

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.170/2004

Date of decision: 8-2-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

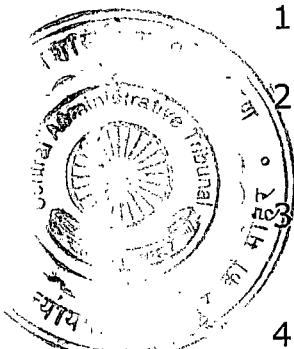
Hon'ble Dr. K.S.Sugathan, Administrative Member.

Ponnachan Kunju G, s/o Shri Jeorge K. age 41 years r/o 18, Panna Vihar Colony, New Bhupalpura, Udaipur (Raj) official Address Stenographer in the office of Project Director, PIU 6 Meera Marg, Sardarpura, Udaipur (Raj.)

: applicant.

Rep. By Mr. Kamal Dave ; Counsel for the applicant.

Versus



1. Union of India through the Secretary, Ministry of Road, Transport and Highways, New Delhi.
2. National Highways Authority of India, through its Chairman, Road Transport and Highways Ministry G-5 and 6 sector 10 Dwarka, New Delhi 110 075.
3. Manager Administration I, National Highways Authority of India, Road Transport and Highways Ministry G-5 and 6 sector 10- Dwarka, New Delhi 110 075.
4. Project Director, National Highways Authority of India, Project Implementation Unit (PIU), 6 Meera Marg, Sardarpura, Udaipur (Rajasthan)
5. Jitendra Kumar, House No. 36, Sidharth Nagar, Post Office Jangpura, New Delhi 110 014.

: Respondents.

Rep. By Mr. Rajesh Joshi : Counsel for respondents 2 to 4
None present for R.1 and R.5

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member

Applicant Ponnachan Kunju G. who was appointed as Stenographer/PA, in National Highways Authority of India, on contract basis has preferred this O.A for grant of following reliefs:

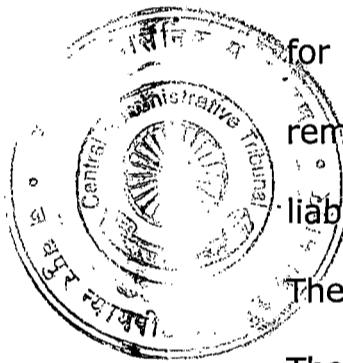
- a) That the impugned order dated 19.04.2004 and 21.06.2004, Annex. A/1 and Annex. A/2 may be quashed and set aside and the respondents may be directed not to terminate applicant's services.

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- b) That the respondents may be restrained to substitute another contract employee by terminating applicant's services of same nature.
- c) That respondent may be directed to regularize the service of the applicant or in alternate continue applicant till continuity of project with all admissible salary and benefits as allowed to other contract employee.
- d) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.
- e) Costs of the application may kindly be awarded in favour of the applicant.

2. The brief facts of the case are that in compliance of an advertisement issued by the 3rd respondent dated 14.10.2001, the applicant applied for the post of Stenographer in the department of National Highways Authority of India (NHAI for short) and he was selected for the said post. The applicant was issued offer of appointment dated 11.11.2001 as Stenographer/PA on contract basis for a period of 90 days from the date of joining on a consolidated remuneration of Rs.3000/- with a stipulation that his services are liable to be terminated at any time without assigning any reason.

The said offer of appointment is annexed with O.A as Annex. A/3. The applicant joined the post on 13.11.2001. On representation made by the applicant, his salary was revised and he was allowed consolidated pay Rs. 6300/- + 10% P.F. The applicant continued to serve even after 90 days of contract without any break and according to the applicant he is continuing till date although no formal order was issued in this regard. Further case of the applicant is that the respondent department again advertised the post on contract basis in November 2003 and in furtherance of the said advertisement respondent no. 5 was appointed as English Stenographer vide order dated 19.04.2004 on contract basis initially for a period of two years or co terminus with the project whichever is earlier. The said order of



[Signature]

appointment of respondent No. 5 and letter dated 21.06.2004 granting extension of time for joining are under challenge, which are Annex. A/1 and A/2 respectively.

