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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.72/93

Date of order: 3.6.1996

Yogeshwar Dayal Pradhan : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.M.Rafiq : Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

0 In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Yogeshwar Dayal Pradhan has prayed that the order dated 1.2.93 (Annx.A1) by which the services of the applicant have been terminated may be quashed, the applicant may be reinstated in service, the respondents may be directed to regularise the services of the applicant from the date of his initial appointment with all consequential benefits and that the respondents may be directed to assign appropriate seniority to the applicant on the post of Hindi Typist.

2. The applicant's case is that he was appointed on the post of Hindi Typist in the office of All India Radio, Jaipur by order dated 28.12.91 and he joined duty on 2.1.1992. The memorandum offering him appointment stated that the post offered to him was that of ad hoc Hindi Typist. After his joining duty, another order Annx.A3 dated 9.1.92 was passed declaring his appointment as purely on ad hoc basis with no right for regular absorption in the department. However, the order offering him appointment stated that his services would be terminated as soon as a candidate nominated by the Staff Selection Commission joins duty. The applicant's appointment was with due approval of respondent No.1, Director General, All India Radio, New Delhi and thus for all practical purposes his appointment was with the approval of the competent authority.

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He was appointed against a permanent sanctioned post and the post is still lying vacant because no person regularly selected through the Staff Selection Commission, etc, has been appointed. In any case, the applicant's services can be terminated only after a candidate regularly selected through Staff Selection Commission, is available for appointment. The post of Hindi Typist has not been abolished. Termination of his services is in breach of the principles of natural justice because no opportunity of hearing has been afforded to him before passing of the impugned order. Also the order of termination has not been passed by the Station Director, who was the applicant's appointing authority, but by the Station Engineer, who is not an authority competent to pass such order. The applicant had been appointed after undergoing regular mode of selection and his name has also been sponsored by the Employment Exchange. He had also faced an interview before his appointment, therefore, he has acquired a legal right to hold the post, which now cannot be taken away without following due process of law. He has also contended that he is a 'Workman' within the definition of Section 2-S of the Industrial Disputes Act (ID Act) and the respondents are an 'Industry' as defined in Sec.2-J of the I.D Act. Therefore, before terminating his services, the provisions of 25-F of this Act should have been applied. Nothing adverse with regard to his performance was found by the respondents before terminating his services.

3. The respondents in their reply have stated that the appointment of the applicant was made on ad hoc basis under the instructions of the Director General, All India Radio, New Delhi. The Director General, All India Radio, had informed the All India Radio, Jaipur, that further extension to the ad hoc appointment of Hindi Typist at All India Radio, Jaipur, should not be granted vide Annx.F7 dated 25.1.93. The order of

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termination was passed in accordance with the terms and conditions of the offer of appointment. The Tribunal had by way of interim relief stayed the operation of the order of termination on 2.2.93. The applicant was, therefore, taken back on duty on 5.2.93 as ad hoc Hindi Typist. The averments of the applicant regarding violation of principles of natural justice, etc, have been denied by the respondents. They have also denied that All India Radio is an 'Industry'. According to them, it is purely and wholly a department of the Govt. of India like any other Department of the Govt. of India and that the persons working therein hold civil posts and therefore, the I.D Act, 1947 will not be applicable in this case.

4. The applicant has filed a rejoinder to the reply filed by the respondents. Thereafter, the applicant also filed an Additional Affidavit. The respondents have also filed reply to the additional affidavit filed by the applicant.

5. In the reply to the Additional Affidavit filed by the respondents, they have stated that the applicant was subsequently nominated by the Staff Selection Commission for appointment to the post of Hindi Typist on his being selected for appointment after his qualifying the special qualifying examination for regularisation of ad hoc/daily rated/casual LDCs conducted by the Staff Selection Commission as per the instructions of Department of Personnel and Training O.M dated 2.8.93. The applicant is eligible for regularisation of his service as Hindi Typist w.e.f. 6.10.94, the date on which the result of the aforesaid examination was declared and that his seniority will be fixed enbloc junior to the candidates who qualified in the selection of 1992 conducted by the Staff Selection Commission.

6. None is present on behalf of the applicant. We have heard the learned counsel for the respondents.

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7. The learned counsel for the respondents stated that formal orders regularising the services of the applicant w.e.f. 6.10.91 have since been issued. According to him, the applicant is entitled for regularisation only from the date of the announcement of the results by the Staff Selection Commission and that all such candidates would be placed enbloc junior to the candidates regularly appointed to the concerned posts in the respective offices on the basis of the result of the last competitive examination held prior to this special qualifying examination. The relevant instructions are contained in Annx.P1 dated 2.8.93 issued by the Department of Personnel & Training. The applicant has been regularised in accordance with these instructions from the date from which the results of the qualifying examinations were declared.

8. Since the applicant has already been regularised on the post of Hindi Typist, all the prayers in the relief clause except one have now become infructuous. The only point that remains to be considered is whether the applicant would be entitled to regularisation of services from the date of his initial appointment on ad hoc basis and whether he would be entitled to seniority for the said date. We find that the applicant was appointed on ad hoc basis as is made clear in the offer of appointment, Annx.A2 dated 28.12.91 and Annx.A3 dated 9.1.92, the latter having been issued immediately after the applicant joined duty. The Govt. of India formulated a scheme for regularisation of services of ad hoc appointees like the applicant and gave them an opportunity to pass special qualifying examination to be conducted by the Staff Selection Commission. There is a stipulation in the Scheme, Annx.P1, that regularisation of such ad hoc employees will take place from the date of declaration of the result of the special qualifying examination. It is in accordance with this scheme that the

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applicant services have been regularised w.e.f. 6.10.94. He will also have to be granted seniority from the date of regularisation of his services, as per the criteria laid down in para 2 of Annx.F1. Since the applicant has already been taken back in service and his services have ^{been} regularised w.e.f. 6.10.94, his seniority, etc, would be regulated with reference to the date of his regularisation and he would not be entitled for regularisation of his services from the date of his initial appointment on ad hoc basis.

9. The O.A stands disposed of accordingly with no order as to costs.


(Ratan Prakash)

Member(Judl)


(O.P. Sharma)

Member(Adm).