

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.331/86.

Shri M.U.Bhalerao,
R/o.At Post Jejuri,
Tal-Purandhar,
Dist-Pune.

... Applicant

V/s.

Government of India
(The Director, Central Water
and Power Research Station
Khadakwasla,
Pune.411 024.

... Respondent.

Coram: Hon'ble Vice-Chairman, B.C.Gadgil
Hon'ble Member(A), J.G.Rajadhyaksha

Appearances:

1. Mr. Salve and Mr.Kamble
for the applicant.
2. Mr.P.M.Pradhan for the
Respondents.

JUDGMENT:

¶Per J.G.Rajadhyaksha, Member(A)¶ Dated: 28.1.1987

Regular Civil Suit No.2158/82 has been transferred to this Tribunal and is numbered as Transferred Application No.331/86. The applicant was working as Assistant Mechanic in the Central Water & Power Research Station at Khadakwasla, Pune.

2. This is a peculiar case in which the applicant's services have been terminated under Rule 5 of the C.C.S.(Temporary Services) Rules, 1965 after he served the organisation for nearly fourteen years in various temporary capacities. This rule deals with the termination of temporary service.

3. It will be useful at the outset to reproduce rules 2(b), 2(d) i.e. Definitions, Rule 3 about Quasi Permanent service of temporary servants and Rule 5 about termination of temporary servants for

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understanding the legal position in this matter.

"Definitions

2. In these rules, unless the context otherwise requires:-

- (b) " quasi-permanent service" means temporary service commencing from the date on which a declaration made under Rule 3 takes effect and consists of period of duty and leave after that date;...
- (d) "temporary service" means the service of a temporary Government servant in a temporary post or officiating service in a permanent post under the Government of India."

3. A Government servant shall be deemed to be in a quasi permanent service :-

- (i) if he has been in continuous temporary service for more than three years; and
- (ii) if the appointing authority, being satisfied, having regard to the quality of his work, conduct and character as to his suitability for employment in a quasi permanent capacity under the Government of India, has made a declaration to that effect.

5. Termination of temporary service:

- (1)(a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;
- (b) the period of such notice shall be one month. Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he

was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

4. The facts briefly are that on 21.8.1968 applicant was appointed in Central Water and Power Research Station Khadakvasla as a 'Machine-man' in officiating, work charged basis Ex. 3/8 and Ex.3/3 (offer and appointment respectively) (Hereafter reference to Exhibits would mean Exhibit in the Civil Suit Papers.). He was kept on probation for two years. In 1970 his probation was extended. There was then a vacancy of a Machinist in the regular cadre which was advertised. Applicant applied, competed, was selected and got an offer vide Ex.3/2 dt. 2.6.1972. He was appointed as machinist by an order dt. 23.6.1972 (Ex.3/9) in a temporary post. Here again the new job involved appointment on probation for two years. It had been made clear that the earlier period of service would not be counted as made known by this letter dt. 2.6.1972. Even in this job the probation was extended by six months. It was declared as having been successfully completed (Ex.3/11). He was continued on officiating basis w.e.f. 24.12.74. In 1975, there were vacancies of Assistant Mechanics. The applicant applied and was selected and recruited as an Employment Exchange candidate in the post of an Assistant Mechanic in the scale of 380-560. The offer of the job is at (Ex.3/10). By order dt. 21.2.1975 the applicant was appointed to officiate in a regular vacancy of Assistant Mechanic (Ex.3/6) Two years' probation was involved in this post also. This probation was extended ex post facto from 1977 for six months (Ex.3/12) A certificate was

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given by the same order that the applicant had successfully completed the probation. He was continued in officiating capacity from 22.8.77. Requests of applicant to conclude the probation or that he should be confirmed were not heeded. The Departmental Promotion Committee had decided early in 1977 that the applicant was not then fit for confirmation and, therefore, his probation had been further extended. Thus the applicant remained officiating and never got confirmed in any of these jobs, and, therefore, the respondents treating him as temporary invoked rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and terminated his services by an order dated 30.9.1982 with immediate effect i.e. effective on 1.10.1982 (Ex.3/1). It is the applicant's contention as argued by Mr.Salve the Learned Advocate for him that applicant had put in a total of 14 years of service in the Central Water and Power Research Station at Khadakwasla and he should have been made at least Quasi Permanent under rule.3. This rule 3 cited at the outset contemplates 3 years of service without a break, and in addition conduct and performance to the satisfaction of the appointing authority. This has to lead to issue of a declaration of a quasi permanency but such declaration of applicant being quasi permanent was never issued in favour of the applicant. It is this omission that enabled the Respondents to terminate the applicant's services under Central Civil Services (Temporary Services) Rules, 1965.

