

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO./208/91
~~T.A.NO.~~

DATE OF DECISION 23-9-1998

Mina P. Bhatt

Petitioner

Mr. A. R. Thakkar & Mr. M. S. Trivedi

Advocate for the Petitioner [s]

Versus

Union of India & ors,

Respondent

Mrs. P. Safaya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. RADHAKRISHNAN

: ADMINISTRATIVE MEMBER

The Hon'ble Mr. LAXMAN JHA

: JUDICIAL MEMBER

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? y3
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? y4

Mina Prabhashanker Bhatt,

Add: Vora Sadhna,
Dela Sameni Sheri,
Nagar Chakla,
Uplipar Road,
Bhuj-Kutch.

:: APPLICANT

ADVOCATE

Mr.A.R.Thakkar
Mr.M.S.Trivedi

VERSUS

- 1) Station Director,
All India Radio,
Bhuj.,
Add: Nr.Jubilee Ground,
Opp.Bankers Colony,
Bhuj-Kutch.
- 2) Union of India, Through :
The Secretary,
Information and Boradcasting Dept.,
New Delhi.

:: RESPONDENTS

ADVOCATE

MRS.P.SAFAYA

J U D G M E N T

O.A.No.208/91

DATE: 23-9-1998

PER HON'BLE MR.LAXMAN JHA : JUDICIAL MEMBER

This is an application under section 19

of the Central Administrative Tribunal Act, 1985 (CAT ACT, for short) for quashing and setting aside the termination order dated 31.12.90 of the applicant, as at Annexure A-8, issued by the Respondent No.1, the Station Director, All India Radio, Bhuj- (Kutch).

2. The facts are within the narrow compass. The applicant, Mina P. Bhatt, was appointed as Clerk Grade II, on ad hoc basis after ^{an} ~~the~~ interview in the Office of Respondent No.1, in the pay scale of Rs.260-400/- on 12.3.1981, vide the appointment letter as at Annexure A-1 (wrongly referred as Annexure A). Her services were allowed to be continued even after completion of one year, vide the office order No. BHU-1/(5)/82-S, dated 24.3.1982, as at Annexure A-2 (wrongly referred as Annexure A-1). She worked satisfactorily and enjoyed all benefits attached to her grade till she was terminated from the services on 31.3.1987, as at Annexure A-3 (wrongly referred as Annexure A-2). This termination order, as at Annexure A-3, was challenged before the Bench of this Tribunal, vide the O.A.No.182/87. The Respondents resisted the challenge by filing reply as at Annexure A-4 (wrongly referred as Annexure A-3). The Bench of this Tribunal, vide its order dated 23.4.1990, set aside the termination of the applicant and further directed to reinstate her with

back-wages with liberty to the Respondents to terminate her services as per terms and conditions of the appointment letter or substituting grounds, after notice, as at Annexure A-7 (wrongly referred as Annexure A- 6).

3. It is the further case of the applicant that the then Station Director, the Predecessor of the Respondent No.1, after obtaining permission of the S.S.C. to fill up the vacancy of the Hindi Typist, Grade II, vide the letter as at Annexure A-4, wrote a letter to the Director General, All India Radio, New Delhi, requesting him to accord permission to regularise the services of the applicant as she had already completed 3½ years satisfactory services on ad hoc basis and ~~was~~ possessed the requisite qualification and experience, and also, the permission of the S.S.C. had already been obtained as at Annexure A-6. Accordingly, the Director General, All India Radio, New Delhi, granted ' no objection certificate ' in favour of the applicant according to which her services already stood regularised. ' No objection certificate ' as granted by the Director General is being suppressed by the Respondent No.1. After the order of termination from the services was set aside with the directions to be reinstated with back-

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wages in the aforesaid O.A. No. 182/87, by this Tribunal, the applicant reported for duty on 31-12-90, to the Respondent No.1, who, on the same day, only after five minutes on her joining, terminated her from the services by the order impugned, as at Annexure A/8, stating that her services were terminated as per the terms and conditions mentioned in the appointment letter as at Annexure A/I.

