work order/contract basis. However, based on Tribunal order in OA 839/2007 and CP 110/2012 thereof, the seniority list was revised by considering the number of days the casual labour worked on hand receipt/ work order basis and 18 casual labour were regularised against 10 sanctioned posts on 4.3.2013. On approaching the DG, CPWD for sanctioning the additional posts required, it was ordered to revert the juniors to the applicants who filed the OA

839/2007 and accordingly the services of the applicant were terminated after issuing show cause notice. The appointment of the applicant was erroneous since the service rendered as contract labour was considered in working out the length of the service. Creation of supernumerary post would mean providing back door entry of the applicant and thus, violative of Uma Devi judgment. The impugned order was issued in compliance with the Tribunal order dated 14.3.2013 in CP 110 of 2012 in OA 839 of 2007. No rule has been violated nor any illegality committed by the respondents in terminating the service of the applicant.

6. Heard both the counsel and perused the pleadings on record.

7. I. The issue is about the termination of the services of the applicant after being confirmed in service, by issuing a show cause notice. The facts reveal that the applicant was engaged as casual labour in 1989 and his services were confirmed in 2010 w.e.f. 05.12.2009. Thereafter, in pursuance of the orders of the Tribunal in OA 839/2007 & CP 110/2012 thereof, respondents revised the seniority of the casual labour by considering the service rendered based on hand receipt/ work order and excluding the services put up as contract labour. Thereupon, respondents regularised services of 18 casual labour on 4.3.2013 against 10 sanctioned posts, but the DG, CPWD directed to revert the juniors to the applicants in OA 839/2007 so as to restrict the regularisation to the 10 sanctioned posts. Accordingly show cause notice was issued and the applicant was reverted as casual labour.

II. The services of the applicant were confirmed in 2009 and therefore, he is a regular employee. Treating him as a regular employee respondents granted even 1st MACP in 2018. In case the respondents were to terminate the services of the applicant they ought to have taken disciplinary action against the applicant under CCS (CCA) rules 1965 which they have not initiated. Tribunal in CP 110/2012 has directed to revert the juniors or accommodate them in supernumerary posts. Instead of adjusting them in supernumerary posts the respondents terminated the services of the applicant without following due process of law. If they had to revert the applicant then it has to be as per due process of law. The protection provided under Article 311(2) of the Constitution to regular employees was not reckoned. The applicant cited the judgments of the Hon'ble Supreme Court, as at para 4 above, where in it was laid down that even a temporary employee is protected under Article 311 (2) of the Constitution. The above contentions raised by the applicant were not answered in the reply statement, except to state that the order of termination was in accordance with the directions of the Tribunal in CP 110/2012. In implementing the order, the procedure prescribed under rules and law have to be followed. It is a very shallow argument of the respondents to state that they have acted as per the orders of the Tribunal without following the mandatory procedure prescribed under rules/law. Besides, it is incorrect to state that accommodating the applicant would tantamount to back door entry, since the applicant was confirmed against a sanctioned post by the competent authority. On the contrary, respondents have adopted the short cut method of issuing a show cause notice to do away with the services of

the applicant without following the due process of law and rules laid down while dealing with the dispensation of the services of a regular employee.

II. An identical issue fell for consideration before the Tribunal in OA 1255 of 2014 involving the same respondents, wherein it was directed as under:

> *"7 (I) It is not under dispute that the applicants were engaged as casual labours between the years 1987 to 1989. They have been granted temporary appointment on 4.12.2007 and their services were confirmed w.e.f. 05.12.2008 vide letters dt. 15.02.2010 and 11.03.2010. The respondents issued a seniority list on 30.11.2007 of all the casual labours wherein applicants names appear within serial 10. Respondents admit that they made a mistake in preparing the seniority list by considering the number of days for which the casual labours worked in the respondents organization in terms of hand receipt/ muster roll/ through contract on outsourcing basis. When Sri Shaik Ali and two others filed OA No. 839/2007, this Tribunal directed the respondents to revise the seniority list by taking into consideration only work done by engaging casual labour through hand receipt/ muster roll. The order of this Tribunal was to exclude the number of days for which the casual labour engaged on outsourcing basis. When the order of the Tribunal in OA No. 839/2007 was not implemented, CP No. 110/2012 was filed wherein this Tribunal passed an order on 14.03.2013, which reads as under:*
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> > *"Mr. G. Jaya Pakash Babu, learned Senior Standing Counsel appearing for the respondents reports that the order of the Tribunal is being implemented and the applicants care being appointed in their turn as per the revised seniority list prepared in pursuance of the direction of the Tribunal. As such, the applicants cannot complain. In case, the grievance of the applicants are unjustly ignored, overlooking the directions of the Tribunal, they can approach the Tribunal by filing a fresh OA by making out a fresh case. This order shall not preclude the respondents from appointing the applicants in pursuance of the directions of the Tribunal in their turn. In case any of the juniors to the applicants are working, immediate action shall be taken up rectify the position, either by reverting them or by creating supernumerary posts."*
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> *The order very clearly states that the juniors have to be reverted or if required, supernumerary posts to be created to rectify the position. Respondents went ahead and issued letter dt. 05.05.2014 to show cause as to why applicants' services should not be terminated as per Rule 11 of CCS (CCA) Rules, 1965. The applicants replied on 15.05.2014 claiming that they are permanent employees and if any action has to be taken against them, it shall have to be in consonance with Article 311(2) of the Constitution. The applicants filed OA 595/2014 against 05.05.2014 wherein the Tribunal directed the respondents to dispose of the representation of the applicants dt. 15.05.2014. Respondents disposed of the same by an order dt. 01.08.2014. Applicants again filed OA 920/2014*

