

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No . 317 OF 1986.

This the day of 16th November 1994.

Sudesh Singh S/o Sri Ram Gopal
R/o & C/o Shri Rajinder Singh,
79/21, Moti Katra, Agra.

..... Applicant.

By Advocate Sri M.A. Siddiqui.

Versus

1. Union of India through Finance Secretary
(Dealing with Income Tax), Ministry of
Finance, Government of India,
Central Secretariat, NEW DELHI.
2. Income Tax Officer (H.Q.)/Admn.,
In the office of the Commissioner of Income Tax,
Agra.

..... Respondents.

By Advocate Sri Amit Sthalekar.

CORAM: Hon'ble Mr. T.L. Verma, J.M.

Hon'ble Mr. K. Muthukumar, A.M.

O R D E R

(By Hon'ble Mr. T.L. Verma, J.M.)

1. This application has been filed under section 19 of the Administrative Tribunal Act , for quashing the order dt. 25.3.1986, whereby the service of the applicant has been terminated and for issuing a direction to the respondents to treat the applicant as in service and giving the consequential benefits.
2. The applicant was appointed as Lower Division Clerk in the office of the Assistant Commissioner of Income Tax Range I, Agra on being sponsored by the Employment Exchange against the clear and substantive vacancy in the scale of pay of Rs 260-400/-

vide an order dt. 4.2.1984 (Annexure-I). The appointment was purely temporary and on ad-hoc basis for a period of three months or till the time regular appointment on the recommendation of the Staff Selection Commission liable to be terminated at any time without notice and without assigning any reason. The service of the applicant was terminated by an order dt. 25.3.86 (Annexure-II)..

3. It is stated that the applicant was appointed on the post of Lower Division Clerk by an order of the ^{Inspecting} Assistant Commissioner of Income Tax, the Income Tax Officer (HQ)/Administration who is inferior to Assistant Commissioner has no authority in law ^{to} passed the impugned order. The impugned order, therefore, it is stated, is without jurisdiction. The further case of the applicant is that he having worked more than two years continuously to the satisfaction of his superiors has acquired a right to hold the post unless otherwise he is found ^{un}fit. Termination of his service, without notice or following the procedure prescribed under the rules is arbitrary, illegal and void ab initio.

4. The respondents have contested the claim of the applicant and have stated that the appointment of the applicant was temporary and on ad-hoc basis pending appointment of ^a nominee of the Staff Selection Commission. Hence, the applicant has no cause of action for the same.

5. We have heard the learned counsel for both the parties and perused the record.

4. The appointment letter (Annexure-I) clearly states that the appointment is purely temporary and on ad-hoc basis and was not to be reckoned for seniority and promotion to the higher grade and shall last so long the post is not filled by the nominee of the Staff Selection Commission. It ^{noted that} ~~may be~~ the Government of India has taken a decision to constitute Subordinate Services Commission for the purpose of making recruitment to the non technical class III posts in the Department of India and the Subordinate Office except those posts for which recruitment is to be made by the Railway Service Commission, in the office of the Comptroller and Auditor General and Accountant General etc. The said resolution defines the function of the Subordinate Service Commission as follows:-

"Conduct examinations for recruitment to non-technical class III posts in the subordinate services in the Ministries / Departments of the Govt. of India and their attached and subordinate offices as may be specified by the Government from time to time."

