

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 1274 of 2002.

this the 23rd day of January 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Hari Ram Maurya, S/o Sri Ram Pyare, R/o Village Tenuhari
(shukla), P.O. Sahjanwa, District Gorakhpur.

Applicant.

By Advocate : Sri H.S. Srivastava.

Versus.

1. Union of India through the Secretary, Ministry of
Defence, (Finance) New Delhi.
2. The Controller General of Defence Accounts, West
Block - V, R.K. Puram, New Delhi.
3. The Controller of Defence Accounts (PD), Meerut Cantt.
4. The Defence pension Disbursing Officer, Kunraghat,
Gorakhpur.

Respondents.

By Advocate : Sri S.K. Anwar.

O R D E R

By this O.A., applicant has challenged the order dated 30.9.2002 whereby applicant has been informed that after expiry of one month from the date of receipt of this letter, his engagement would stand terminated (page 17). He has further sought a direction to the respondents to continue the services of the applicant with all consequential benefits.

2. It is submitted by the applicant that he was engaged as casual labour w.e.f. 16.5.1990 after his name was duly sponsored by the Employment Exchange and since he had completed more than 240 days in each year from 1991, he was conferred with temporary status w.e.f. 1.9.1993 vide Annexure A-2. He gave a representation to the respondent no.

3 on 16.3.1998 for regularising, but no reply was given to him.

3. All of ^{all} sudden, applicant was served with a letter dated 12.11.1998 terminating his services after expiry of one month from the date of receipt of the letter dated 12.11.1998 without giving any reason in the said letter. Being aggrieved, applicant challenged the said order by filing O.A. no. 1377 of 1998 and the Tribunal was pleased to stay the operation of the impugned order dated 12.11.98. Ultimately, the said O.A. was allowed vide judgment and order dated 15.1.2002 by quashing the said order (Annexure A-7). Thereafter, applicant was served with show-cause notice dated 20.8.2002 stating therein ^{to explain B} as to how he was caught red handed by the personnel of Intelligence and Field Security Unit while receiving the amount of bribe, therefore, calling-upon him ^{to explain B} as to why his services should not be dis-engaged (page 33). It is submitted by the applicant that he gave a detailed reply to the said show-cause notice and requested the authorities to give him the documents, but by the impugned order, his services have been dis-engaged.

4. It is submitted by the applicant that his services could not have been dis-engaged without holding a proper enquiry and giving him a chargesheet as the respondents have put stigma against him which makes the order punitive, therefore, impugned order is liable to be quashed and set-aside. He has also submitted that the respondents have themselves contradicted in the newspapers that no such incidents had taken place of accepting the bribe, therefore, his services could not have been dis-engaged on the basis of the same incidence. He has relied on the following judgments:

- (1) (2002) 4 SCC 573 in re. U.O.I. & Ors. Vs. Mohan Pal & Others.
 - (ii) 1986 SCC (L&S) 745 in re. Smt. Rajinder Kaur Vs. State of Punjab & Another.
- B

(iii) 1986 SCC (L&S) 524 in re. Jarnail Singh & Ors. Vs. State of Punjab & Ors.

(iv) 1987 (1) ATJ 157 (Ahmedabad Bench of CAT) in re. Nitya Nath Bishvanath Singh Vs. Executive Engineer (Elect) & Another.

5. Respondents, on the other hand, have submitted that when the applicant had approached this Tribunal in the earlier O.A., this Court had given liberty to the respondents to proceed against the applicant by giving him a show-cause notice. Accordingly, now he has been given a show-cause notice dated 20.8.2002 and after ^{examining} ~~seen~~ the reply filed by the applicant, since the authorities were not satisfied and this is the case where the applicant was caught red handed by the Personnel of Intelligence and Field Security Unit, therefore, his services were dispensed with in accordance with para 7 of the O.M. dated 10.9.1993. They have further submitted that the order is simplicitor and since applicant had not even controverted the acceptance of bribe in his reply, there is no need to hold an enquiry or ^{to} issue a chargesheet as the applicant was not a regular/ ^{Casual labour R} employee, but was only ~~granted~~ with temporary status.

