

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(13)

~~NEW DELHI~~
AHMEDABAD BENCH.O.A. No. 347 OF 1986.
~~XXXXXX~~DATE OF DECISION 11.7.1989.CAPTAIN S.M. KANJILAL PetitionerMR. G.A. PANDIT Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. RespondentsMR. J.D.AJMEERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

(14)

Captain S.M. Kanjilal,
Nautical Surveyor,
Mercantile Marine Deptt.,
Jamnagar.

Res. Address: VIPUL NILLAY,
Panchvati, Goshala,
Jamnagar - 361 001.

..... Petitioner.

(Advocate: Mr. G.A. Pandit)

Versus.

1. Union of India, through
Secretary, Ministry of Surface/
Transport, Parliament Street,
New Delhi - 110 001.

2. Director General of Shipping,
Jahaj Bhavan,
Walchand Hirachand Marg.,
Bombay - 400 038.

..... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.NO. 347 OF 1986

Date: 11.7.1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Captain. Shri S.M. Kanjilal, who was serving as Nautical Surveyor, on transfer, at Jamnagar, being aggrieved by the order contained in office memorandum dated 9th September, 1986, has filed this application on 26.9.86, under section 19 of the Administrative Tribunals Act, 1985. He was informed about the decision that the period of his ad hoc appointment as Nautical Surveyor beyond 1.10.1986 was not extended. He has challenged the validity of the said order (Annexure 'D'), which reads as under :

Subject: Ad-hoc appointment of Capt.S.M.Kanjilal
Nautical Surveyor, Mercantile Marine
Deptt., Jamnagar.

.....

In continuation of this office letter of even number dated 16/4/1986 on the above subject. Capt.S.M. Kanjilal, Nautical Surveyor, Mercantile Marine Deptt., Jamnagar is hereby informed that it has been decided by the Director General of

15

Shipping, not to extend his ad-hoc appointment as Nautical Surveyor beyond 1/10/1986(F.N.).

Sd/-

(K.S. Butaney)

Asstt. Director General of Shipping.
for Director General of Shipping.

2. According to the case set up by the petitioner, as he had put in more than 5 years of satisfactory service, he was entitled for regularisation to the post held by him. It was alleged that the action of the respondents in terminating his service amounts to removal from service and hence it is illegal, improper and violative of Article 311 of the Constitution and in breach of the provisions of Rule 8 of CCS(CCA) Rules. It was further alleged that MMD Surveyors on ad hoc basis, who are junior to him have been retained and hence the impugned order is discriminatory and violative of Articles 14 & 16 of the Constitution of India.

The petitioner, by way of amendment(allowed by the Tribunal vide order dated 7.1.87), averred that he did not accept the letter dated 14.7.81 which mentioned that the post was required to be filled in by the Union Public Service Commission and that it will be on ad hoc basis initially. However, when he received telex (Annexure 'C' dated 25.7.81) stating that he has been appointed as Nautical Surveyor, he resigned from the confirmed post in the SCI and joined the department on 7.9.81(F.N.). But for the first time, he was informed after about 8 months under letter dated 13.5.82, that his appointment to the post was ad hoc and for a period of one year from 7th September, 1981. According to him, had he been told in the 'telex' that the post is only ad hoc required to be regularised after Union Public Service Commission formalities, he would not have accepted the post and hence he is protected by the doctrine

of "promissory estoppel" applicable in his case. It is further averred that he was granted periodical increment during his service and the "contribution for General Provident Fund and Premium for Group Insurance" was deducted from his salary and when he had continued over more than 3 years he was entitled to the benefit provided under the Government Notification dated 24th July, 1986 (Annexure 'M'). He also prayed that the impugned order be quashed and set aside as his termination amounts to 'retrenchment' within the definition of Section 2 (000) of the I.D. Act and the provisions of Section 25(F) of the I.D. Act, have not been complied with.