5. The resolution further clarified that the term 'Subordinate Services' will include all Class III posts sanctioned in the Ministries / Departments, their attached and subordinate offices in the Govt. of India, recruitment to which is to be made through the Subordinate Services Commission, but will not include posts recruitment to which is made by the Railway Service Commissions, the C.A.G. and the offices of the Accountant General. Thereafter, the Govt. of India issued O.M. dated 4.11.1978 on the subject of recruitment to Group-C non-technical posts through the SSC which was set up with effect from 1.7.1976 by the Govt. of India in the Department of Personnel and Administrative Reforms vide their aforesaid resolution to make recruitment to Group-C non-technical

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posts. Para 5, which has some bearing on the point in issue, reads as follows;

" There are, however, certain categories of posts in various offices which are very small in number and for which varying qualifications have been prescribed considering the different nature of jobs to be performed in such offices. The Commission make recruitment interviews. It has been found by the Commission from experience that most of the offices report vacancies only after they have actually arisen and start reminding the Commission to let them know when candidates will be sponsored. It has to be appreciated that the selection process through the Commission is not as simple as recruitment through the Employment Exchange but is a complex one involving various stages, e.g. advertisement, receipt of applications from a large number of candidates, scrutiny of applications, preliminary selection of a candidate for being called for interview, issue of interview letters, constitution of Selection Boards, selection and nomination of candidates. It, therefore, follows that the Departments/offices should as far as feasible, anticipate vacancies and report them to the commission in the prescribed form well in advance so as to allow it sufficient time to advertise the posts and make selection. This is brought to the notice of all Ministries/Departments who are requested to advise their attached and subordinate office suitably in the regard."

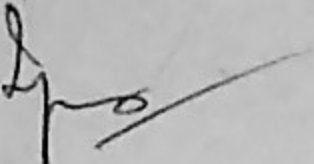
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"..... As recruitment to Group 'C' non-technical posts is to be made only through the Commission in accordance with Resolution of the Department of Personnel and Administrative Reforms, the Ministries/Departments are requested to issue suitable instructions to their attached and subordinate offices to the effect that recruitment to Group 'C' posts should not be made by any department / office without reference to the Staff Selection Commission. All vacancies should invariably be reported to the Commission. Only in those rare cases where the commission permit the Departments/ Offices to make recruitment through other channels, can recruitment be made by the Department/offices themselves."

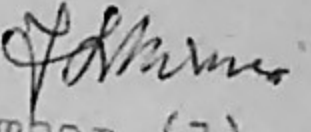
6. It is thus clear from the rule extracted above that every appointment to class III non-technical post has to be made through the Subordinate Service Commission and that the same cannot be made in any other manner .

The learned counsel for the applicant has stated that the applicant was appointed after the process selection through Employment Exchange and SSC, he has a right acquired to continue on the post of L.D.C. This argument can not be accepted. He may have appeared at the limited test for appointment, even on temporary and on ad-hoc basis, because the number of candidates recommended for appointment may have been more than the number of vacancies available. Such a test, we are of the view, can not be a substitute for the examination conducted by the SSC for recruitment to LDA grade and as such merely because he was appointed by the Selection Committee after passing the limited test does not confer any right on him to be regularised on the said post. Such a regularisation is possible on passing the examination conducted by the SSC. The respondents, it was stated, gave an opportunity to the applicant to clear the examination conducted by the SSC and as the applicant failed to qualify in the examination held by the SSC on 28th July 1985 for ad-hoc employees, his services have been terminated by Annexure-A-2.

7. It was next argued that the impugned order, which was passed by an Officer inferior to the appointing officer hence, is of no legal consequence. We find no merit in this argument also, because Asst. Commissioner of Income Tax and I.T.O. (H.Q.) exercise the same administrative power, as averred in para 13 of the C.A. This has not been effectively controverted by the applicant. Hence, we find that the I.T.O. was competent to pass the impugned order.

8. On a careful consideration of the facts and circumstances of the case discussed above, we have no hesitation in holding that the service of the applicant was purely temporary and adhoc and by way of stop-gap-arrangement. The mere fact that the ad-hoc appointment is continued for a period of over 5 years has not conferred on him the right of substantive appointment or regularisation on the said Post. That being so, we find no merit in this application and the same be ~~said~~ ^{is} is hereby dismissed. There will be no order as to costs.


Member (A)


Member (J)

Allahabad dated:
am/

16.11.94