

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~XXXXXX~~

6

O.A. No. 58 OP 1987
~~XXXXXX~~

DATE OF DECISION 27-8-1990.

SHRI R.D. SHRIMALI

Petitioner

PARTY-IN-PERSON

~~Advocate for the Petitioner~~

Versus

UNION OF INDIA & ORS.

Respondents

MR. J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. N.R. CHANDRAN, 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? No

Shri R.D. Shrimali,
Computer,
Directorate of Census Operations (Guj)
Kerawala Building,
Opp. V.S. Hospital,
Ellisbridge, Ahmedabad - 6. Petitioner.
(Party-in-person)

Versus.

1. Shri J.K. Patel and/or
his successor in office,
Deputy Director of Census Operations,
Gujarat, Kerawala Building,
Opp. V.S. Hospital,
Ellisbridge, Ahmedabad.
2. The Union of India,
Notice to be served through
the Secretary to Government of India,
Home Affairs,
New Delhi. Respondents.

(Advocate: Mr.J.D.Ajmera)

JUDGMENT

O.A.No. 58 OF 1987

Date: 27-8-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

We find that the reliefs prayed in this
Original Application are not in order. In its para
7, the following figures as "relief sought":

"In petition No.OA.147/86 and OA.181/86 was
final judge by your lordship at dt.30.01.1987,
petition No. OA.147/86 is partly allowed and
OA.181/86 has not merit and is rejected. So
please give me a status quo".

Prayer for "interim order" in para 8 is as follows:-

"Pending final decision on the application,
the applicant seeks issue of the following
interim order :-

- a) This Hon'ble Tribunal may be pleased to declare that the applicant is entitled to the status of quasi-permanency under Rule 3 of the Central Civil Services (Temporary Services) Rules, 1965 and that his services cannot be terminated simplicator ;
- b) Pending hearing and final disposal of this application, the respondent No.1 & 2 herein be restrained from terminating the services of the applicant or in any way discounting the services of the applicant.
- c) be pleased to grant such other and further reliefs as deemed proper in the nature and circumstances of the case ; and
- d) be pleased to allow this application with costs. "

In Tribunal's order dated 6.2.1987 stay order in terms "Accordingly, the operation of the notice may be stayed until further orders" was passed. As the case continued to be listed after that also, including for final hearing, we take as prayers for final relief what are mentioned in the application as for interim order. We feel such defect in the application can and should be noticed by the Registrar for correction/accordance with Rule 5 of Central Administrative Tribunals (Procedure) Rules which figures in the Rules notified in 1985 as also in 1987.

2. The applicant, in person at the final hearing, made written submission that Kum. N.K.Shah, an employee junior to the applicant, has approached the Supreme Court by filing special leave application and the Supreme Court has ordered stay and that this Tribunal having also given stay order as above, the stay order in this application should be continued

till the decision of the Supreme Court in
Kum. N.K. Shah's special/leave case.

3. The applicant's case is that he was directly recruited as a computer regularly in accordance with the recruitment Rules and so appointed by order dated 27.5.1982 (Ann. B) on temporary basis against the posts which were created for 1981 census work. After the appointment the respondents allegedly surreptitiously added the word 'ad hoc basis' to the terms of appointment of the applicant, stipulated the period of duration of appointment and extended the same from time to time. The applicant alleges that this change in his terms of service introduced later on is illegal. The petitioner fears that availing of such a change, the respondents intend to illegally terminate his service with effect from 12th February, 1987. The applicant says that the conditions of his service cannot be changed after four years of his service unilaterally to his prejudice. He also claims protection of section 25F of the Industrial Disputes Act. The applicant had made a representation to the Registrar General of India and also to the Deputy Director of Census Operations, Gujarat, claiming quasi permanent status under Rule 3 of CCS(TS) Rules 1965 as he had already completed three years of service and also on question of his seniority. This representation came to be rejected.

4. The respondents' reply is to the effect that statutory recruitment rules for Computers post have been framed and published in the Gazette of India. 75% of the vacancies of computers are to be filled by promotion and 25% by transfer and in case the latter stream does not suffice, the shortfall is also to be made up by promotion. Promotions are to be made from the grade of Assistant Compilers with three years regular service in the grade and appointments by transfer have to be made from amongst Computers in the offices of the Directorate of Census Operations in State/Union territories. The respondents therefore say that the statutory recruitment rules contain no provision for appointments by direct recruitment, the manner the applicant was recruited. Census workload rises in a line spurt at decennial census/ and for 1981 census additional purely adhoc, temporary and short term nature posts of Computers were created to which making regular appointment in accordance with the statutory recruitment rules not being quickly possible, direct recruitment on a purely temporary and adhoc basis was made to cope with the spurt in the workload. Such direct recruitment also has to be made through Staff Selection Commission set up by the Government of India for Group-C posts. But in view of the urgency of filling up the posts to cope with the 1981 census work, the Registrar General of India permitted direct recruitment on a temporary ad hoc basis

