

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 258 of 1990
T. A. No.

DATE OF DECISION 14-8-1991

Suresh N _____ Applicant (s).

M/s Mathai M Paikeday,
P Mohanan & MJ Nelson _____ Advocate for the Applicant (s)

Versus

Director, National Environmental Engineering Research Institute, Nagpur & another _____ Respondent (s)

M/s MC San & AVM Salahudeen _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, 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. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

In this application dated 26.3.1990, the applicant

Shri Suresh N has prayed for the following reliefs:

- i) "To direct the respondents to reinstate the applicant in the post of Store Keeper held by him till 31.1.1990 with continuity of service and benefits due as if he was in continuous service,
- ii) To direct the respondents to consider and dispose of his application(Annexure-V) on merits, and
- iii) To grant such other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of this case."

2. The facts in brief are as follows. The applicant, a

First Class Graduate in Science with typewriting English Higher grade qualification was engaged on contract to work as Store Keeper on a monthly consolidated remuneration of Rs.700/- u.s.p.

3.8.1988. This contract was initially for a period of six months upto 31.3.1989. On expiry of the period after a short break, the contract was renewed. In that manner upto 31.1.1990, the applicant had served the respondents for 503 days in the aggregate. The last contract was executed on 10.8.1989 for a period of six months. In response to the office memorandum dated 9.1.1990 inviting applications for filling up the post of Store/Purchase Assistants, the applicant submitted application through proper channel. In response to a telegraphic message from the first respondent calling for names and details of employees, the second respondent had while furnishing the details omitted to include the name and particulars of the applicant, but later on by letter dated 27.6.1989, the second respondent had sent Annexure-IV letter stating that as on 1.4.1989 the applicant had completed 206 days of work with the respondents. While so, on 31.1.1990 the services of the applicant were terminated and the contract was not extended thereafter. The applicant on 5.3.1990 made a representation to the first respondent claiming that he had been continuously working as Store Keeper, with the respondents from 3.8.1988, that from 31.1.1990 onwards he was not allowed to join duty and requesting that orders may be issued to absorb him in the post of Store Keeper in the Cochin office. The applicant has filed this application stating that he has been orally informed that his representation had been turned down and that as the termination of his services after it

continued for 503 days abruptly on 31.1.1990 being illegal, he may be directed to be reinstated in service with back wages and that the respondents may be directed to dispose of the application at Annexure-V submitted by him on merits.

3. The respondents in their reply statement have contended that the applicant was engaged on contract basis for specific terms to do certain work in connection with a Project entrusted with them by the Hon'ble High Court of Kerala as per orders in O.P.6041/81, that the work was in noway connected with the regular service of the respondents, that on completion of the work in terms of the contract the ~~service of~~ ^{service} of the applicant was terminated on 31.1.1990 and that as the applicant was not an employee under the respondents either provisionally or casually, he has no right to claim reinstatement or for consideration for appointment as Store Assistant as averred by him in his application at Annexure-V as only persons who are in the regular service of the respondents are entitled to be considered for appointment as Store/Purchase Assistants Grade-VII in terms of the office memorandum at Annexure-II. They have further contended that as the termination of the services of the applicant was on completion of the project work in terms of Clause(b)(b) of Section 2-a-a of the Industrial Disputes Act, the termination does not amount to retrenchment. According to the respondents, the applicant is not entitled to any relief as prayed for by him.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the pleadings and

the documents produced. The case of the applicant is that though he was originally engaged by the respondents for a term of six months from 3.8.1988 as he was continuously engaged with intermittent breaks for a total period 503 days, he had acquired a right to continue in service and that the termination of his services without complying with the provisions of the I.D.Act is illegal and unjustified. The respondents contend that though the applicant was initially engaged on contract basis for six months, as the project entrusted with the respondents by the Hon'ble High Court could not be completed within that period, he was again engaged for different spells under different contracts, that the last engagement was terminated in terms of the last contract entered into between the applicant and the respondents and that the termination comes within the category mentioned in Clause(b)(b) of Section 2-o-o of the I.D.Act. Even according to the applicant, the engagement was for definite terms by independent instruments of contract executed between him and the respondents. Annexure-I is a copy of the last contract executed between the applicant and the respondents. The period stipulated in this contract was for a period of six months w.e.f. 10.8.1989. But it appears that there is an error in the date mentioned in the contract because in the second paragraph, it is ^{seen} stated as follows:

"WHEREAS the NEERI is desirous of entrusting the work of contract for the skilled jobs to be done in NEERI ZONAL LABORATORY, COCHIN on a lumpsum basis for a period of 6 months w.e.f. 10.8.1989 to 10.1.1990 at Rs.700/- per month(fixed) for 8 hours per day i.e. from 9 a.m. to 5.30 p.m. in NEERI, COCHIN as detailed hereinafter."

The period of six months from 10.8.1989 would expire only on the date 10.2.1990. So 10.1.1990 obviously must have been a mistake.

