

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 416 of 1986 ~~XXXX~~
~~XXXXXX~~ with
417 of 1986

DATE OF DECISION 1/07/1987

Mahesh B Dhobi
Inayakali S Saiyed Petitioner

J P Bhatt Advocate for the Petitioner(s)

Versus

Govt. of India, Central Water Commission Respondent

J D Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P SRINIVASAN : ADMINISTRATIVE MEMBER

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

JUDGMENT

OA/416/86

1/07/1987

With
OA/417/86

Per : Hon'ble Mr P Srinivasan : Administrative Member

(Dictated in Open Court)

Both these applications involve common issues and are therefore disposed of by this common order.

The applicant in OA/416/86 was appointed as Temporary Khalasi in the Central Water Commission by order dated 17.6.85. The said order made it clear that the appointment was temporary and would be for a period of four months, terminable at any time by 14 days notice from either side. On the terms of this order, the appointment would have expired on 15-10-1985. However, by a second order dated 1-10-1985 his appointment was extended up to 15-4-1986 and again by an order dated 17-4-1986 his appointment was further extended up to 14-7-1986. The position in regard to the applicant in OA/417/86 was ; he was appointed temporary Khalasi in Central Water Commission on the same terms by order dated 6/06/1985. Before the term of appointment stated in that order came to an end his services were extended by two subsequent orders up to 14/07/1986. It is stated in the application that both the applicants were told on 23-7-1986 that their appointments stood terminated w.e.f. 15/07/1986, i.e. the date upto which their appointments had been extended by the orders already referred to. In these applications, the applicants pray that the oral order terminating their services be quashed and the respondent be directed to take them back into service right from 15/7/1986 and pay them all back wages from that date. The second prayer is that since both the applicants though appointed as Khalasi, had actually worked as Wireless Operators ~~xxxx~~ they should be given XXXXXXXXX

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the pay scale of Wireless Operator i.e. Rs. 260/- instead of the scale of Khalasi. The applicants also want to be absorbed in the regular establishment on the basis of their ad hoc service.

Shri PP Bhatt for Shri J P Bhatt learned counsel for the applicant submitted that the termination of the services of the applicants was illegal, after they had worked for more than a year. He did not however press the prayer for granting them the pay of Wireless Operator as also the prayer regarding their regular absorption in the establishment at this stage. He contended that though the organization in which the applicants were appointed was a work-charged establishment, ⁸³ and it was not as if the work for which the applicants were initially taken came to an end on 15/07/1986. Immediately after the services of the applicants were terminated the Deputy Director of the Central Water Commission, Ahmedabad issued a notification inviting applications for posts in the grade of Khalasi. The applicants should have been taken in these vacancies, since they had already worked in the organization. Instead of doing so, the respondents had chosen to select outsiders on the ground that the names of the applicants had not been sponsored by the Employment Exchange. Since the applicants had joined the respondent's organization in 1985, naturally the Employment Exchange was not in a position to sponsor their name in 1986. However, when the applicants were initially appointed, it was on the basis of sponsorship from the Employment Exchange, and that sponsorship should have been treated as valid for continuing the applicants in the same post, when vacancies ^M ~~were indeed became~~ available. He therefore prayed that the respondents be directed to reinstate the applicants retrospectively from 15-7-86 and to give them all back wages on this basis.