5. We have heard Mr.Salve the Learned Advocate for the applicant at length. We have also heard

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Mr.P.M.Pradhan for the Respondents. Mr.Salve's contentions are that after 14 years of service in the organization the applicant should have at least been made Quasi Permanent under rule.3. He was never told that he was not to be made Quasi Permanent. His probation in the last job was belatedly certified as having been successfully completed by order dt. 30.10.1978, but he was continued as an officiating Assistant Mechanic all along. Shri Salve also strongly contends that there had been no allegations of mis-conduct or delinquency and the termination of the services of the applicant was without any charge sheet or without any enquiry and without any order to that effect. Mr.Salve has produced copies of a number of decisions of various judicial authorities. We found that none of them are much useful to the applicant.

6. Shri Pradhan's contentions in brief are that the applicant was always temporary or officiating and, therefore, the organization was justified in terminating his services under Central Civil Services (Temporary Services) Rules, 1965, not as a penal action, but without attaching any stigma to him and on being found unsuitable.

7. Mr.Salve in reply urges that there was 'promissory estoppel' in favour of the applicant by continuing him in service from time to time and it was the Government which had been at fault and negligent in not confirming or even making the applicant a Quasi Permanent employee under the relevant Rules. He prays for quashing the termination order under

Rule.5 of the Central Civil Service (Temporary Service) Rules.

8. We have very carefully gone through the record and we find that the applicant came to be appointed as an Assistant Mechanic on 21.2.1975 and had been continued as such. There is indeed an order dated 30.9.1982 terminating his services with immediate effect. i.e. w.e.f. 1.10.1982. As discussed above, there is also an earlier order which says that he successfully completed his probation and that he was appointed on officiating basis since the date of termination of his extended probation.

9. . Now the point that arises for our consideration is whether 3 years continuous service in a post in a temporary capacity entitles the Government servant who has been working for well high fourteen years in an organisation to be made Quasi Permanent or even permanent. We have already seen how rules 2 & 3 read. It is clear therefrom that for being declared as Quasi Permanent two conditions have to be fulfilled. The first condition is that the employee must have been in continuous temporary service for more than 3 years. Applicant has fulfilled this part in the post of Assistant Mechanic. The second condition is that the appointing authority, being satisfied having regard to the quality of work, conduct and character as to his suitability for employment in quasi permanent capacity under the Government of India has to make a declaration to that effect. There is no dispute here that the applicant had been with this organisation in various capacities for about 14 years at the time of termination

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of his service. But the Respondents' claim that he never successfully completed probation or three year's service in any of the lower posts and that he was never promoted to the higher posts on merit. Every time there was a new recruitment to a higher post, the applicant applied, was considered as a direct recruit, and was appointed. In each such post applicant had to serve a period of probation. In each such case the probation had to be extended because of the unsatisfactory performance of the applicant. There is, however, no explanation as to why in the last post of Assistant Mechanic applicant was not considered for Quasi Permanency and was termed as officiating "until further orders" though there is a certificate that he completed his probation period successfully. It is significant to note that this order has also been issued quite some time after the extended probation period came to an end. The question, therefore, is that if the applicant has, in the last post of Assistant Mechanic, in fact put in more than 3 years of continuous temporary service, what stands in the way of the authorities appointing him on a Quasi Permanent basis, or issuing a declaration that he is Quasi Permanent. It seems the Respondents rely upon this rule 3 and contend that as long as declaration of Quasi Permanency has not been issued, the applicant is not to be considered as Quasi Permanent, that it is not obligatory upon them to make such a declaration. He merely continues as temporary or officiating. Legally, this might appear to be the position. But the question that worries us is whether, the appointing authority or Government are at liberty to continue a person in temporary service indefinitely, without

