

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH  
~~XXXXXXXXXXXX~~O.A. No. 244  
~~XXXXXX~~  
T.A. No.

1987

DATE OF DECISION 23.4.1990

Shri J. M. Sunthawala Petitioner

G. A. Pandit Advocate for the Petitioner(s)

Versus

Dy. Salt Commissioner, office of Respondent  
~~Dy. Salt Commissioner & another~~

J.D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

O.A. No. 244/87

Shri J. M. Sunthawala,  
residing at 'Gandhinagar'  
oppo. Prabha Kutir, Juna Wadaj,  
Ahmedabad-380 013

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.. Applicant

Vs.

1. Dy. Salt Commissioner  
Office of the Dy. Salt Commissioner  
Govt. of India,  
Ajanta Commercial Centre,  
'B' Block, 4th Floor,  
Ahmedabad-380 014

2. Superintendent of Salt,  
Office of the Supdt. of Salt,  
Chemical road, Dhrangadhra-363 310  
Dist. S'nagar

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.. Respondents

Mr. G. A. Pandit

Counsel of the  
applicant

Mr. J. D. Ajmera

Counsel of the  
respondents

O R D E R

Per: Hon'ble Mr. N. Dharmadan, Judicial Member

The grievance of the applicant in this application filed under section 19 of the Administrative Tribunals Act 1985 is that his services were terminated without considering his right for regularisation because he continued as Lower Division Clerk on ad hoc basis for an unduly/long period of about seven years. According to him he was discharging duties with utmost sincerity and loyalty and his appointment was against the permanent post available under the respondents. He has also stated that one Shri Praveen Kumar Nai, LDC who is similarly situated like the applicant has been confirmed and regularised by the respondents. Therefore, according to the applicant the action of the respondents in terminating the services without considering his right to regularisation is unreasonable, discreminatory, unjust and arbitrary. After the filing of the application the applicant amended the O.A. by incorporating additional grounds and prayers challenging Annexure-3 memo by which the impugned order was passed.

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2. In the reply affidavit filed by the respondents they admitted that the applicant was appointed as per Annexure-A order dated 5.11.1980 on a temporary basis. But they have indicated in the order that the appointment is likely to be terminated at any time without assaigning any reason. According to the respondents, since the applicant did not pass the departmental qualifying examination his services were terminated. The respondents have further taken the view that an ad hoc employee has no right to hold the post and his services can be terminated at any time for his failure to pass the special qualifying examination.

3. The main point to be considered in this case is as to whether an ad hoc employee who continued in the service for more than seven years can be sent out in an unceremonious fashion without even a notice or observing the formalities for merely on account of the fact that he has not passed the departmental examination subsequently conducted.

4. We have heard the arguments and perused the records. The respondents have admitted that the applicant was continued in service for about seven years as an ad hoc employee and they had not considered the claim of the applicant for regularisation. The stand of the respondents is that the applicant has no right to continue in service without passing the test.

5. The learned counsel of the applicant produced copies of the judgment of the Hyderabad Bench of the Tribunal in O.A. 424/89 and OA 248/89 in support of his case. In the former case, the Tribunal held as follows:

"The short point is whether the applicant by virtue of having served on ad hoc basis for nine years is entitled to regularisation despite the fact that

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he failed in the Special Qualifying Examination. We have considered an identical question in a connected matter disposed of today viz. O.A. 248/89. For the reasons given therein we allow this Application and direct that the applicant should be regularised by the competent authority namely the appointing authority on an evaluation of his confidential reports for the last three years."

In O.A. 248/89 referred to in the O.A. 424/89 the Tribunal after discussing various decisions of the Supreme Court disposed of the case with the following observations:

"Applying the equitable principle laid down by the Supreme Court in Dr. A. K. Jain's case, we would direct that the applicant should be regularised by the competent authority namely the appointing authority on an evaluation of his confidential reports for the last three years. The seniority of the applicant will be governed applying the same principles as in the case of other ad hoc salt inspectors who have been regularised as a consequence of passing the special qualifying test of Staff Selection Commission. With these directions the O.A. is allowed and in the circumstances there shall be no order as to costs."

6. The learned counsel for the respondents on the other hand relied on the judgments of the Jabalpur Bench of the Tribunal in O.A. 322/87, O.A. 1193/86 of the Principal Bench and TA 1154/86 and TA 215/87 of this Bench.

7. We have gone through these judgments and we find that the facts in those cases are not identical. They are all distinguishable. The case of the applicant that his services were terminated without even a notice was not considered in any of these judgments. Hence, we are not prepared to follow them in deciding the issue raised in this case.

8. The Supreme Court is consistently taking the view that ad hoc appointee cannot be shunted out unceremoniously just on the expiry of a specified term of appointment without even a notice. When the employees are appointed against permanent posts on ad hoc basis and allowed them to continue for unduly long period on that basis, their

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services cannot be terminated at the sweet will and pleasure of the employer assigning reasons which will not stand the scrutiny of law. "The legal position of a Government servant is more one of status than of a contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of parties." See Roshan Lal Tandon Vs. Union of India and others AIR 1967 SC 1889 and Union of India Vs. Arun Kumar Ray 1986 1 SCC 675. The rights of ad hoc employees have been considered by the Supreme Court in Jarnail Singh and others Vs. State of Punjab and others 1986 3 SCC 277 and Manager of Govt. Branch Press Vs. D. V. Belliappa A.I.R. 1979 SC 829. The Court was taking the view in all the cases that ad hoc employees have also certain rights to continue in the post when such appointments have been made in regular posts and they are allowed to continue for unduly long period in these posts. Such rights cannot be deprived of without assigning valid reasons and that too after issuing notice and an opportunity of being heard. Such notice or opportunity of being heard is absent in the instant case.

9. More or less identical question was considered by the Principal Bench in the case reported, Dr (Mrs) Sangeetha Maran and others Vs. Delhi Administration ATR 1988 (1) CAT 556. The Tribunal observed as follows:-

" The terms and conditions laid down in the appointment letters issued to the petitioners are surely unfair, arbitrary and harsh. Obviously the petitioners have accepted the same because they had no choice but to accept the posts or decline them and unemployed; the unemployment position in the country being what it is with ever growing specter of unemployment looming large. Hence, we quash the impugned orders

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in all these applications and hold that all the junior ~~Medical~~ Medical Officers Grade II appointed purely on ad hoc basis would be entitled to the same pay scale of Rs. 700-1300 and allowance as also the same benefits of leave/maternity leave/increment on completion of one year and other benefits of service conditions as are admissible to the Junior Medical Officers appointed on regular basis in the payscale of Rs. 700-1300 Further, notwithstanding the break of one or two days in their service as stipulated in their appointment letters, etc.. they shall be deemed to have continued in service ever since the day of their first appointment."

10. Following the principles, we are of the view that the termination of the applicant is illegal and we quash the order of termination and direct the respondents to reinstate the applicant in service but without any back wages, which will depend on his establishing that he was not gainfully engaged otherwise when he was out of employment.

11. There will be no order as to costs.

(N. Dharmadan)  
Judicial Member

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Pharis  
(P. H. Trivedi)  
Vice Chairman