

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

409/ 1989

DATE OF DECISION 29.6.90

P.C. Jay Applicant (s)

Shri K. Krishnankutty Menon Advocate for the Applicant (s)

Versus

Union of India represented by its Secretary, Defence Department, New Delhi and 2 others Respondent (s)

Shri V. Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. MUKERJI, VICE CHAIRMAN

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The Hon'ble Mr. N.DHARMADAN, 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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant who worked as Fireman Grade II under the second respondent on the basis of selection through the Employment Exchange now approached this Tribunal after a long lapse of time with the grievance that his services were terminated with effect from 31.3.83 in an illegal manner without any notice or following the procedural formalities for a valid and legal termination of the services of an employee.

2. As per Annexure-B certificate produced by the applicant he has worked under the second respondent, Flag Officer, Commanding-in-Chief, Southern Naval Command, Cochin during the following

periods as Fireman Grade II on a casual basis:-

- a) 03 May 82 to 02 Aug 82
- b) 05 Aug 82 to 04 Nov 82
- c) 08 Nov 82 to 04 Feb 83
- d) 07 Feb 83 to 30 Mar 83

3. While working as such he was told by the superior officer on 30.3.83 that his services are not required by the Defence Fire Force and he need not report for duty from 31.3.83 onwards. According to him, all other persons selected to the post of Fireman Grade II who are juniors to the applicant are even now allowed to continue in service. He submitted repeated representations to various authorities from 15.6.83 onwards. Annexures-E, F & I are some of his representations. Since the representations have not been considered by the respondents, the applicant filed this Original Application.

4. The respondents' definite stand in the counter affidavit is that the applicant was only selected provisionally through the Employment Exchange for the post of Fireman Grade II and placed in the waiting list after giving due intimation to him under Annexure-A dated 4th November, 1981. He was also appointed provisionally in short-term vacancies which arose in the department under the second respondent. His appointment was purely on casual basis for specific periods and after the expiry of the period of his last appointment on 30.3.83 he was not given any further appointment order,

because on verification of his character and antecedents he was found to be a person not fit enough for a regular appointment in the Defence Service. He was never employed as a member of Naval Force or any other Armed Force under the first respondent. The service under the respondents is so sensitive and secret in nature, that only persons of good character and antecedents alone could be appointed in regular posts. According to the respondents, the applicant has also furnished some false information in the attestation form. The respondents are not in a position to confirm the receipt of Annexure-E representation alleged to have been sent by the applicant on 15th June, 1983. But they have stated that it was not received in the office. However his representation Annexure-F submitted to the Prime Minister was disposed of as per Naval Headquarters letter No.CP/(SC)/4606 dated 26th February, 1987.

5. The applicant has not challenged the aforesaid letter of the Naval Headquarters disposing of his representation. In fact he has suppressed this fact in this application and approached this Tribunal with the allegations that all his representations sent from 1983 onwards are even now pending the consideration. This application is liable to be dismissed on the sole ground of non-disclosure of the all relevant details.

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6. The learned counsel for the applicant, Shri K. Krishnankutty Menon, submitted that the applicant's appointment was to a post of Fireman Grade II having a scale of pay and it is not a casual engagement for a specific term as alleged by the respondents in the counter affidavit. Hence the applicant is entitled to regularisation especially in view of the fact that his juniors are even now allowed to continue in service. His contention that the applicant was appointed to a specific post after proper verification of his character and antecedents and satisfying that he is a fit person for appointment. This argument is not supported by any documents. No such verification of character and antecedents of an employee would normally be made by the department when casual appointments are made for specified terms. He has not even produced the appointment order which according to the applicant was surrendered to the respondents at the time of his joining duty. If this is correct he could have obtained a copy of it from the office and produced it for our perusal. But he has produced Annexure-B certificate obtained from the officer-in-charge of INS, Garuda, Cochin, which shows that his appointment was on casual basis for specified periods. The applicant has admitted in Annexure-E representation

alleged to have been sent by him on 15th June, 1983, that he has been employed as Fireman Grade II in INS, Garuda from 4th May 1982 to 30th March 1983 with occasional breaks of one day each after serving every three months.

