

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. 203 of 1992 & OA/260/92

DATE OF DECISION :29.10.99

Mr. Patel Hintendrakumar Motilal : Petitioner [s]

Mr. M.S. Trivedi : Advocate for the petitioner [s]

Versus

Union of India & ors Respondent [s]

Mr. B.N. Doctor Advocate for the Respondent [s]

CORAM

THE HON'BLE MR. V. RADHAKRISHNAN : MEMER (A)

THE HON'BLE MR A.S. SANGHAVI : MEMBER [J]

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? ~
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 ? ~

Patel Hintendrakumar Motilal,
265, Near Kocharab Mota Rohit Vas,
Near Ramji Mandir,
Ellisbridge,
Ahmedabad.
(Advocate : Mr. M.S. Trivedi)

: Applicant.

VERSUS

1. Union of India,
to be served through
Secretary,
Ministry of Information and Broadcasting,
Sanchar Bhavan,
New Delhi.

2. Station Director,
All India Radio,
Ashram Road,
Ahmedabad.

: Respondents.

(Advocate : Mr. B.N. Doctor)

Date : 29.10.99

JUDGEMENT

O.A. NO. 203 OF 1992 & OA/260/92

PER : HON'BLE MR. A.S. SANGHAVI : MEMBER (J)

Heard Mr. Trivedi, for the applicant and Mr. B.N. Doctor, for the respondents in both the O.As.. Both these O.As are filed by the same applicant Mr. Hintendrakumar Motilal Patel and since O.A./260/92 depends on the decision of the O.A./203/92, both are consolidated and are heard together and they are being disposed of, by this common judgement.

2. O.A./203/92 is filed by the applicant challenging his termination from the service and praying for re-instatement in the service with full back-wages, while in the O.A./260/92, the applicant has prayed for a declaration that his

appointment was a continuous one and therefore, he was entitled to be regularised in the service with all consequential benefits.

3. The applicant was appointed as a clerk Gr.II (Hindi Typist) on 5.10.91. After his name was forwarded by the employment exchange, his being successful in written test, he was given appointment for a period of three months and the same had been continued thereafter. According to the applicant, his services were terminated by artificial breaks and after each termination, he was immediately given appointment order on the next date and as such he was continued in the service till 24.4.92, when he was orally informed that his services were being terminated. Prior to the termination of his service, no notice was given to the applicant and he is also sought to be replaced by respondent No.3 without any substantial reasons. The applicant has contended that he was a regular appointee and was appointed through proper channel and he had even cleared written and oral test and the typing test and in spite of the fact that two other vacancies of Hindi typists were still there, his services were summarily terminated. He has contended that termination of his service was illegal, arbitrary, and against the provisions of law. He has also made grievance in O.A./260/92 that though he was continuously working from the date of his appointment, and his appointment was regular one, a show was made by the respondents, that his service were adhoc by giving artificial breaks after three months. This artificial break was against all norms of the service and had no effect, whatsoever, so far, the continuity of his service was concerned. He was,

therefore, entitled to regularisation of his service, as he had worked for more than 240 days. He has therefore prayed that his service be considered as regular one and he be regularised in the service with all consequential benefits.

4. The respondents have resisted these O.As and in their reply have contended interalia that the applicant was appointed purely on adhoc basis and his service were liable to be terminated at any time without giving a notice. It is also contended that this post of Hindi typist is required to be filled by a regularly selected person through the Staff Selection Commission and since no such regularly selected person was available, the applicant was appointed to hold the post in question purely on adhoc and provisional basis and it was made to understand to the applicant that his service were liable to be terminated at any time without giving any notice. Now that regularly selected candidate by the Staff selection Commission, i.e. the respondent No.3, is available, the services of the applicant were no more required. Hence, the same were terminated. It is further contended by the respondents that the applicant has no enforceable right on the post of the Hindi Typist and no question of illegal termination of his service arises as his posting was merely on the basis of stop gap arrangement on adhoc basis. The respondents have also denied that two posts in the Hindi typists are vacant and that the applicant could be accommodated in one of these posts. They have also denied that his services were brought to end by giving artificial breaks and that the applicant was entitled to be regularised in the service.

5. We have heard learned advocates for both the parties and have also carefully gone through the documents produced. There is no dispute that the applicant's name had been forwarded through employment exchange for the post of Hindi typist, clerk Gr.II and that the respondents had appointed the applicant on dated 5.10.91 to this post on *ad hoc* and provisional basis. The appointment order dated 5.10.91 (Annexure A) to the post of clerk Grade-II (Hindi typist) showed that it was made purely on *ad hoc* and provisional basis and that it was made clear that this appointment did not confer any right for seniority etc in the pay scale of Rs. 950-1500. It is also stated in the appointment order that the appointment is purely on *ad hoc* and temporary basis and the appointment authority reserves the right to terminate the service forthwith without any notice or reason at anytime. It is therefore quite obvious that the appointment of the applicant was not on regular basis and the applicant was appointed purely on temporary and provisional basis and the appointment therefore does not confer any enforceable right on this post to the applicant. It is not in dispute that the appointment to the post of clerk Gr.II, Hindi Typist, is to be made by the person selected by the Staff Selection Commission and that the applicant had not been selected by the Staff Selection Commission. The respondents have contended that subsequently, the candidate selected by the Staff selection Commission, that is the respondent No.3 was available for the appointment to the post of clerk Grade-II and therefore, the services of the applicant were terminated. The respondents have also denied that other post of clerk Gr.II is lying vacant. It is