3. The application has been contested by the Respondents. In the counter dated 24.11.86 filed by the Assistant Director General of Shipping, contended that the petitioner was appointed purely temporary and on ad hoc basis for a period of one year and it was extended from year to year basis under the powers delegated to the Director General of Shipping vide item No. 22, of Ministry letter No. SW/1/MTS(18)(82)-MA dated 30.6.83. But when the last period of extension which was granted with effect from 1st April 1986 for a period of six months, the contract came to be terminated automatically on the expiry of six month from that date i.e., with effect from 1st October, 1986. According to them, the services of the petitioner are not terminated by way of any penalty and hence the applicability of the CCS(CC&A) Rules and the provisions of Article 311 of the Constitution are not attracted in the case of the petitioner. It was further submitted that everyone who was appointed as Nautical Surveyor on ad hoc basis under the Directorate, his services since been terminated or are being terminated from the date of

(17)

the expiry of present ad hoc terms. The Respondents in their further reply filed on 1.8.88 denied the petitioners' averments and allegations made against them. According to them, the recruitment rules (published under Notification No.F.No.1-MA(8)/64 dated 20.1.86) for the post of Nautical Surveyor, the age limit was prescribed below 35 years and at the time of his first appointment, the petitioners' age was more than 39 years and hence he was not eligible for appointment regularly, but he was given ad hoc appointment for a specified period and initially his matter was referred to Union Public Service Commission who had given the age relaxation twice in respect of the petitioners' appointment on ad hoc basis to the post of Nautical Surveyor. However, thereafter again when UPSC was requested to give relaxation of age for ad hoc appointment, no response was given by the UPSC. As the post of Nautical Surveyor was required to be filled in on regular basis only by direct recruitment on the recommendation of the candidates selected by the UPSC and when it was so notified, it was for the petitioner to apply for the same and get qualified for the post. It was submitted that second time when a requisition was sent to UPSC on 8th August, 1984 to fill up 9 post of Nautical Surveyor (six general, two S.C. and 1 S.T.) it did not materialised and the UPSC directed the Director General, Shipping, to relax the age limit vide letter dated 21.9.84. It was further submitted that pending regular appointment through UPSC, the office of the Director General of Shipping appointed Nautical Surveyor on ad hoc basis for a period not exceeding one year. It is the defence of the respondents that non-extension of ad hoc appointment does not give any cause of action to the petitioner as he has no right to get his ad hoc

appointment continued. The respondents have categorically denied the petitioners' assertions that he had not received the offer of appointment dated 24.7.81 and that he was given any verbal promise or assurance regarding his regularisation.

4. When the matter came up for hearing we have heard Mr. G.A. Pandit and Mr. J.D. Ajmera, the learned counsel for the petitioner and the respondents respectively. We have also perused and considered the materials placed on record.

5. At the outset, it may be stated that Mr. Pandit during the course of his arguments did not raise any plea regarding the applicability of Section 25(F) of the I.D. Act. Even otherwise the petitioner has failed to establish that he was a 'workman' governed by the I.D. Act or that activities carried out by the respondents in which the petitioner was engaged is an "industry" within the meaning of the provisions of the said Act. He however vehemently contended that since the appointment of the petitioner was made by the President his services can not be terminated by the officer below the President and since the 'telex' received by him indicated that he was regularly appointed as Nautical Surveyor, the action of terminating his services is bad in law. In the alternative he contended that when the petitioner has put in more than 5 years service as a Nautical Surveyor, the respondents be directed to regularise his services. In support of his contention he relied on the case of Dr. A.K. Jain & Ors. V/s. Union of India & Ors. (1988(2) A.T.J.p.491). As against this Mr. J.D. Ajmera relying on the unreported judgment dated 19.9.86 rendered by New Bombay Bench (C.A.T.) in O.A.No. 198/86, filed by Cap. A.I. Osmany, strenuously urged that the petitioner

in that case was also recruited on ad hoc basis as a Nautical Surveyor on October 1981 when he was 49 years old and when he challenged the termination of his ad hoc appointment his application was rejected relying on the case decided by the Supreme Court in S.P. Vasudev V/s. State of Haryana, (A.I.R. 1975 S.C. 2292), wherein it was held that an ad hoc appointee has no right to the post.

6. Before adverting to the rival contentions canvassed by the learned counsel for the parties, it will be pertinent to note that the petitioner received a copy of the letter dated 13.5.82 (Annexure 'E') appointing him as Nautical Surveyor on ad hoc basis is not in dispute. The said letter is reproduced as under :-

Sub:- Appointment of Capt.S.M. Kanjilal as Nautical Surveyor on ad hoc basis in Mercantile Marine Department, Calcutta.

Sir,

I am refer to your letter No.2/7/51 dated the 31st April 1982 on the above subject and to state that the President is pleased to appoint Capt.S.M. Kanjilal as Nautical Surveyor, MMD Calcutta, on a purely Temporary capacity on ad hoc basis for a period of one year with effect of 7th September, 1981(FN) the date on which he took over charge of the post or till the post is filled by a Union Public Service Commission whichever is earlier on the terms and conditions contained in this Directorate's Memorandum of even number dated the 24th July, 1981. While so employed his pay will be fixed at Rs.1200/- p.m. in the scale of pay of Rs.1200-50-1500-60-1800 attached to the post of Nautical Surveyor.

