

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 12th day of July 2001

Original Application no. 327 of 1993.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
Hon'ble Maj Gen KK Srivastava, Administrative Member

Jay Prakash, S/o Shri Ram Kewal,
R/o Plot No. 116/521, Keshav Nagar,
Near Rawatpur Public School,
Rawatpur, Kanpur.

... Applicant

C/A Shri NK Nair
Shri MK Updhayaya

Versus

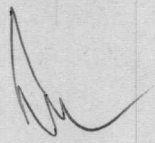
1. Union of India, through the Secretary,
Ministry of Defence, Department of Defence
Production, Govt. of India,
NEW DELHI.

2. General Manager, Field Gun Factory,
KANPUR.

... Respondents

C/Rs Km. Sadhana Srivastava

...2/-



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ORDER

Hon'ble Maj Gen KK Srivastava, Member-A.

By this OA under section 19 of the A.T. Act, 1985, the applicant has prayed that direction be issued to the respondents to continue the services of the applicant as cook and regularise the same in the Field Gun Factory, Kanpur with consequential benefits including annual increments etc.

2. The facts in brief are that the applicant was appointed as a cook on casual basis initially for a period of 15 days w.e.f. 16.04.1984 and his appointment was extended for a period not exceeding 89 days on ad-hoc basis from time to time, thereafter, with artificial breaks. He worked upto 4.1.1993. His appointment was notified in factory Part II orders each time. However, in the factory order part II no. 223 dated 5.2.1993, his name was omitted whereas the appointments of barber, Dhobi and another cook similarly placed casual employees were notified. He was ^{informed by} ~~impugned~~ verbally by the Management that his services were not required w.e.f. 5.2.1993 giving rise to this controversy.

2. We have heard learned counsel for the contesting parties and perused records.

3. Shri MK Updhayaya, learned counsel for the applicant made the following submissions :-

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1. The applicant was recruited through Employment Exchange and he worked for more than 8 years to the full satisfaction of the respondents and he is entitled for regularisation as per Govt. policy as he has worked for more than 240 days in each year. Besides removing the applicant from services orally is arbitrary and illegal.
- ii. On 10.3.1992, Management published a factory order part II No. 72 dated 10.3.1992 inviting applications by 21.3.1992 for 2 posts of cooks for which the applicant submitted application on 21.3.1992 for regular appointment and absorption against one of the said posts. Instead taking any action to regularise the services of the applicant, respondents terminated his services. ^{on 5.2.1993} Such action on the part of respondents tantamounts to high-handedness.
- iii. Continuing the services of other similarly placed casual employees through factory order part II no. 223 dated 5.2.1993 ignoring the justified claim of the applicant is a clear cut case of discrimination.
4. The learned counsel for the applicant placed reliance on the Principal Bench of this Tribunal's judgment dated 03.07.1999 in Mishri Lal & another Vs. Union of India & Ors, OA no. 2224 of 1993.

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In this case the Principal Bench of the Tribunal has held as under :-

"The applicants have been engaged on casual basis continuously for about 10 years with artificial breaks. Giving of artificial breaks has been held by this Tribunal as bad in law. In the facts & circumstances, the artificial & technical breaks in casual service should be ignored and the applicants should be treated as in continuous service for over 10 years till 1993. We, therefore, hold that the applicants are entitled to the re-engagement as and when work is available."

5. Miss Sadhana Srivastava, learned counsel for the respondents contested the claim of the applicant. She submitted that Field Gun Factory is a Defence installation where Defence Security corps (in short DSC) platoon is deployed. For catering to the meals arrangement for the DSC platoon one post of cook is sanctioned against which Shri Nand Lal is working since 24.9.1977 as a regular employee. There was requirement of another cook and one Shri Kishan Lal was appointed on casual basis in 1981. The petitioner was engaged in 1984 when regular cook Shri Nand Lal was proceeded on leave. Factory took^{up} the case for sanction of two or more posts of cooks with Ordnance Factory Board which has not been sanctioned so far. Platoon Commander of DSC complained to the security officer about the unsatisfactory behaviour, attitude, conduct and performance of the petitioner. Security officer made a note that the petitioner's services were no longer required and hence the petitioner's

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) services were no longer required and hence the petitioner's appointment was not renewed further and his services were dispensed with in January 1993.