evident from the averment of the applicant that he was aware of the facts that his post of clerk Gr. II was required to be filled up by the candidate selected by S.S.C. and he himself had appeared in the examination conducted by the S.S.C on 12.4.92. The applicant, therefore, now can not be heard to make a grievance that his services were arbitrarily and illegally terminated by the respondents. The applicant himself were know that his appointment to the post of clerk Gr. II was on temporary and adhoc basis and liable to be terminated at any time on the regularly selected candidate being available, and that no right was created on this post in his favour as his appointment was adhoc and purely temporary appointment. Since the termination of the applicant was because of the availability of the regularly selected candidate, the same can not be held to be illegal or arbitrary and can not be set aside.

6. In the case of Mr. A.K.Sharma Vs UOI reported in AIR 1999, Supreme Court 897, adhoc promotion were given to the post of Law Assistant in exigencies of service Their claim for regularisation was dismissed by the Supreme Court since, they were not selected nor empanelled for regular promotion which was requirement under the relevant rules. In the case of Banumati Tapubhai Muliya Vs State of Gujarat reported in 1996 (1) GLR-54, it is laid down by the Gujarat High Court that the person appointed on temporary basis, has no right to continue in the service.

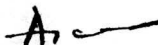
7. In view of these decisions and also for the reasons discussed above, since, the appointment of the applicant was purely on adhoc and temporary


basis, the applicant had no enforceable right to the appointment in question and can not claim that his services were terminated illegally and unlawfully. He therefore can not claim that he should be re-instated with full back-wages. So far the provisions of section-25F of the Industrial Dispute Act, referred to, by the applicant are concerned, this Tribunal can not enter into the question regarding the applicability of these provisions to the facts of the instant case, as the Tribunal has no jurisdiction in entertaining such questions. We have therefore no hesitation in concluding that the service of the applicant were not illegally and unlawfully terminated and that the applicant is not entitled to claim reinstatement in the service with back-wages. O.A. No. 203/92 therefore deserves to be dismissed.

8. Since, the applicant is not entitled to be re-instated in service and his service are held to be terminated legally and properly, the question of regularisation of his service does not arise as he was not in service on the date on which O.A/260/92 was filed. Mr. Trivedi, learned advocate for the applicant has relied upon the decisions of this Tribunal in OA/208/91 and in OA/744/94 as well as decision of the Supreme Court reported in 1998, Supreme Court cases 731, but these decisions have absolutely no application to the facts of the instant case, as there is no service of the applicant which requires to be regularised. This is also not a case, wherein, the applicant had put in long period of service. He was appointed on dated 5.10.91 and his service are terminated on dated 3.1.92. It is therefore quite obvious that he has not worked even for a year in this post and

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therefore, can not claim creation of any right on this post. No question of regularisation in the service, therefore, arises, and we find that both these OAs are devoid of any merits. In the conclusion, we dismiss both the OAs bearing No. 203/92 and OA/260/92 with no order as to costs.


(A.S. Sanghavi)
Member (J)


(V. Radhakrishnan)
Member (A)

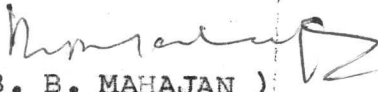
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ice Report

Order

Present : Mr. J. J. Yadav, learned counsel
for the applicant.
Mr. Akil Kureshi learned Counsel
for the respondents.

Learned counsel Mr. J. J. Yadav
for the applicant wants to file rejoinder up to
18th June, 1992. Registry to put up the case
on 18th June, 1992.


(B. B. MAHAJAN)
Member (A)


(D. L. MEHTA)
Vice Chairman


AIT

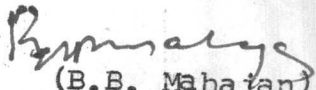
Mr. Yadav learned advocate for the applicant
has filed rejoinder with a copy to give to
learned counsel Mr. Akil Kureshi for the responde-
nts. Mr. Akil Kureshi learned counsel for the
respondents is present.

(R.C. Bhatt)
Member (J)

(B.B. Mahajan)
Member (A)

Heard counsel for the parties. In view of the
statement in the reply filed by the respondents
that no other post of Hindi Typist is ^{vacant} vacated
in the establishment ^{selected} in respondent No. 1 and 3
has been regular selection by the Staff Selection
Commission, the ad interim stay order granted on
24.4.92 is vacated. The case may be fixed for F.H.
Applicant prays ^{stay of this order for 2 weeks for filing} for appeal to file in Hon'ble
Supreme Court. Prayer is rejected.


(R.C. Bhatt)
Member (J)


(B.B. Mahajan)
Member (A)