7. Ext R.5 produced along with the counter affidavit filed by the respondents on 22.6.90 only supports the fact that the appointment of the applicant was only a casual one. It states that the applicant's appointment as Fireman Grade II(casual) in INS, Garuda on a pay of Rs.200/- per month plus allowances as admissible from time to time for different periods, from 3 May 82 to 2 Aug 82, from 5th August 82 to 4 Nov 82, from 8th Nov 82 to 4th Feb 83 and from 7th Feb 83 to 30 Mar 83, are only on temporary basis as a casual employee. From the available documents we can only come to the conclusion that the engagement of the applicant was only casual in nature even though his appointment was to a post of Fireman Grade II. It is also seen from Annexure R-5 that no further extension or fresh appointment was issued to the applicant after the expiry of the period of his last engagement from 7th February 1983 to 30th March 1983.

8. There is no substance in the argument of the learned counsel that his juniors are allowed to continue in service. Though the applicant has stated in the application that a 'dozen other persons were employed in the same post under similar and identical terms and conditions of the applicant' are even now allowed

to continue by the respondents, he has not produced any evidence to substantiate this contention.

He has not furnished the names or other details of the juniors alleged to have been continued in service. Hence the applicant has failed to establish his case of discrimination.

9. The next contention of the applicant is that his termination on the ground that he is unsuitable and there is suppression of information is casting stigma on him and it is illegal. From the documents available in this case there is evidence about the suppression of information pertaining to the criminal cases pending against the applicant. The posts in Defence Service are of special nature and persons having utmost integrity and good character alone could be posted in the posts in this service. So some sort of screening is permissible in this department. No weight can be given to the arguments of the learned counsel in this behalf because the applicant was only appointed as a casual employee in short term vacancies. He was not able to produce any materials to show that he worked for 240 days in twelve calendar months.

10. The specific question raised by the applicant is covered by a judgment of this Tribunal in TAK 226/87

produced as Ext R-3 along with the counter affidavit.

Considering more or less a similar case, the Tribunal held as follows:-

" The respondents have clearly stated in the reply that the applicant was not given fresh engagement as he was not found to be a fit person for employment in Defence Services. This is a case of refusal on the part of the respondents to give engagement to the applicant. As such the principles governing the termination of service of an employee continuing in service, on the ground of unfitness, do not apply. The engagement though it be only to a casual post is within the Southern Naval Command and as such if the respondents have found that the applicant is not a fit person to be given access to the precincts, they cannot be faulted in not giving him engagement any further. Merely because certain others who were engaged along with the applicant were given fresh engagements it cannot be said that there has been discrimination so as to violate Articles 14 and 16 of the Constitution, as the applicant cannot equate himself with those others."

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" In the instant case the engagement of the applicant being on a casual basis against a casual post, and for a specific period of 89 days, the applicant cannot press into service the aforesaid decision. Equally unfounded is the reliance placed on the decision of the Supreme Court in Ramana Dayaram Shetty Vs. the International Airport Authority of India (AIR 1979 SC 1628). It was laid down therein that where the Government is dealing with the public, Government cannot act arbitrarily on its sweet will and deal with any person as it pleases, but its action must be in conformity with the standard or norm which is not arbitrary, irrational or irrelevant. The action of the respondents in not giving further engagement to the applicant on the basis of their being satisfied that the applicant is not fit for such engagement cannot be said to be arbitrary so as to require interference".

11. In the facts and circumstances of the case

there is no merit in the application and it is only
to be dismissed. Accordingly we dismiss the same.

There will be no order as to costs.

N. Dharmadan

29.6.90

(N. DHARMADAN)
JUDICIAL MEMBER

S.P. Mukerji

29.6.90

(S.P. MUKERJI)
VICE CHAIRMAN

n.j.j