4. Thus, it is the case of the applicant that she continued to work right from 12-3-1981 to 31-12-1990, i.e. for 9 years, as Hindi-Typist, Grade-II, with unblemished record. She was appointed after interview on being sponsored by the Employment Exchange. There was no candidate available at the time of her appointment. The vacancy of the Hindi-typist, Grade-II, still exists and she continued on the post, which had already been regularised in view of the permission as accorded by the S.S.C. and the Director General, All India Radio, New Delhi. Accordingly, prayer is made to set aside the impugned order of her termination from the services and for re-instatement with all consequential reliefs.

5. A counter has been filed by the Station Engineer, in the office of the Respondent No.1, challenging the maintainability of the application on the facts and as well as in law. It is denied that the respondents obtained permission for regular appointment of the applicant, but it is admitted,

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vide Para 5:11 of ^{the} reply, that the permission for her continuance had been obtained, as at Annexure III. It is also denied that the Director General, had granted ' No Objection Certificate ' in favour of the applicant but in this connection, it is said that he had granted ' no objection certificate ' against the post.

6. It is the stand of the Respondents that according to the extant Rules and instructions of the Directorate, the said post of the Hindi Typist, Grade II, could not be filled up by ad hoc appointment. The ad hoc appointee could be regularised only after clearing a special examination for ^{the} purpose. The ad hoc appointee who failed in the special examination conducted on 4.7.1981, 18.12.1983, and in July 1985, were ineligible to be regularised and are liable to be terminated. The applicant failed to clear the special examination upto 1986, and, hence, she was terminated from the services on 31.3.1987. In this view of the matter, the plea of continuing in service for 9 years, and, therefore, she stood regularised is not available to her. Moreover, according to the terms and conditions of the appointment letter as at Annexure A-1, the Respondents have right to terminate her services at any time without giving any notice and without assigning any reason. She has been terminated from the service with the payment of one

month's notice pay, as required under law. The L General, All India Radio, had already passed the for her termination on 25.3.1987, and, accordingly^r was terminated on 31.3.1987. It is denied that she discharged her duty satisfactorily.

7. It is admitted that the applicant was given ad hoc appointment, as per the terms and conditions as at Annexure A-1. Her services were terminated by the order dated 31.3.1987, in terms of the appointment letter. However, this termination order was set aside by the Bench of this Tribunal by the order dated 23.4.1990, passed in O.A.No.182/87, with the following operative order.

" In the facts and circumstances of this case, therefore, we find that there is merit in the petition and the impugned order dated 31.3.1987 is quashed and set aside. The petitioner be reinstated with back-wages. The Respondents are at liberty to terminate the appointment in terms of the appointment letter or on their substituting the petitioner on stating the grounds in the termination order as and when such orders can be legally be passed, after notice. No order as to costs."

However, in the meantime, after the termina-

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tion order dated 31-3-1987, was passed and the same order was set aside by the aforesaid order dated 23-4-1990 in O.A. No. 182/87, an incumbent was appointed by the S.S.C. on the post, and, accordingly, her services were dispensed with, immediately in accordance with the aforesaid order of the Tribunal. The termination of the services of the applicant after selection of the candidate made by the S.S.C. and also, as the selected candidate was available, it was the only course for the Department to dispense with her services in accordance with terms and conditions of the appointment letter after giving one month's notice pay. Hence prayer is made for rejection of the O.A.

8. At the very outset, Mr. Trivedi, the learned counsel for the applicant raised the preliminary objection regarding notice. According to him, prior notice is a sine-qua-non for passing the order of the termination. He contended that the respondents were under legal obligation to issue notice as required by the order of the Tribunal, passed in O.A. No.182/87, as at Annexure A/8, stating/substituting the ground of termination (as extracted above) Admittedly, the Respondents passed the impugned termination order on 31-12-90 on the same day, only after five minutes, of her joining, in violation of the aforesaid order, taking shelter to the conditions of the appointment letter, which had already been negated by the Tribunal in the aforesaid order in O.A. No. 182/87.