through Employment Exchanges for 36 posts created. The applicant is one of those so appointed. The position in regard to the nature of the appointment was made quite clear to the applicant (and other such appointees) in the appointment order (Ann.R-2) and the applicant is legally bound by those terms and conditions. This Tribunal, in Ahmedabad Bench O.A.No. 181/86, has decided the issue and whether 'ad hoc' was stated at the time of first appointment or not, does not make any difference to the nature of the appointment of the applicant and the allegation that the word 'ad hoc' was surreptitiously and illegally added to change the conditions of service of the applicant is denied. The respondents also deny that the conditions of service at initial appointment cannot be subsequently changed by the employer and they also say that there has been no change in the condition of service of the applicant. The respondents say that some ad hoc posts of Computors were continued in view of ad interim relief given by Gujarat High Court to some ad hoc computors. However presently the sanction for the posts exists upto 28.2.1987 and any further extension will depend upon workload and approval of the Ministry which grants only piece-meal approval for three to four months at a time. The respondents say that one month's termination notice had been given to the applicant. But the applicant did not disclose true and complete facts to the Tribunal though these were fully known to him. In all there are 47 sanctioned

temporary posts of computors. From these, services of five were required to be terminated in view of the reversion to computors rank of five persons who were promoted to higher post on ad hoc basis. Hence five computors had to be given termination notice and applicant is one of them and if the applicant is continued under Tribunal's order, he would be in excess of the temporary sanctioned posts. The applicant's seniority as computor has been rightly counted from the date of his joining service.

5. The learned advocate for the respondents argued that the prayer of the applicant to continue the stay as requested in his written submission should not be allowed and that the case may be finally decided as notice of termination has long been served on the applicant.

6. The appointment letter (Hindi version Ann. B and English version Ann. R-2) describes the applicant as a retrenched census employee given appointment on a purely temporary basis against the post created in connection with 1981 census with effect from 27.5.1982 (F.N) till 28.2.1983. This letter also mention that the appointment is further subject to the following conditions :

"i) It is on a purely temporary basis against the temporary post created in connection with 1981 Census and his services are liable to be terminated at any time without assigning any reason therefor.

ii) He is liable to be transferred anywhere in Gujarat."

We also notice that in the list of 41 adhoc computors (Annex.R-6) names are arranged in order of date

(13)

of joining of service by each. The applicant, with his date of joining on 27.5.82, figures at Sr.No. 37. It is therefore obvious that if the services of five have to be terminated because five computers who were ad hoc promoted to a higher rank have to revert, in accordance with last-come-first-go principle which is settled law, the applicant's services have to be terminated. The applicant has not alleged that the five are not liable to be reverted and that this contention of the respondents is not true.

7. In view of the above state of the record, we find no support for the applicant's allegation that the word 'ad hoc' was surreptitiously added to the terms and conditions of his appointment virtually in order to find grounds to terminate his services. It is obvious that even in the beginning, the applicant's services were to be used for the period upto 28.2.1983 only and the order of appointment explicitly and clearly said that the appointment was against posts created in connection with 1981 Census. Even though word ad hoc is not there in the appointment letter, it is very obvious from the contents of the letter that the service is for a specific purpose and for a specified period. That is the implication of the word ad hoc.

8. Regarding the applicant's claim for protection of section 25-F of the Industrial Dispute

act we, with respect, agree with the views of this Tribunal expressed in the decision dated 30.1.1986 in Ahmedabad Bench O.A.Nos. 147/86 and 181/86 that Census operations are not of the nature of an industry. We mention here that this judgment of the Tribunal has been relied upon by the applicant also. Regarding the applicant's claim to quasi permanent status, law is settled that unless a declaration under rule 3(ii) of CCS(TS) Rules has been made by an express order declaring such a status, a government servant cannot be deemed to be quasi permanent even though he has completed more than three years of services. Such a declaration does not appear congruent to the nature of these posts of Computer sanctioned as seen earlier for a specific purpose and for a specified period.

9. Coming to the applicant's submission on the basis of Kum. A.M. Shah & Ors. having filed Special Leave Petition which has been granted including status quo pending disposal, the status quo so granted will protect the applicants of that case only and no any others. Besides, there is no evidence or submission to the effect that in Mumari Shah's case, termination of service notice became necessary to accommodate persons reverting from a higher post. Such termination of service when brought about by the employer will be in good faith when both posts

and their incumbents are ad hoc.

10. In view of our above views, there seems no merit in the application. The stay order dated 6.2.1987 is vacated and the application is hereby dismissed without any order as to costs.

11. Before parting with this case, We observe that the applicant was once retrenched from the Census Department and is placed in the retrenchment zone again and therefore suggest that the respondents may view his case sympathetically for continuing in employment or for employment again after retrenchment.

MRONW

(N.R. CHANDRAN)
Judicial Member

M. M. SINGH
27/11

(M.M. SINGH)
Administrative Member