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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 367 of 1988

Manoj Kumar Tewari & others .... Applicants.

Versus

Union of India & others .... Respondents.

Hon'ble G.S. Sharma, J.M.  
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, by S/Sri Manoj Kumar Tewari, Virendra Kumar Srivastava and Abid Hussain Siddiqui, all employed as Lower Division Clerks (LDC) in the Ordnance Equipment Factory, Kanpur. They were originally appointed as LDCs on an ad hoc basis from time to time and were regularised in that post with effect from 18.3.1980 by an Order no. 1783, dated 18.8.1984. This order has been cancelled by another order dated 7.3.1988. The application is mainly for quashing this order of 7.3.1988. The applicants have also prayed for a direction to be issued to the respondents for non-recovery of any amount paid to the applicants on the basis of the impugned order, and certain other related reliefs.

2. The facts in this case, in brief, are that the applicants were sponsored by the Kanpur Employment Exchange for filling up posts of LDC in the respondents' factory in 1979. After passing a written test and interview, the applicants were appointed as LDCs by an order dated 27.3.1980, w.e.f. 18.3.1980 on casual basis for a period not exceeding 89 days. <sup>In</sup> <sup>the</sup> appointment order four persons have been named, the first being <sup>an</sup> <sup>one</sup> Promod Shanker Shukla, who was appointed w.e.f. 17.3.1980 and the other three being the applicants, as aforesaid. According to the applicants, they were all appointed against regular and existing permanent vacancies. It is alleged by

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the applicants that the respondents had terminated the services of the three applicants only, by an order dated 24.6.1980, w.e.f. 13.6.1980, with the ulterior motive of showing an artificial break in the service of the applicants. The applicants were, however, reappointed by the same order w.e.f. 16.6.1980 for another stretch of 89 days. This exercise of casual appointment for 89 days followed by termination orders and re-appointment orders after a day or two went on several times. However, in the case of <sup>Shri</sup> Promod Shanker Shukla, referred to above, who was recruited along with the applicants and appointed by the same order as the applicants, <sup>Shri</sup> was not given the same treatment. After the initial appointment on a ~~EXEMAL~~ casual basis for 89 days along with the applicants, <sup>Shri</sup> P.S. Shukla was appointed on a regular basis w.e.f. 17.3.1980, i.e. the date of his joining the post on casual basis along with the applicants, by the order dated 24.6.1980, referred to above. The appointments of the applicants were ultimately regularised by an order dated 26.3.1981, but w.e.f. 15.12.1980. The order stipulated that the applicants had to pass the typing test in English and Hindi both and that they would be on probation for a period of two years from the date of their regular appointments (15.12.1980). The applicants were declared to have successfully completed probation by an order dated 23.1.1983.

3. The applicants submitted representation to the respondents requesting that they should also, like <sup>Shri</sup> P.S. Shukla, referred to above, be regularly appointed from the date of their initial appointment w.e.f. 18.3.1980. In the representation each one of them specifically referred <sup>to</sup> the case of <sup>Shri</sup> P.S. Shukla. They also stated that their police verification report, the receipt of which was awaited by the respondents for regularisation, had been received in the factory in July, 1980 and that, therefore, they should have been given regular appointment earlier instead of casual appointment for 89 days repeatedly. They have <sup>also</sup> requested regularisation w.e.f. 18.3.1980,

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on the same ~~post~~ as P.S. Shukla. The applicants aver that after considering the representations, referred to above, the General Manager of the Factory conceded their request in his order dated 18.3.1984 and regularised their appointments w.e.f. the date of their initial appointments, i.e. 18.3.1980 in temporary capacity. An order was passed as a consequence, calling the applicants to apply for leave to regularise the breaks in service. The leave was sanctioned. The applicants were also appointed in quasi-permanent capacity w.e.f. 18.3.1983, exactly on completion of three years since the date of their initial appointments on casual basis. The applicants have duly passed the typing test both in English and Hindi. They were paid the differences of pay and allowances, arrears of bonus, over-time and salary in *view* *of* earned leave. Their dates of annual increment were also duly fixed on the basis of regularisation with effect from 18.3.1980. Then, according to the applicants, came the ~~thunderhead~~ thunderbolt cancelling the regularisation of the services of the applicants w.e.f. *the* initial dates of appointment. The impugned order dated 7.3.1986 was issued by the respondents, by means of cancellation of number of orders including the order of regularisation dated 18.8.84 referred to above.

4. The grievance of the applicants is that, firstly, the impugned order was issued, adversely affecting their interest financially and otherwise, without any notice or indication of any reason for such cancellation. Secondly, they have been unduly discriminated against, vis-a-vis *Shri* P.S. Shukla, referred to above, who stood on the same footing as the applicants, except that he joined the casual appointment a *day* ~~date~~ earlier. The applicants, therefore, contend *that* the impugned order is illegal, mala fide, arbitrary and without jurisdiction.

5. The respondents in their counter affidavit averred that the applicants were appointed for spells of 89 days, since their police verification reports were not received and that on receipt of *these* reports, they were regularised against the regular post by order dated *1986*

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26.3.1981 from the date of their initial appointment. It is further stated that the Controller of Accounts (Fys) had raised some objections regarding regularisation of casual employees and that in terms of Ministry of Defence letter dated 24.11.1967, the services of casual workers should be regularised w.e.f. the latest and continuous spell. Accordingly, the previous factory orders were cancelled by the impugned order. As regards the allegation of discrimination vis-a-vis P.S. Shukla, the respondents state that the police verification report in respect of P.S. Shukla was received on 27.5.1980 and, therefore, his services were regularised w.e.f. the date of <sup>his</sup> initial appointment. The respondents seem to argue that the police verification reports of the applicants were received later and, therefore, they were appointed again and again for periods of 89 days.