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9. On the other hand, the learned counsel for the respondents, Mrs. Safaya, contended that the new incumbent had already been appointed by the S.S.C. and, therefore, as provided under the terms and conditions of the appointment letter, and also, as per the order of the Tribunal the services of the applicant was terminated after one month's notice pay was paid to the applicant. There was no requirement for prior notice in view of the aforesaid available ground as per the terms and conditions of the appointment letter, and also, in view of the order of the Tribunal, passed in O.A. No. 182/87.

9(A) We find from a careful reading of the aforesaid order, as at Annexure A/7, that the respondents were given liberty to terminate the services of the applicant in accordance with the terms and conditions of the appointment letter, or substituted ground, mentioning it in the termination order only after notice (emphasis supplied). Admittedly, in this case, no notice has preceded the impugned termination order. The applicant joined on 31-12-90, in compliance of the order of the Tribunal, and, on the same day, she was terminated on the grounds of the terms and conditions of the appointment letter, as if the

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termination orders were prepared from before hand. This goes to show that the Respondents acted with preconceived and predetermined idea without application of mind to the letter and the spirit of the order in dispensing with the services of the applicant by the order impugned. ^{The Respondents} He seems to have read the letter of the order only to its bitter end and lost the spirit. Accordingly, the contention of the learned counsel for the applicant appears correct and acceptable on this point.

10. Next, rather more important contention advanced by Mr. Trivedi is regarding non-compliance of the provision of section 25 F of the Industrial Disputes Act. He contended that the All India Radio has been held as covered within the meaning of "industry" under section 2 (j) of the I.D. Act, and the non-compliance of the provision under section 25 F of the ^{I.D. Act} Act goes to the root of the impugned termination order. It appears from the impugned order that one month's notice pay has been ordered to be paid, but no retrenchment compensation as required under section 25 F ^{of the I.D. Act} has been paid to the applicant. It is ^a mandatory requirement under the aforesaid provision of the I.D. Act. Mr. Trivedi is fortified in his stand in view of the recent ruling of the

of the Hon'ble Supreme Court, as reported in 1998(3) SCC, 237, Thus, the aforesaid preliminary objections as raised by Mr. Trivedi, must prevail, and, accordingly, the impugned order of termination is held not sustainable on these ^{preliminary} grounds.

11. Now, so far as the merit of the case is concerned, it can be gone into only for academic discussion. The learned counsel for the Respondents strenuously tried to justify the impugned order on the ground that the S.S.C. appointee is already available to be appointed, and, in fact, has been appointed, and, therefore, as per the terms and conditions of the appointment letter, in such an eventuality, the ad hoc appointee must be out. Moreover, she further contended that the applicant has failed to qualify in the special examination held for the purpose, and, therefore, she has rightly been terminated from the service, in view of the directions/orders of the Directorate, and, also, of the Ministry.

12. We have ^{gave} ~~given~~ our anxious consideration to the aforesaid contentions of the Respondents, and, find that none of the pleas is available to them. It is not clearly averred in the reply that the S.S.C. candidate has already been appointed, in the chain of the vacancy caused due to the termina-