3. The contention of the applicant is that the appointment of the applicant was an adhoc appointment and he can be replaced by ~~a person who has been regularly selected and not by~~ another adhoc appointee.

4. On filing of application, notices were issued to the respondents and in compliance of the notices, respondents 2 to 4 appeared through counsel and filed their reply. However, none appeared for respondents 1 and 5 in spite of service of notices. In the reply, it has been stated that the appointment of the applicant was on adhoc basis as the applicant had requisite qualifications and experience as per NHAI's requirement except in respect of age limit. It has been further contended that the respondent authorities have rightly exercised their power to appoint respondent No. 5 on adhoc basis in place of the applicant as the applicant had crossed the age limit. On the basis of above averments, they have prayed for dismissal of the O.A

5. During course of the argument, learned counsel of the applicant produced an order of the Principal Bench dated 10.01.2000 passed in M.A.No. 2888/1999 and O.A. No. 2622/1999 [**Jitendra Kumar vs. Secretary, National Commission for Scheduled Castes and Scheduled Tribes** and submitted that the present case is fully

covered by the above mentioned order. He has also placed reliance upon the decision of the Apex Court in the case of **State of Haryana vs. Piara Singh and ors.** [1992 SCC (L&S)825] and the decision of the Hon'ble High Court of Rajasthan, in the case of **Mrs. Anita Kothari etc etc vs. State of Rajasthan and ors.** [RLR 1990 (1) 87].

6. We have carefully perused the above decisions. We are of the view that the instant case is fully covered by the decision of the Principal Bench rendered in the case of **Jitendra Kumar** (supra) in which the issue was whether an adhoc appointee can be replaced by another adhoc appointee. The Principal Bench took the view that the services of the applicant therein will not be terminated by appointing another candidate on adhoc basis and the proper course for the respondents is to take steps for appointing a regularly selected candidate and replace the applicant by a regularly selected candidate. Although the facts of the case of **Mrs. Anita Kothari and ors.** (supra) are not similar but in that case also the Hon'ble Judges of the Rajasthan high Court took the view that the writ petitioners who were appointed on adhoc basis should be allowed to continue in service till regularly selected candidates become available from RPSC. The respondents have not produced any decision taking contrary view to the decision stated above.

7. As regards the contention of the respondents that the applicant was not selected second time because of the fact that he had become

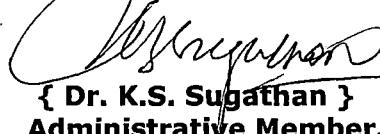
verage, we are of the view that this plea is not available to the respondents at this stage as they have already waived this disability.

8. We are satisfied that the applicant who was appointed on adhoc basis and still continuing on his post have got very good case in his favour and as per settled principle he cannot be replaced by another adhoc appointee.

9. Accordingly, this O.A is allowed and Annex. A/1 dated 19.04.2004 and Annex. A/2 dated 21.06.2004 are hereby quashed and set aside. The respondents are restrained from terminating the adhoc services of the applicant by another adhoc appointee.

10. So far as the prayer of the applicant for regularization is concerned we are of the view that no such order can be passed in this O.A as the services of the applicant is purely adhoc.

11. In the facts and circumstances of this case there will be no order as to costs.


 { Dr. K.S. Sugathan }
 Administrative Member.

jsv


 { Justice S.M.M. Alam }
 Judicial Member.

R/C
2/100/2 10/2

~~Dear~~

Dr Rajesh Jethwa

दिनांक 17/12/15 के आदेशानुसार
मेरी उत्तिष्ठति में दिनांक 9/11/6
को भाग-III का III काल किए गए।

लक्ष्मीनाथ दास
केन्द्रीय इसायन कालिकरण
जोधपुर ज्यादातों, राजस्थान