6. She further submitted that in absence of a regular post, the petitioner cannot be regularised. Sri Kishan Lal, another cook working on casual basis is senior to the petitioner as he was appointed in 1981 whereas the petitioner was appointed in 1984. Hence the services of Sri Kishan Lal were continued vide factory order part II no. 223 dated 5.2.1993. Therefore, there is no violation of article 14 and 16 of the Constitution of India and plea of discrimination is not at all sustainable in the eyes of law. Besides it was decided to explore the possibility of appointing exsisting factory employee as a cook by surrendering matching savings and hence the factory order Part II dated 10.3.1992 was published inviting applications for cooks from regular employees only. Since the petitioner was not a regular employee and he was working on casual basis, ^{hence} no action was taken on his application dated 21.3.1992.

the factory order dated 10.3.1992 was not applicable to the petitioner and

7. Miss Sadhana Srivastava, learned counsel for the respondents relied upon the decision of this Bench in 1995 ATC Vol 31 page 59, Govind Das & Ors. Vs. Director General, Archaeological Survey of India

...6/-

and others. In which it has been held as under :-

" 9. As noted hereinabove, the applicants have alleged that their work and conduct have been satisfactory. The respondents have, however, taken the plea that the orders for disengagement of the applicants was passed after proper enquiry. Copy of the enquiry report has been annexed which is by way of preliminary enquiry.

10. The applicants admittedly were daily-rated casual workers and they can be disengaged without assigning any reasons. On the basis of the temporary enquiry the authorities on being satisfied have passed the order for termination/disengagement of the applicants. The order for termination is a simpliciter order and is not stigmatic. It is well settled on the basis of several judicial decisions that the defence indicated in the counter affidavit to meet an allegation of arbitrariness in passing the order for termination will not lend colour to the order termination simpliciter.

11. The Hon'ble Supreme Court in Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs Dr Pandurang Godwalkar had laid down that whenever the services of an employee are terminated while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry, it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge and as such penal in nature. In the said decision reliance has been placed on a few earlier Supreme Court

decisions.


12. ^In view of the law laid down in the aforesaid decisions the order of termination simpliciter of the services of the applicants calls for no interference at our hands. A temporary employee would be entitled to the provisions of Article 311 while daily rated casual workers cannot invoke the provisions of Article 311 of the Constitution."

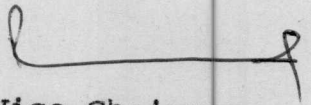
8. We have carefully considered the submissions of the learned counsel for the parties. There is force in the arguments of the learned counsel for the applicant that terminating the services of the applicant by way of oral order is illegal and arbitrary. The applicant was given appointment after his name was sponsored by the Employment Exchange. The proper procedure of the selection was followed. The applicant worked in the respondent's establishment for more than 8 years. The respondents have not been able to produce any evidence about unsatisfactory work and behaviour of the applicant during the period he worked with them. A simple statement that the Platoon Commander of the DCS Complained to the Security Officer about the unsatisfactory work and conduct of the applicant has no force in law. The principal of natural justice demands that the applicant is given an opportunity to explain his position in case there ^{are} ~~was~~ complaints against him, which was conveniently ignored by the respondents. The applicant should have been given a show cause notice and also an opportunity to personal hearing before his services were ^{dispensed} ~~dispensed~~ with.

9. It has been admitted by the respondents in their counter reply that there has been requirement of two or three more cooks in addition to the regular cook Shri Nand Lal. Under the circumstances it is not understood as to how the ^{Security} ~~secretary~~ officer made a note that the applicant's services were no longer required when all along 3 cooks were engaged for more than 8 years.

10. In view of the above observations we have no doubt that the action of the respondents is bad in law. We dispose of the application with direction to the Respondent no. 2 to re-engage the applicant on assurance of good conduct within a month and consider the case of the applicant for regularisation whenever an additional post of cook is sanctioned subject to fulfilling the required conditions. The applicant will however, not be entitled to claim other consequential benefits ^{for} the period he has not actually worked.

11. There will be no order as to costs.


Member-A


Vice-Chairman

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