The respondents have along with an additional reply statement produced Annexure-D, a copy of the Annexure-I agreement signed by the applicant. In this document, the date 10.1.1990 as seen in Annexure-I is seen corrected to 10.2.1990. Since the periods stipulated is six months from 10.8.1989, the date 10.1.1990 in Annexure-I is obviously a mistake. Clause(s) of Annexure-I provides that the contract would be terminated by the Director, NEERI at any time without notice and without assigning any reason. Annexure-A produced along with the reply statement of the respondents is a copy of the Hon'ble High Court of Kerala in CMP-21960/81 in OP-6041/81. A perusal of this order would make it clear that the NEERI was reluctant to take up the project on the ground that it did not have sufficient number of staff and the resources to undertake the project and that the Hon'ble High Court has directed the NEERI to undertake the project in public interest. That the applicant was engaged by the respondents in connection with the execution of the project work entrusted by the Hon'ble High Court is evident from Annexure-IV produced by the applicant. In this communication written by Shri CSG Rao, a Scientist it has been stated as follows:

"...Shri Suresh had also worked as Store Keeper on the Kerala High Court Project in the previous sanction with effect from 3rd August 1988 to March 31st 1989."

Annexure-E produced along with the additional reply statement by the respondents is a copy of the telegram received by the

Scientist and Head, NEERI Zonal Laboratory, Cochin from the headquarters informing him that the Director approved engagement on contract Science Graduate, Store Keeper and Driver. Annexure-F also is a Telex Message from Director by Dr.KI Pandit of NEERI to Mr CSG Rao informing him that Director has approved engagement of contract Science Graduate, Store Keeper and Driver. It is seen from this document that this engagement was in connection with the High Court Project. Annexures-B & C shows that funds were provided for payment of remuneration to Store Keepers at the rate of 700/- per month under the contract for different periods and that the funds were debited to the funds of Project of High Court of Kerala. From these documents, it is evident that the applicant was engaged specifically in connection with a project work undertaken by the NEERI at the command of the Hon'ble High Court of Kerala, that the work was totally unconnected with the regular work of the establishment, that the applicant was engaged for different periods under separate contracts and that his services were terminated on 31.1.1990 within the period of contract entered into by the applicant and the respondents for a period of six months commencing from 10.8.1989. As the termination of service was on completion of the project work for which the applicant was specifically engaged within the period stipulated in the contract as per Sub Section(b)(b) of Section 2-a-a of the I.D.Act, the termination of services of the applicant does not amount to retrenchment. Therefore, we find that the claim of the applicant that the termination of

his services after a period of 503 days of engagement amounts to illegal retrenchment has no merit.

5. The applicant has made an application for the post of Store/Purchase Assistant Grade-VII, a copy of this application is at Annexure-V. He has submitted this application pursuant to the memo at Annexure-II, a copy of which was marked to him with an endorsement that he might apply if he was interested. The memo reads as follows:

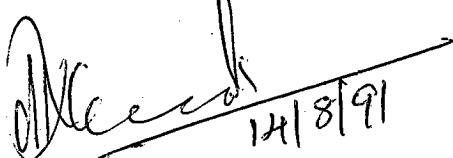
"It is proposed to fill up one post of Store/Purchase Asstt. Gr.VII in the scale of Rs.975-25-1150-EB-30-1540 at this Institute. Departmental Candidates (Regular employees of NEERI) possessing minimum educational qualification of Matriculation or its equivalent and typing speed of 30 wpm and having some experience in Store/Purchase line are eligible for this post. Departmental candidates possessing the above qualifications and who are interested is being considered for this post are requested to submit their willingness to P&V Section by 22.1.1990 positively. Candidates will have to qualify competitive test in typewriting at the minimum speed of 30 words per minute. The candidates who qualify the test will be interviewed by the duly constituted Selection Committee for selection to the above post. The selected candidate will have to give an undertaking to the effect that ^{on the basis of his old cadre/post} he is holding at present. His promotion confirmation etc. will be considered in Stores Purchase cadre only as and when his turn comes."

He will not claim any promotion or other benefit

Though by the Cochin Zonal office, a copy of this was given to the applicant stating that he ^{might} apply if he was interested that did not make the applicant eligible to apply for the post, because he was not a regular employee of NEERI. Only regular employees of NEERI are entitled to be considered for this post even as per Annexure-II. As the applicant was only a person engaged on contract in connection a project work undertaken by the NEERI and as he had been discharged by expiry of period of contract, he is not entitled to apply for selection to the post

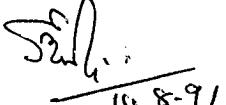
of Store/Purchase Assistant in terms of the Annexure-II memorandum. Therefore, he is not entitled to get an order directing the respondents to dispose of his application at Annexure-V.

6. In the result, in view of what is stated in the foregoing paragraph, finding no merit in the application, we dismiss the same without any order as to costs.


(AV HARIDASAN)

JUDICIAL MEMBER

14/8/91


(SP MUKERJI)

VICE CHAIRMAN

14-8-1991

trs