6. Sri N.K. Nair, learned counsel for the applicant and Sri K.C. Sinha, learned counsel for the respondents, advanced their arguments during the course of hearing. We have ~~also~~ carefully considered the records of the case and their arguments.

7. The first point to be decided is as to whether the impugned order could be issued by the respondents without observing the principles of natural justice, by way of issuing a notice to the applicants of the proposed action of cancellation of their earlier regularisation. It is clear that no such notice was issued and no opportunity was given to the applicants to advance their case or arguments against the proposed action. It is also well established that the cancellation of the earlier regularisation is bound to visit the applicants with ~~severe~~ <sup>civil</sup> consequences including financial liability and loss, as pointed out by the applicants. ~~In that case it is of~~ increments ~~that~~ would be postponed and the applicants would be asked to pay back the arrears of various dues received by them, as a consequence of the impugned order. The only explanation given for the issue of the impugned order is that some official had raised some objection regarding the regularisation. What precisely was the objection has not been divulged and it is not known whether it was

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reasonable or trivial. Some orders of 1967 are cited for the action taken in 1988. Whatever ~~these~~ orders be, the principles of natural justice required that before the order adversely affecting the applicants was issued, they should have been given an opportunity to show-cause against the issue of such order. Thereafter, after hearing their side, a speaking order ought to have been passed. This is the very minimum that fairness and justice would require. In this connection it is sufficient to refer to the classic case of State of Orissa v. Dr.(Miss) Binapani Dei & others (AIR 1967 S.C. 1269) decided by the Hon'ble Supreme Court years back. It was held by the Hon'ble Supreme Court that -

"..... even an administrative order which involves civil consequences must be made consistently with the rules of natural justice after informing the respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the respondent of being heard and meeting or explaining the evidence."

The impugned order is, therefore, to be held as bad in law on this ground alone and is liable to be quashed accordingly.

7. As regards the allegation of discrimination against the applicants <sup>Shri</sup> vis-a-vis P.S. Shukla, is concerned, it may be stated that the three applicants and <sup>Shri</sup> P.S. Shukla were appointed by the same order dated 27.3.1980. <sup>Shri</sup> P.S. Shukla was, however, made a regular LDC by an order dated 24.6.1980 w.e.f. his initial appointment, i.e. 17.3.1980, whereas by the same order, the applicants services were first terminated at the end of 89 days and the applicants were re-appointed for a period of 89 days. The repeated ad hoc appointments of the applicants and the prompt regularisation of <sup>Shri</sup> P.S. Shukla have been explained by the respondents by stating that the police verification report of <sup>Shri</sup> P.S. Shukla was received on 27.5.1980, whereas the reports in respect of the applicants were delayed and were not received at that time. One point of significance here is that though the police verification report of <sup>Shri</sup> P.S. Shukla was received on 27.5.1980, on receipt of this report he was regularised w.e.f. 17.3.1980, i.e.

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the date of his initial appointment. In other words, the date of receipt of the police verification report did not affect his regularisation w.e.f. an earlier date. It is clearly established and has not been controverted that the police verification reports in respect of the applicants were received by the respondents in July, 1980. Inspite of this, the applicants were being appointed for periods of 89 days only, till 1981. The respondents have not explained as to why, even after the receipt of the police verification reports of the applicants, they were appointed on a casual basis, unlike P.S. Shukla. The respondents are also silent on the point as to why after receipt of the police verification reports in July, 1980, and after considering the representations of the applicants, they cannot be regularised w.e.f. their date of initial appointment, as was done in the case of P.S. Shukla (vide above).

8. Such repeated ad hoc appointments for about three months or so with one or two days' break at a time, have come in for caustic criticism by this Tribunal in some cases. In Dr. (Mrs.) Sangeeta Narang & others v. Delhi Administration & others (ATR 1988

(1) CAT 556), decided by the Principal Bench at Delhi, such policy of hire and fire and laissez-faire have been adversely commented upon.

9. Considering all the facts, one cannot escape the conclusion that the respondents have not been impartial as between the applicants on the one hand and P.S. Shukla on the other. The distinction in treatment received by the applicants and P.S. Shukla is not based on any reasonable classification and there is no intelligible differentia between the two classes, having a rational relationship with the object to be achieved. There has been a violation of Articles 14 and 16 of the Constitution of India, as alleged by the applicants. On this ground also the impugned order deserves to be quashed.

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10. For the reasons stated above, the application is allowed and the impugned order dated 7.3.1988, cancelling the regularisation of the services of the applicants w.e.f. 18.3.1980, is hereby quashed. The respondents are consequently directed not to change the date of accrual of annual increments of the applicants on the basis of the impugned order, not to change the seniority position of the applicants in the cadre of LDC, not to reduce the pay and allowances of the applicants and also not to make any recovery from the applicants towards the amounts paid to the applicants by way of difference in pay and allowances, bonus, overtime wages, <sup>etc.</sup> consequent upon the regularisation of the services of the applicants with effect from 18.3.1980 and not to recover the salary, in lieu of earned leave paid to the applicants for the periods of artificial breaks shown in the year 1980. There will be no order as to costs.

Kiranawal

MEMBER (A).

Surarao

MEMBER (J).

Dated: 13-7-1989.

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