any limit of period. If this was so then Government would be able to treat almost every employee, not governed by any particular cadre rules to be a temporary employee, whose services could be terminated under C.C.S. (Temporary Service) Rules, 1965. There are guidelines for implementation of rule 3. True, the guidelines cannot be rigid and their application may vary from case to case. But it appears that some positive action is expected on the part of the appointing authority. That positive action could be that the appointing authority watches the performance of the temporary employee for 3 years on the basis of Annual Confidential Reports about the character and performance of the employee and when considering the question of his Quasi Permanency these annual reports might have to be taken into account. Secondly, it is also clear from administrative orders that if a temporary servant has been found unsuitable for Quasi Permanency, he has to be informed in writing that he has been found unsuitable and, therefore, the question of making him Quasi Permanent is deferred. Of course, at this stage nothing prevents the Government or the appointing authority from terminating the services of a temporary servant under rule.5. It also appears that cases of all persons who become eligible for Quasi Permanency certificates in any year, are to be considered as soon after the crucial date in that year as possible and finalised without any avoidable delay. In the instant case there is no indication whatsoever, no averment on the part of the Respondents that they have maintained such Annual Confidential Reports on the character and

performance of the applicant as "Assistant Mechanic and on that basis took a decision in his case. These factors lead us to accept the contentions of the Learned Advocate for the applicant that he is entitled at least to be considered for Quasi Permanency. The unfortunate part is that the appointing authorities have thought it fit to terminate the services of the applicant when he had been with them for fourteen years. In our opinion, this is a harsh step which has been taken without due consideration to the character and performance of the applicant in the post in which he was temporary. We feel that if applicant came to be selected and appointed to the post of Assistant Mechanic on 21.2.1975 then the question of his being made Quasi Permanent could also have been considered in 1978 and thereafter from time to time. We find that there is an order saying that he has satisfactorily completed his probation. But the same order also keeps him on as officiating. Normally, on successful completion of probation the employee could be entitled to be considered for confirmation in the post. This has also not been done by the appointing authorities in this case, for reasons best known to themselves. What is also strange is that the applicant who joined on 'work charged' basis as a Machine man and remained on probation for two years and whose probation was extended from time to time was allowed to apply for, compete and get selected for higher posts. It beats imagination that a person who is considered fit for recruitment to a higher post is not considered suitable for a lower post and that his services are not to be counted. Technically, this might be

correct as the applicant got recruited to a higher post as a direct recruit on each occasion. But equitably viewed, his selections without consideration of the fact that the probation had been extended in the earlier posts on the ground that he was not considered suitable because of his performance etc. in the lower post, indicates that either the selectors decided to ignore this aspect, or never cared to ascertain the antecedents of the applicant. In either case the benefit must go to the applicant. Considering these aspects and in the peculiar circumstances of the case where applicant has been working in this organisation for fourteen years, as well as the failure of the appointing authorities to view the applicant's case in proper perspective as also of their failure to inform him that he has not been found suitable for quasi permanency, we feel that the applicant has a good case, and that the termination of his services is bad.

We therefore pass the following orders:-

1. The order dated 30.9.1982 made effective from 1.10.1982 terminating the services of the applicant under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 is bad in law and is therefore hereby quashed and set aside. Consequently the applicant should be reinstated with immediate effect.
2. The wages and allowances due for the period from 1.10.1982 till the date of reinstatement should be paid to him within two months from the date of this order.
3. The appointing authority viz. the Respondents are hereby directed to view within four months from today the case of the applicant in the light of rule 3 and the administrative instructions and explanatory memoranda issued by the Government of India from time to time ...11.

Only in the event of the authorities coming to the conclusion that the applicant is not suitable for being conferred with the status of quasi permanent servant, they may offer to him the next below position, as it would be unfair to throw him out of service from an organisation in which he has served in various capacities for about 16 years, by now.

4. The applicant is at liberty to accept or reject the offer of a lower post with appropriate consequences attached to his choice.
5. No order as to costs.

B.C. Gadgil

(B.C. GADGIL)
VICE - CHAIRMAN

[Signature]
28.1.987
(J.G. RAJADHYAKSHA)
MEMBER(A).

Received copy of the
Judgement on behalf of
Applicant.

[Signature]
28/1/87

B. K. SALAVE
Adv.

Received the copy of judgement
on behalf of the Respondent

[Signature]
28/1/87 (S.L. JAIN)
SAG
BRS.
Pune