Yours faithfully,

Sd/-

(K.S. Butoney)
Executive Officer.

More over the fact that the petitioner received the letter dated 14th July, 1981 addressed to him by Mr. S.M.Ochaney, Senior Deputy Director General of Shipping quite before he took over the charge is not controverted. It is borne out from the said letter that he was clearly informed that the

Director, can make an appointment only on ad hoc basis, as the posts of Nautical Surveyors are filled on regular basis through UPSC and that his appointment will therefore be subjected to his being found fit to regular appointment by the UPSC. It is also indicated in the said letter that as he had already agreed to ad hoc appointment on initial pay in the scale of Rs. 1200-50-1500-60-1800, his case has been referred to the Ministry of Shipping and Transport, New Delhi, for approval.

7. Now an attempt seems to have been made by the petitioner that he had not agreed to the adhoc appointment and as he had not received the letter of offer of appointment dated 24.7.81, he was led believe that he was appointed as Nautical Surveyor on regular basis. The petitioner has also endeavoured in his rejoinder dated 8.1.87 to show that he was assured by the authorities that his posting would be on permanent basis. The stand of the respondents is that the plea of the petitioner that he was not aware of his terms and conditions of his ad hoc appointment is nothing but an after thought and can not be accepted. They have also denied the petitioner's allegations regarding the promise given to him during the verbal discussion of the officers of the Director General Shipping and SCI (Shipping Corporation of India). According to ~~them~~, the offer of appointment dated 24.7.81 was received by the petitioner and was duly acknowledged by him in his charge report dated 7.9.1981. We find great substance in the plea of the respondents made in this regard. It is significant to note that in all the following documents admitted to have been received by the petitioner, it is clearly indicated right from the inception that his appointment as

Nautical Surveyor was on purely temporary and on ad hoc basis initially for a period of one year with effect from 7th September, 1981 when he took over the charge of the post and the said period was extended from time to time.

- (1) Letter dated 13.5.1982 (Annexure 'E')
- (2) Extension under letter dated 17.3.83 with effect from 7.9.82 to 30.9.83.
- (3) Extension under letter dated 7.11.83 for a period of one year from 1.10.83.
- (4) Extension under letter dated 14.1.85 for one year with effect from 1.10.84.
- (5) Extension under letter dated 21.11.85 for 6 months with effect from 1.10.85.
- (6) Extension under letter dated 16.4.86 for 6 months with effect from 1.4.86.

8. In the telex dated 25.7.81 (Annexure 'C') it is clearly indicated that formal offer of appointment is being issued separately. More over in the very letter dated 13.5.82 it was clearly indicated to the petitioner that his appointment was on ad hoc basis for a period of one year or till the post is filled by the UPSC whichever is earlier on the terms and conditions contained in the Directorate's memorandum of even No. dated 24th July, 1981. The terms and conditions of the appointment of the petitioner which are contained under the offer of appointment under memorandum dated 24th July, 1981, clearly stipulate that his appointment was purely temporary and on ad hoc basis for a period of one year with effect from the date he takes over the charge of the post or till the date UPSC's nominee joins duty whichever is earlier and "no notice will be necessary for termination of service on or after the date of expiry of the period stipulated in Clause(i) of para-2 of the said memorandum or any extension as may be granted thereafter."

9. Admittedly, the petitioner has not addressed any letter to the respondents till his services came

(12)

to an end raising any objection or disagreement against the nature of his adhoc appointment offered to him and that he had not received the letter of offer of appointment dated 24.7.81 referred ^{to} in several documents. The petitioner for the first time seems to have pleaded by way of amendment to the petition that he had not received the said letter dated 24.7.81. All through out the petitioner accepted the ad hoc appointment and the extension granted to him from time to time. His plea that he was appointed on a regular basis on receipt of the telex and ~~that~~ that he had not received the memorandum dated 24.7.81 is the result of after thought and can not be accepted. It is borne out from the endorsement made below of his memorandum dated 9th September 1986 (P.B.133) that the petitioner was advised to apply to the Principal Officer, MMD, Bombay, in case, he was interested in fresh appointment, However, the petitioner does not seems to have availed of the said opportunity.

