

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Transfer Application No. 198 of 1987

A.K. Khatri & Others

..... Applicants

Versus

Union of India and Others

..... Respondents

CORAM:

Hon'ble Mr. Justice U.C. Srivastava, V.C

Hon'ble Mr. K. Obayya, Member(A)

( By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants 3 in number filed a Writ petition before the High Court which by operation of law has been transferred to this Tribunal for adjudication, praying to issue a writ of mandamus restraining the respondents from interfering <sup>with</sup> the applicants working in the Factory and directing them not to put obstructions in their working in the factory.

2. According to the applicants they have acquired a permanent status and lien and as such they cannot be restrained from working in the factory and the stoppage from working was violative of Principles of Natural Justice, of Articles 14, 16 and 311 of the Constitution of India. The applicants have ~~been~~ worked for more than 6 months, they have acquired the status of regular employees as such their services could not be terminated.

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3. The applicants were appointed as IDC by respondent no. 1 in the A.F.D Factory, Hazratpur, Agra vide appointment orders dated 23.8.79/4.5.1979 and 27.9.79 respectively. As per allegations the applicants stated that they have been working upto the year 1982 but they were not allowed to do the work without any termination order. The details of their working has been given in the Counter which indicate that there has been a break but short break. As earlier they were appointed as in the case of applicant no.1 he was appointed on 23.8.79 and his services were terminated on 19.11.1979 and again taken back on 21.11.1979 and terminated on 13.2.80 and again taken back on 16.2.80 and terminated on 6.8.80, appointed on 8.8.80, terminated on 4.2.81 and again taken back on 6.2.81 and again terminated on 3.8.81 and taken back on 5.8.81 and terminated finally on 3.2.82 and this happened in the case of other persons also. This indicates that/this with artificial breaks for 2 to 3 days they have been continued to work in service. Thus they have worked 3 years continuously and in view of their working of 6 months they attained a temporary status, consequently they could not have been thrown out from the service.

4. They have made the reference to the demand which was made by the Officer Incharge AFD Factory Hazratpur Agra. One of the demand was that " In this connection, it is stated that 3 casual IDCs were employed in this factory were recruited on casual basis against the

casual vacancies sanctioned by the Government,

Ministry of defence letter No. 16(12)/77/D(NF) dated 4.4.1978 and amended for time to time. These LDCs have been in service since last 2 or 3 years approximately and could not be absorbed in regular vacancy since these were transferred to other Ordnance Factories after the closure of the factory and posting of regular staff of this factory. This matter was referred to Ministry vide this factory letter nos AFD/337/Estt dated 23.7.81 and it is on record Ministry's reply vide letter No 2(6)/81/DNF dated 5.11.1981 is relevant.

However, if a decision is taken to absorb these employees on regular basis, Ministry will have to sanction regular posts or alternatively have to ask the Defence Establishments to absorb these employees against their own vacancies here till the factory is finally disposed of".

5. As stipulated in the appointment letter, on the expiry of 89 days, no order what so ever has been issued or served on the applicants extending their duration of appointment on the expiry of 89 days, their services have been dispensed with by the respondents. On the contrary they have been working on their posts for about 3 years continuously. There are various Government orders

issued by the Defence Ministry relating to the employees working in Defence Establishment in which it has been contemplated that if a person is allowed to work more than 6 months, as even casual employee, his services cannot be discharged and such employee should be treated as temporary and he acquire permanent and regular status from the date of his original casual appointment. Since the applicants have worked for about 3 years continuously they have acquired the permanent status and they have right to serve with the respondents and their services cannot be terminated without giving any opportunity.

6. In reply to the Counter affidavit it is stated that as per records the AFD Factory Hazratpur Agra was permanently closed down and its employees were declared surplus and were adjusted in various other Defence Establishments under surplus deficiency scheme. It is further stated that to meet certain ad hoc requirements of working the applicants were appointed on casual basis for short periods. It is pointed out that the respondents have not placed material documents in support of the averments made in the reply. It is pertinent to mention that in fact the AFD factory was never closed down and never became a non-existent thing in as much as on 23.5.83 in a letter from the Government of India addressed to the Chairman of Ordnance Factory Board, it has been clearly mentioned that the assets of the AFD Factory had taken over by the Ordnance Factory Board

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and not only this, on 28.1.84 Officer in temporary charge has clearly mentioned that the AFD Factory Hazratpur had been renamed as Ordnance Equipment Factory, Hazratpur. However, it is submitted that even after the year 1977 staff was recruited for the AFD. The staff so recruited was later on absorbed. It is admitted that some of the employees were transferred in AFD factory as regular employees during 1979 to 1982 and also promotions have taken place. All the applicants have been working since the date of the appointment in 1979 till they were prevented from working in January 1982. On account of their continuous working without break the applicants have become entitled to benefits under the various Govt. orders including the right of regularisation. No notice for terminating the services of the applicants, nor any termination order was ever served upon the applicants on the alleged termination. In these circumstances, their cases too have been considered but the cases of the applicants have not been considered and accordingly the respondents are directed to consider the cases of the applicants within 3 months for getting them alternate employment in the AFD Factory and side by side to consider their cases for absorption., if not from the back date with effect from the subsequent date, in case the similarly placed persons have already been absorbed. Incase the applicants are absorbed elsewhere under the same Ministry, they may be given continuity but not back wages. With these observations this application stands disposed of finally with no order as to the costs.

*Rishabh*  
Member

Vice Chairman

Dated: 2nd September, 1992:

(Uv.)