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-tion of the applicant. The applicant has seriously challenged this stand and has stated that there is still vacancy of the Hindi Typist, Grade II, in the office of the Respondent No.1. The Respondents have filed annexures to show that the appointment of the clerk, Grade II was made in 1987, and onward in the All India Radio, Bhuj. However, it does not show the actual sanctioned strength of the Hindi Typist, Grade II, and the present position of available vacancy. It is also not clearly averred as to which of the appointees of the S.S.C. has replaced the applicant after her termination, and before her joining as per the directions in the aforesaid O.A.No.182/87. All the more, the matter was subjudice, and, therefore, the plea that the appointment of the Hindi Typist having been made by the S.S.C., the service of the applicant was required to be terminated must be repelled as not tenable. As said above, it appears from Annexure A-5, read with Annexure A-6, that the permission to fill up the vacancy of the Hindi Typist, Grade II, had been obtained from the S.S.C. as far back as on 10.10.1984, and, accordingly, the Director General had also been recommended for approval of her regularisation by the Station Director. Therefore, the plea of the Respondents that the impugned termination order had been passed

due to the appointment of a new incumbent by the S.S.C does not appear available to them.

13. So far as the plea of non-clearing the special examination by the applicant is concerned, this plea had already been taken in the previous O.A. No.182 /87, vide their reply, as at Annexure A-4. This plea could not find favour with the Tribunal. The findings of the Tribunal having not been set aside by the competent court, its conclusion is binding. Moreover, the applicant has been found quite efficient and has been allowed to cross-efficiency bar. There is nothing to doubt about her competency, and she had been recommended for regularisation to the higher authorities. The then Station Director recommended to the Director General for her regularisation, vide letters dated 31.10.1984 and 2.2.1985 respectively stating that she possessed requisite qualification and experience, and, that she had been appointed on ad hoc basis with the permission of the S.S.C., on being sponsored by the Employment Exchange. Accordingly, this plea is also not available to the Respondents.

14. The learned counsel for the applicant forcefully contended that the applicant was engaged

for a long spell of time i.e. to say, for 9 years without break. She discharged her duties to the satisfaction of all concerned. She also acquired more experience and possesses requisite educational qualification. The purpose of the S.S.C. selection is also to see that any qualified candidate is selected. She is now over-age with no hope to get employment elsewhere, she was appointed by the Respondents after proper interview, on being sponsored by the Employment Exchange, as there was no candidate available at that time. In such a situation, she deserves to be regularised in the services as Hindi Typist, Grade II, in view of a ^{Cafexa} ~~heads~~ of rulings of the Hon'ble Supreme Court, the High Courts and the Tribunals. The learned counsel for the applicant relies upon the following rulings in support of his aforesaid contentions and ^{he} appears quite fortified.

(I) Ram Swaroop Vs. State of Haryana, AIR 1978 SC 1536, It was held by the Hon'ble Supreme Court that the petitioner who completed experience of requisite number of years on the post of Labour-Cum-conciliation officer, his appointment on the post should be deemed to have been regularised.

(II) Dharwad District P.W.D. Employee Association Vs. State of Karnataka, AIR 1990 SC 883, The Hon'ble

Supreme Court in this case ordered regularisation of services of the casual and daily rated employees who completed 10 years of services.

(III) State of Haryana Vs. Piara Singh, AIR 1992 SC 2130, wherein the Hon'ble Supreme Court has laid down that if any ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the Rules and service record is satisfactory, and the appointment does not run counter to the reservation policy of the State. The applicant in the instant case fully satisfies the aforesaid conditions for regularisation.

(IV) Santosh Yadav Vs. State of Haryana and ors. reported in 389, Swamy's CL Digest, 1996/2, SC 569,, the Hon'ble Supreme Court held that the termination after 10 years of service as teacher on the ground that the teachers' training diploma certificate from the other State was not recognised by the Haryana Government was not justified. As said above, it is one of the pleas of the Respondents that the applicant did not clear the special examination for the purpose as said above, but she continued on the post for a long spell of 9 years without any complaint against her efficiency and competency and possesses requisite qualifications.

(V) Guru Charan Sahoo Vs. C.M.D., 1995(1) L.L.J. 707. The Orissa High Court held that employee working for more than 9 years, as Nominal Muster Roll is entitled to regularisation even though not having prescribed educational qualifications and long experience is sufficient for regularisation.

(VI) Mool Raj Upadhyaya Vs. State of Haryana 1994 (3) J T 453. The daily wage muster roll workers having completed 10 years of services were ordered to be regularised and to be given pay scale of regular employee with all other benefits available to the corresponding posts.

(VII) The Jaipur Bench of the CAT, in its decision dated 21.10.1994, in O.A.No.838/89, exactly on the same facts and circumstances as are obtaining in the instant case, discussing the various rulings on the points, ordered for regularisation of the incumbent who had been appointed on ad hoc basis, on being duly sponsored by the Employment Exchange, and had continued on the post for a long spell of time.

(VIII) In the case of Veterinary Officer Vs. Rajendra Singh Jhala, reported in 1998 (1) XXXIX, GLR 110, the Gujarat High Court held that the

termination of ad-hoc or temporary employee who continued for about 4 years, and his services not found unsatisfactory, could not be discharged from the services without fulfilling conditions of valid retrenchment.

(IX) In the case of Ms. Bharati M. Vora and D.M. Bhat VS Union of India and Others, Hon'ble Supreme Court in Writ Petition No. 937 and 940 of 1989, held the termination of ^{incumbent} temporary employee, with break in service of one or two days in between and ultimately their services were terminated is illegal and pleased to allow regularisation.

15. In view of the aforesaid discussion of the factual and legal aspects of the matter, we find that the order impugned as at Annexure A/8, is not sustainable. It is, accordingly, quashed and set-aside. The Respondents are directed to reinstate the applicant forthwith on receipt of a copy of the order. The Respondents shall make an enquiry as to whether the applicant was gainfully employed during the period ~~he~~ was out of service and accordingly adjust the payment of back-wages. This exercise should be completed within three (3) months. Intervening period shall count for continuity ~~in~~ service. No order as to costs.

Laxman Jha
(Laxman Jha)
Member (J)

Radhakrishnan
(V. Radhakrishnan)
Member (A)

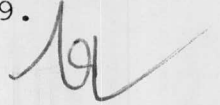
DATE DAILY	OFFICE REPORT	ORDER
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22.12.98

Notice issued
on 24.12.98
RMO awaiting
21.12.99

Heard Mrs.Davawala, learned counsel for
the respondents.

Notice returnable on 13.1.1999.



(V. Radhakrishnan)
Member (A)

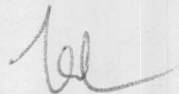
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13-1-99

At the request of Mr. Trivedi,
adjourned to 29-1-99.



(P.C. Kannan)
Member (J)



(V. Radhakrishnan)
Member (A)

Pt

DATE	OFFICE REPORT	O R D E R
22.12.98		<p>Heard Mrs.Davawala,learned counsel for the respondents.</p> <p>Notice returnable on 13.1.1999.</p> <p>(V.Radhakrishnan) Member(A)</p>
13-1-99		<p>aab</p> <p>At the request of Mr. Trivedi, adjourned to 29-1-99.</p> <p>(P.C. Kannan) Member(J)</p> <p>(V.Radhakrishnan) Member (A)</p>
		Pt

DATE	OFFICE REPORT	O R D E R
29-1-99		<p data-bbox="873 311 1105 355"><u>MA/845/98 :-</u></p> <p data-bbox="792 427 1602 723">Heard Ms. Davawala. Extension of time prayed for in MA/845/98 is not convincing, hence M.A. dismissed. The respondents may take necessary action to implement the judgement.</p> <p data-bbox="1166 814 1485 883">(V. Radhakrishnan) Member (A)</p> <p data-bbox="662 947 699 981">Pt</p>

DATE

OFFICE REPORT

O R D E R

29-1-99

MA/845/98 :-

Heard Ms. Davawala. Extension of time prayed for in MA/845/98 is not convincing, hence M.A. dismissed. The respondents may take necessary action to implement the judgement.

(V. Radhakrishnan)
Member (A)

Pt