10. In the case of Dr. A.K.Jain & Ors. etc.(supra) relied upon by the petitioner, the writ petitions were filed under Article 32 of the Constitution; wherein it was contended inter-alia by the petitioners that they had not availed of the three chances stated in their appointment order for selection through Union Public Service Commission. The Supreme Court having regard to the special circumstances of the fact that the Combined Medical Services Examination was introduced by the Union Public Service Commission, in the year 1977 and from 1977 to 1983, maximum age relaxation upto 40 years or even 50 years was granted from time to time to enable the said ad hoc doctors on the zonal railways to avail themselves

of the opportunity of appearing in the combined medical service examination, directed that the services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officer on ad hoc basis upto 1.10.1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential report in respect of the period subsequent to 1.10.1982. It was further directed that the railway shall be at liberty to terminate the services of those who are not so regularised. More over the petitions of the Assistant Medical Officer, Assistant Divisional Medical Officers appointed subsequent to 1.10.1984 were dismissed. Thus it will be evident that the case of Dr. A.K. Jain is quite distinguishable and can not be made applicable to the instant case.

11. Mr. K.S. Butaney, Assistant Director General of Shipping, in his letter dated 17th October, 1986 addressed to the Secretary to the Government of India, Ministry of Transport, New Delhi has elucidated the circumstances in which ad hoc appointment of temporary arrangement was made in appointing persons as Nautical Surveyor, as regular incumbents were not available. These posts were required to be filled in on the basis of the recommendation made by the Union Public Service Commission under the extant rules. The eligible age provided for under recruitment rules for recruitment of the post of Nautical Surveyor, was 35 years. Admittedly at the time of the appointment offered to the petitioner, Cap. Kanjilal was not eligible for being appointed for regular post through the Union Public Service Commission and the appointment was extended on year to year basis. The last extension was given for six months with effect from 1.4.1986 which

terminated on 1.10.1986.

12. Now, on perusal of the terms of appointment of the petitioner it is evident, that the petitioner was appointed to the post of 'Nautical Surveyor', purely on ad hoc basis for a period of one year with effect from ^{the date} ~~it~~ he takes over the charge of the post or till the date the Union Public Service Commission's nominee joined duties whichever is earlier and that his appointment could be terminated at any time without any notice and reason. The question for consideration is whether the petitioner has acquired any right as such to the post.

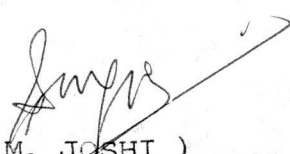
13. It is now well settled that an ad hoc appointment by its very nature is a stop-gap arrangement made for a variety of reasons, particularly, when a regular incumbent is not available or a process of regular selection involves time and the exigencies of service are such that the post can not be allowed to remain unmanned meanwhile. In Miss. Sujata Oberoi V/s. Union of India & Ors. (1987(1) S.L.R. New Delhi C.A.T. p. 625) it was held that an applicant acquires a right to the post only as per terms of appointment. In that sense, an ad hoc appointment does not by itself confer any right on the appointee and where therefore, an appointment is made purely on ad hoc basis with the stipulation as aforesaid, the services of such an appointee could be terminated without any notice and the employer could put an end to the employment by exercising the right to terminate the services.


14. In Omprakash V/s. State of Haryana & Ors. (1981 (1) S.L.R. 314) the Division Bench of the High Court of Punjab & Haryana while considering the difference

between an ad hoc appointment and a temporary appointment observed that broadly speaking ad hoc appointments are made outside the rules whereas temporary appointments are made within the framework of rules of a service. In the instant case, it is not the case of the petitioner that he had been appointed under any statutory rules. His appointment and continuation was nothing more than purely ad hoc and as such he can not be said to have acquired any vested right or interest in the post. It follows, therefore that since the petitioner had no right to continue to the post either under the rules or under the terms of his appointment, the termination of his services was valid and legally in order.

15. We are given to understand that recently the Union Public Service Commission has invited the application for the recruitment of 11 Nautical Surveyor in the Directorate General of Shipping, Ministry of Transport under Advertisement No.34 dated 22.8.87, presumably, after amendment made regarding the eligibility age which is now fixed at 50 years and perhaps in response to this advertisement the petitioner has applied for the post in question and it is said that he was also invited for interview and he may have a fair chance of selection. But this development does not entitle the petitioner to claim regularisation. In the absence of any rules, the services of the petitioner has been rightly terminated in view of the terms and conditions of his appointment. The question of its regularisation does not arise

16. In the result, the application fails and the same is accordingly dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN