IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

A L L A H A B A D

***** Lko Circuit Bench

O.A.NO. 89 1989(L)

T.A.NO.

DATE OF DECISION April , 1990

Majoj Kumar Srivastava PETITIONER

Shri S.K. Mishra. Advocate for the Petitioner(s)

VERSUS

Union of India and ors RESPONDENTS

Shri D. Chandra. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, Vice Chairman

The Hon'ble Mr. K. Obayya, Member Administrative

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. Whether to be circulated to other Benches ? No

Dinesh/

******

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
CIRCUIT BENCH, LUCKNOW.

O.A. No. 89/1989(L)

Manoj Kumar Srivastava ...Applicant.

Shri S.K. Mishra ..Counsel for Applicant.

versus

Union of India & ors ...Respondents.

Shri D. Chandra ..Counsel for Respondents.

HON. JUSTICE K. NATH, VICE CHAIRMAN.

HON. K. OBAYYA, ADMN. MEMBER.

(Judgment delivered by Hon. K. Obayya, A.M)

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Manoj Kumar Srivastava, challenging his termination from service from the post of Typist in the office of Accountant General (Audit II), U.P., Lucknow. There is also a prayer for regularisation of his services in the said post.

2. The case of the applicant is that he applied for the post of English/Hindi Typist in the office of Accountant General (Audit-II), U.P., Lucknow during April, 1987 and was appointed after test as a casual Typist on daily remuneration of Rs 20.00. He joined duty on 11.5.87 and worked without break up to 15.2.88. Thereafter, he was again given appointment on the post of Typist on casual basis from 23.2.88 to 25.2.88 and from 15.6.88 to 31.8.88. It is alleged by the applicant that he was verbally informed that his services are terminated with effect from 30.1.88. His contention is that he

performed his duties tothe satisfaction of superiors. There was no complaint or adverse remark against his work, as such his termination ~~xx~~ without notice or calling any explanation is arbitrary and illegal. His further contention is that since he has put in more than 240 days of service, his termination/retrenchment without following the provisions of section 25(F) of the Industrial Disputes Act, 1947 is irregular. It is also alleged by the applicant that some of his juniors were allowed to continue while his services were terminated, this amounted to discrimination.

3. The respondents filed counter in which they have denied that the applicant was employed against a regular vacancy. According to them, on account of increased load of work, the applicant was engaged for typing wok on casual basis on daily wages of Rs 20.00 from time to time and that during 1987 he worked for a total number of 160 days and in 1988 for 157 days. Their further contention is that the post of Typist is a Group C post for which selection is made by the Staff Selection Commission(S.S.C. for short) and no appointment can be made without such selection. Competitive examinations were held for the post of Clerk/Typist during the period the applicant was engaged on typing job as casual worker and the applicant was never prevented from appearing at the said examination to get regular selection for appointment. The respondents also contended that the applicant was simply a casual worker and was liable to be disengaged without any written orders.

4. In the rejoinder, the applicant has stated that he was given the work of regular typist due to shortage of regular staff and the post on which he was working, was vacant, as such he was entitled for salary based on principle of equal pay for equal work.

5. We have heard the counsel for the parties and also considered the pleadings on both sides. The learned counsel for the applicant in his lengthy submissions before us urged that the applicant has put in more than 240 days of work in a year, as such, he was governed by the provisions of section 25 (F) of the Industrial Disputes Act, 1947. His termination without following the provisions of this Act was not in order. The respondents contests the statement. According to them the applicant had worked for 160 days in 1987 and 157 days in 1988. Section 25(F) of the Industrial Disputes Act provides safeguards to the workmen in the matter of retrenchment. It lays down that no workman shall be retrenched without one months' notice or wages in lieu thereof, and also compensation of a sum equivalent to 15 days average pay for every completed year of continuous service etc. The learned counsel has also relied on the decisions of the Allahabad High Court (Lucknow Bench) in Narendra Srivastava vs. Scooters India Ltd. 1986 (4) LCD page 427 and also the decision of the Hon'ble Supreme Court in workmen of American Express International Banking Corporation vs. Management of Americal Express Banking Corporation AIR 1986 SC 458. The dispute involved in the above cases was with regard to the number of days worked by a workman. In the above cited cases, it was up-held that the workman should have the benefit of not only of the days he worked, but also of the days on which the industry was closed by compulsion of statute, standing orders etc. The

Hon'ble Supreme Court observed that the expression, " actuallyworked", does not mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehened all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The proposition laid-down in these decisions is well known and accepted and we have no dis-agreement with the learned counsel on this. But the question is whether the applicant is a workman and the Office of Accountant General (Audit) an industry/ industrial establishment for the purpose of Industrial Disputes Act, 1947. The learned counsel has not placed before us any order or decision in this regard.

6. The concept of "workman" and "industry"in the I.D. Act are inter-related. There cannot be a workman without an industry and vice-versa. The definition of workman occuring in section 2(s) indicates that workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. The personnel of armed forces, police and also those employed in managerial or administrative capacity etc. are not workman under this definition. The definition of industry is under section 2 (j) which reads as under:

" "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, - "

X X X X X

but does not include -

X X X X X

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; ".

The Hon'ble Supreme Court in Bangalore Water Supply vs. A. Rajappa A.I.R. 1978 - SC. p.550, held that the sovereign functions strictly understood qualify for exemption from the definition of industry. The Accountant General (Audit) is an authority under Auditor and Comptroller General, Government of India which is a constitutional authority, and exercises sovereign powers derived from the provisions of Indian Constitution. In the circumstances, we see no merit in this argument of the learned counsel for the applicant, as the Office of Accountant General (Audit) cannot be deemed to be industry.

7. The next point urged by the learned counsel was on equal pay for equal work, as enunciated in Surendra Singh and another vs. Engineer-in-Chief, C.P.W.D. A.I.R. 1986 SC p. 584. The Department of Personnel, in their letter No. 49014/2/86-Estt(C) dated 7.6.88 issued certain guidelines based on the above decision of the Hon'ble Supreme Court. Departments were strictly instructed not to employ any person on dailywages. Paragraphs 4 & 5 have a bearing in the instant case(Annexures- RA- 1). The stand of the respondents is that the petitioner was never appointed against any vacancy and that he was engaged to do typing work of casual nature and also these guide lines are applicable to cases of casual workers and not to other employees. We have also been shown instructions dated 26.10.84 issued by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs, New Delhi in their letter

No. 49014/19/84-Estt(C) dated 26.10.84. According to this, instructions were given for regular appointment of casual workers in Group 'D' posts provided they have put in 2 years service. A scrutiny of the above instructions of Department of Personnel clearly shows that the instructions were meant for regularisation of daily workers in Group 'D' post provided they satisfy the prescribed period of service etc. In the circumstances, we agree with the learned counsel for the respondents that the payment in cases of non-workers is governed by para 5 of the instructions of Department of Personnel. The last point urged by the learned counsel is for regularisation. Admittedly, the applicant was not posted against any vacancy. Also this is a Group 'C' post for which selections are made through the Staff Selection Commission. Though the examinations were held in the intervening period, it is not known whether the applicant has appeared, but, nevertheless he was not deprived of any opportunity to appear for the selection/examination xxxx by the respondents. Since he was not selected from Staff Selection Commission, He cannot claim his right for appointment or regularisation. Taking into consideration, the facts and circumstances of the case, we are of the view that there is no merit in the petition. Accordingly, it is rejected without any order as to costs.

MEMBER (A) VICE CHAIRMAN

(sns)

April 7, 1990

Lucknow.