which was disposed on 08.08.2014 directing the respondents to address the specific issues raised by the applicants in their reply dt.15.05.2014. Thereafter, respondents issued the impugned order dt.16.10.2014 terminating the services of the applicants. In this context, if we examine the order of the order of the Tribunal in CP No. 110/2012, it is clear that the applicants can be reverted, but nowhere the Tribunal directed the respondents to terminate the applicants. Besides, it is evident from the letters dt. 15.02.2020 and 11.03.2010 that the services of the applicants have been made permanent. Once applicants were made permanent government servants, then any action to be taken against the applicants has to be taken as per Article 311(2) of the Constitution by instituting a regular inquiry. The respondents without doing so, on the basis of show cause notice, issued the order of termination on 16.10.2014, which is irregular and arbitrary. The respondents claim that the number of posts sanctioned was only 10 and due to revision of seniority list, the applicants did not come within the zone of consideration and therefore there was no alternative except to terminate services of the applicant. They also stated that they did take up the matter with the Central HQs of the respondent organization to grant additional posts, but the same was turned down. This can be no reason to terminate the services of the applicant when the tribunal order was to revert or create supernumerary posts to adjust them.

II. Learned counsel for the respondents submitted that the reversion would mean removal from service. We do not agree with this submission for the simple reason that reverting the applicants in regard to their seniority, and terminating their services are totally different aspects. The action of the respondents is definitely not in consonance with the order of this Tribunal in CP No. 110/2012 cited supra. The respondents had an option of creating supernumerary posts and adjust them against the same. Without doing so, they have violated the orders of this Tribunal in CP 110/2012. An order of the court, whether good or bad, has to be implemented or at the most, the respondents could have pursued alternative remedies to get the order stayed. Respondents have not done so. Hence, the action of the respondents in terminating the services of the applicant is illegal. In addition, applicants also stated that pursuant to the order in OA 1206/2011 dt.24.04.2014, the juniors to the applicants were granted temporary status and their services were also regularized. This was not effectively countered in the reply statement. Respondents could have created supernumerary posts in the context of the applicants having been made permanent in the respondents organization vide orders referred to above till the process of creating regular posts was completed. Head quarters of the respondents organization is not above law and it has to abide by the court order lest it would mean contempt of court.

We also notice that the respondents have not come up with any adverse comments against the applicants nor did the applicants indulge in any misconduct which calls for termination of their services. It is clear that the services of the applicant have been terminated because of the wrong interpretation of the order of the Tribunal in CP 110/2012. The mistake lies with the respondents and the applicants should not suffer for the mistake of the respondents, as observed by the Hon'ble Supreme Court as under:

*The Apex Court in a case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna,** C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.*

*In yet another case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*

*It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

The applicants have cited the judgment of the Hon'ble Supreme Court in 1998 SCC (L&S) 1601 wherein it has been held that the permanent employees cannot be terminated by issuing a simple notice. Applicants also cited the judgment of the Hon'ble Supreme Court in 2000 SCC (L&S) 613 wherein it was held that even temporary servants are protected under Article 311(2) of the Constitution of India. The action of the respondents in terminating the services of the applicants thus goes against the observations of the Hon'ble Supreme court cited supra.

*III. Therefore, as can be seen from the above, respondents have violated the orders of the Tribunal and subjected the applicants to an illegal order of termination. Hence, the impugned orders dt. 23.04.2014 and 16.10.2014 are quashed and set aside. Interim order dt.30.10.2014 is made absolute. The respondents are directed to consider regularizing the services of the applicants from the date they become eligible as per relevant rules and law on the subject and grant consequential benefits thereof. Arrears of pay, if any, shall be confined to 3 years prior to the filing of the OA, as observed by the Hon'ble Supreme Court in **Union of India & Anr vs Tarsem Singh in Civil Appeal No.5151-5152 of 2008.***

With the above directions, the OA is allowed. No order as to costs."

III. The case of the applicant is fully covered by the above verdict of the Tribunal. Therefore, the impugned order dated 05.07.2019 is set aside. Hence, the respondents are directed to provide the relief sought by the applicant in a similar manner as has been directed by the Tribunal in the cited case supra, within a period of 3 months from the date of receipt of this order.

IV. With the above directions, the OA is disposed. Accordingly, MA 268 of 2021 stands disposed. There shall be no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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