

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order: 07.09.2000

OA 320/94

Hari Shankar aged about 28 years son of Shri Mannu Ram, resident of Chowk Mohalla, near Old Bus Stand, Kama, District Bharatpur. At present working as Casual Worker in the office of Conservation Assistant Gr.-I, Archaeological Survey of India, Deeg Sub Circle, Deeg, District Bharatpur.

.... Applicant

Versus

1. The Union of India through the Director General, Archaeological Survey of India, Janpath, New Delhi.
2. Superintending Archaeologist, Archaeological Survey of India, D-49, Subash Marg, C-Scheme, Jaipur Circle, Jaipur.
3. Conservation Assistant Grade -I, Archaeological Survey of India, Deeg Sub Circle, Deeg, District Bharatpur.

.... Respondents

Mr. Anurag Kulshrestha, Proxy counsel for
Mr. Dharmendra Agarwal, Counsel for the applicant.
Mr. R.G. Gupta, Proxy counsel for
Mr. S.S. Hassan, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

ORDER

_____(PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL))_____

In this Original Application filed under section 19 of the Administrative Tribunal's Act, applicant makes a prayer to quash and set aside the order dated 5.7.1994 and allow the applicant to continue as temporary status w.e.f. 1.9.93 with all consequential benefits.

...2/-

2. In brief, the case of the applicant is that applicant was initially engaged as Beldar on daily wage basis on 22.8.86 at the rate of Rs. 9/- per day. Thereafter, the applicant was continuously working. The applicant was conferred temporary status w.e.f. 1.9.93 vide order dated 30.3.94 but the order of conferring temporary status on the applicant^{dated}/30.3.94 was revoked/withdrawn vide impugned order dated 5.7.94. It is stated that applicant was never given any opportunity of hearing before passing the impugned order dated 5.7.94. Therefore, it is fully violation of the principles of natural justice and contravention of the provisions of Article 14 & 16 read with Article 21 of the Constitution of India. It is also stated that in pursuance of impugned order dated 5.7.94, there is every likelihood that services of the applicant may be terminated at any time. It could be clear breach of the provisions of Article 14 & 16 of the Constitution of India. Therefore, applicant filed this OA for the reliefs, as above.

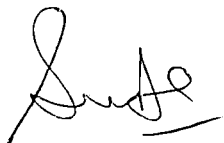
3. Reply was filed. It is stated in the reply that vide office order No. 250/20.3.1994, the name of the applicant was wrongly included in the list of employees of temporary status due to over-sight. It is stated that temporary status could be given to all casual labourers who are in employment on date of issue of office memorandum but the applicant was not in employment on the date of issuance of office memorandum dated 10.9.93. Therefore, the applicant was not eligible for temporary status. Hence temporary status given to the applicant vide order dated 30.3.94 was withdrawn vide office order dated 5.7.94 and no opportunity of hearing was required to correct the mistake committed by concerning Section due to over-sight.

4. Rejoinder was filed. In the rejoinder, it has been made clear that once the applicant's name found place in order dated 30.3.94, a legal right has been conferred upon the applicant for all practical purposes and the said legal right could not have been taken away without due process of law. Therefore, impugned order dated 5.7.94 by which temporary status conferred upon the applicant was withdrawn, deserves to be quashed and set aside.

5. Heard the learned counsel for the parties and also perused the whole record.

6. Office Memorandum dated 10.9.1993 provides that the guidelines in the matter of recruitment of persons on daily wage basis in Central Government offices were issued vide this Department's O.M. No. 49014/2/86-Estt (C) dated 7.6.88. The policy has further been reviewed in the light of the judgement of the Central Administrative Tribunal, Principal Bench, New Delhi delivered on 16.2.90 in the writ petition filed by Shri Raj Kamal and others Vs. Union of India and it has been decided that while the existing guidelines contained in O.M. dated 7.6.88 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Department of Telecom, Posts and Railways may be regulated by the scheme as appended.

7. The learned counsel for the applicant vehemently argued that before issuing impugned order of withdrawal of temporary status of the applicant, principles of natural justice have not been followed. Therefore, the impugned order dated 5.7.94 is liable to be set aside on this count alone.



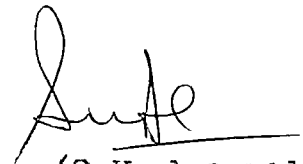
8. Admittedly before issuing the impugned order dated 5.7.94, no opportunity of hearing/show-cause was given to the applicant and vide order dated 30.3.94, the applicant was conferred temporary status w.e.f. 1.9.93. It is not disputed that names of other persons who have been conferred temporary status are also found place in the order dated 30.3.94 but the temporary status conferred to the applicant was only withdrawn. In Menaka Gandhi Vs. Union of India 1978 (1) SCC 248, it was held that before any punitive action is taken which deprives the employees of benefits he is enjoying, an opportunity has to be given. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress 1991 Supp (1) SCC 600, it was held that the rules of natural justice also requires that the applicant should be given an opportunity to be heard before subjecting him ~~xx~~ to any punitive action. In Laxmi Chand Vs. Union of India and Others 1998 ATC 599, it was held that if any order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order cannot be passed without complying with Audi Alteram Partem.-Party should be given an opportunity to meet his case before an adverse decision is taken.

9. On the basis of above legal prepositions, it is clear that any order issued in violation of principles of natural justice is bad in law and liable to quashed. In the instant case, the order dated 5.7.94 by which temporary status conferr ed upon the applicant was withdrawn was issued without following the principles of natural justice. Therefore, this order is not only bad in law but has been issued in violation of principles of natural justice and in contravention of Article 14 & 16 of the Constitution of India. In a recent judgement Narsingh Pal Vs. Union of India 2000(2) ATJ SC 644, it was

held by the Hon'ble Supreme Court of India that a Casual labourer who has attained the temporary status is entitled to constitutional protection as envisaged by Article 311 of Constitution and other Articles dealing with the services under Union of India. Even mistake order requires the compliance of the principles of Audi-Alteram Partum. In view of the settled legal position, as above, I am of the opinion that impugned order dated 5.7.94 is not sustainable in law and the same is liable to be quashed and set aside.

10. I, therefore, allow this OA and quash & set aside the impugned order dated 5.7.94. This order shall not preclude the respondent department to pass an appropriate order after giving an opportunity of hearing to the applicant.

11. No order as to costs.


(S.K. Agarwal)
Member (J)