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Shri P.N Ajmera for Shri J D Ajmera, learned counsel for the applicants strongly opposed the contentions of Shri Bhatt. The orders appointing the applicants made it very clear that their appointment was for a fixed term and was terminable at the end of the term. No doubt their appointments were extended by subsequent letters but each time the applicants were told that after a specified date their appointments would stand automatically terminated. It was in accordance with this clear condition specified in the orders appointing them and renewing their appointment that their services were terminated. The establishment of the respondents had work on a seasonal basis and therefore engaged persons when there was work and terminated their services when the work was over. Referring to the subsequent notification calling for applications, Shri Ajmera stated that in the nature of the respondents' organization they had to invite such applications from time to time to meet the seasonal work during the monsoon season. Under the rules only persons sponsored by the Employment Exchange could be appointed. Since the applicants were not ⁱⁿ ~~in~~ 1986, others who had been so sponsored were appointed in the new vacancies. He also stated that in the beginning of the current season i.e. in June 1987 also, similar notification for appointment of workers on seasonal basis was issued and those who applied with Employment Exchange Sponsorship had been selected and offer of appointment had been issued in respect of all the posts. The applicants had no right for such appointment again because their names were not sponsored by the Employment Exchange.

Having heard counsel on both sides we are of the view that the applicants deserved some relief. It is true that on the terms of their appointment, their appointments ceased when the term specified for the appointment expired. It is also true that the applicants were appointed on temporary basis and their services could be terminated at any time with 14-days notice. Precarious as the tenure of their appointment was,

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normally the services of an ad hoc appointee are terminated for one of three reasons namely ;

1. The work for which he is engaged has been completed.
2. He is found unsuitable for continuation.
3. Persons regularly appointed have to be accommodated.

It is clear to us than none of these conditions existed in this case. In any case so far as the first condition is concerned, after the services of the applicants were terminated, persons had to be engaged for the next monsoon season and when that situation came up they should have been given priority in view of their earlier service. We have referred to the notification issued by the respondents soon after the services of the applicants were terminated, for posts similar to those in which the applicants were working. So far as the second condition is concerned, there is nothing to show that the applicants were unsuitable for being continued. The fact that their appointments were continued twice beyond the initial term suggests on the other hand that their service was satisfactory. As for the third condition, either there is no procedure of regular selection to ^{the} respondents' organization or at any rate no regular selection was made in 1986 after the applicant's services were terminated. Persons appointed thereafter were also appointed on the same terms i.e. for specified periods, temporary and terminable at 14-days' notice. So it was not as if the applicants were being replaced by regularly appointed persons. As for Shri Ajmera's point that appointments could be made only of persons sponsored by the Employment Exchange, we must point out that the applicants themselves were appointed in 1985 by such sponsorship. They could not be expected to get sponsored by the Employment Exchange again in 1986, since the Employment Exchange strikes out names of persons who get employment some-where. The respondents should therefore have

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considered the sponsorship of the applicants in 1985 as sufficient compliance with the rules and taking into account their continuous service of more than one year, they should have given them preference over new comers in the selection in 1986. In not doing so the respondents were unfair to the applicants. Shri Ajmera mentioned that at present there may not be any vacancies to absorb the applicants because offers of appointment for the season begining in June, 1987 have already been issued. Normally we would not issue any direction for appointing persons without reference to the vacancy position. However, in the special facts of this case where, in our opinion, the respondents have been repeatedly unfair to the applicants first by terminating their services in 1986 and then by not selecting them and selecting others for the same posts in 1986 and again in 1987 for no acceptable reasons, we have no alternative but to direct the respondents to take the applicants back into service in posts of Temporary Khalasi within a period of one month from the ~~date~~ receipt of this order. The applicants will however not be entitled to back wages.

Before parting with this application we would suggest to the respondents that they maintain some seniority list of persons engaged from time to time on ad hoc basis and when making fresh appointments, give preference to the senior ones subject of course to suitability and fitness in all respects. This would avoid the inequitable situation like the present one or of persons working for a year or two and there after being sent out without hope of re-employment. The respondents' organisation will also be benefited by taking back known and experienced hands ; further they will not be required to issue advertisements every time when they want to make

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recruitment if there are sufficient number of employees who had earlier worked with the organization on ad hoc basis and who are suitable to be engaged again.

In the result, the application is allowed as indicated above. Parties to bear the costs.

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(P SRINIVASAN)
ADMINISTRATIVE MEMBER

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(P M JOSHI)
JUDICIAL MEMBER