R temporary

6. I have heard both the counsel and perused the pleadings as well.

7. It is seen that when the earlier applicant had approached this Tribunal against notice dated 12.11.1993 by filing O.A. no. 1377 of 1998, this Court had specifically observed that the applicant having attained temporary status should have been given a show-cause notice before the order of termination in case of a single lapse was passed against the applicant, but since applicant's services were terminated without following the principle of natural justice, therefore, order of termination was set-aside. The respondents were, however, given a right to proceed against the applicant after following the principles of natural justice. It clearly shows that even though applicant had challenged his termination, but Court had not directed

R

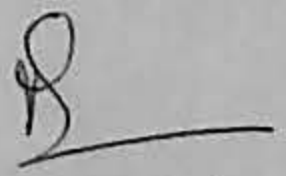
the respondents to hold any enquiry, but had simply observed that before terminating his services, atleast a show-cause notice should have been served on him. Respondents have accordingly given a show-cause notice to the applicant calling-upon^{him} to explain as to why his services should not be dispensed with in view of the fact that he was caught red handed by the Personnel of Intelligence and Field Security unit while receiving the amount. The applicant has given a detailed reply to the said show-cause notice, but he has not denied the incidence mentioned in the show-cause notice. On the contrary, his emphasises is as to why he was not arrested, why FIR was not lodged against him if he was caught red handed. Therefore, in these circumstances, if the respondents feel that it is not in the interest of organisation to continue such a casual labour with temporary status any longer, naturally they should have dis-engaged the services of the applicant, while doing so, the requirement as ~~per~~^{of} para 7 of O.M. dated 10.9.93 had to be complied with, which clearly states as under :

"7. Despite conferment of temporary status, the services of a casual labour may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work."

8. We only have to see whether the requirement of para 7 has been complied with by the respondents or not, while dis-engaging the services of casual labour with temporary status. I am of the opinion that since the respondents have already issued a show-cause notice to the applicant, as desired by the Tribunal in the earlier O.A., the requirement of para 7 was fully complied with. Counsel for the applicant has strenuously argued that full-fledged enquiry should have been held and he should have been given a chargesheet, otherwise termination would be violative of the principles of natural justice enumerated under Article 311 of the Constitution of India. For seeking protection of principles of natural justice as enumerated under Article

18

311 of the Constitution of India, the basic requirement is that the person who is claiming the benefit of such principle should be a regular employee appointed against a clear vacancy. In the instant case, neither applicant was a regular employee, nor was he appointed against a clear vacancy. On the contrary, he was only a casual labour with temporary status, therefore, we cannot equate him either with the regular employee or temporary Govt. servant because temporary Govt. servant is also appointed against a clear vacancy, whereas applicant does not hold any such status, therefore, he cannot claim the protection of principles of natural justice under Article 311 of the Constitution of India, judgments relied upon by the applicant's counsel, therefore, would not be applicable in the present case. As far as judgment given in Mohan Pal is concerned, in this case also the Hon'ble Supreme Court only held that casual labour with temporary status cannot be removed merely on the whims and fancies. The power given to the Employer under clause 7 of the said Scheme was not held to be invalid by the Hon'ble Supreme Court, but it was emphasised that so long there is work and other casual labourers are still employed, casual labourers having acquired temporary status should not be removed from service. That judgment is, therefore, in a different context all together. In the instant case, applicant's service have been dis-engaged because he was caught red handed by the personnel of unit while accepting bribe. In these circumstances, if the respondents dispensed with his services by giving him one month's notice as stipulated under the Scheme in para 7, I do not find any irregularity in the orders passed by the respondents. The O.A. being devoid of any merit is accordingly dismissed. No costs.


MEMBER (J)

GIRISH/-