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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 646/96  
T.A. No.

199

DATE OF DECISION 9.12.99

Vinod Kumar Sharma Petitioner

~~Mr. Kunal Rawat~~ Advocate for the Petitioner (s)

Versus

U.O.I & Ors. Respondent


Mr. K.N. Shrimal Advocate for the Respondent (s)

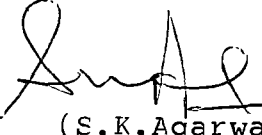
**CORAM :**

~~The Hon'ble Mr.~~ S.K. Agarwal, Judicial Member

The Hon'ble Mr. N.P. Nawani, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

  
(N.P. Nawani)  
Member (A).

  
(S.K. Agarwal)  
Member (J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.646/96

Date of order: 9/12/99

Vinod Kumar Sharma, S/o Shri K.L.Sharma, R/o Aglika Bas Raipur,  
Tehsil Basuwa, Distt.Dausa.

...Applicant.

Vs.

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Deputy Inspector General, Central Bureau of Investigation, Subhash Marg, Bhagwan Das Road, Jaipur
3. The Superintendent of Police, SPE, CBI, Polo Ground-I, Near Ship House, Jodhpur.

...Respondents.

Mr.Kunal Rawat - Counsel for applicant.

Mr.K.N.Shrimal - Counsel for respondents.

CORAM:

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

Hon'ble Mr.N.P.Nawani, Administrative Member.

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

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order dated 2.6.95 and order dated 14.8.96 and to direct the respondents to allow the applicant on the post of Tea-maker and in the alternative the applicant may be allowed any suitable Group-D post in Jaipur or Jodhpur.

2. Facts of the case as stated by the applicant are that the applicant was appointed as Tea-maker in the office of Respondent No.3 after following the due process of selection vide order dated 6.4.89. Thereafter the applicant rendered his services with full devotion of duties but suddenly after a period of 6 years, vide order dated 2.6.95, the services of the applicant were terminated w.e.f. 31.5.95 vide order dated 2.6.95. Aggrieved by this order, the applicant has filed O.A No.317/95, which was disposed of vide order dated 28.2.96. In pursuance of this order, the applicant was directed to file a representation which will be disposed of by the respondents within 2 months. Thereafter, the applicant filed the representation but the same was also rejected vide order dated 14.8.96. It is stated that the termination of the services of the applicant w.e.f. 31.5.95 is illegal, arbitrary, unjust and improper, therefore, liable to be quashed. The applicant completed his probation period and he has rendered more than 6 years of service but the services were terminated without any show cause notice, thereby the respondents have violated the provisions of Articles 14, 16 and 21 of the Constitution of India. Therefore, the applicant files this O.A for the relief as mentioned above.

3. Reply was filed. In the reply it was stated that the applicant was

*Signature*

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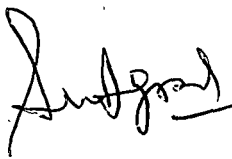
appointed as Tea-maker purely on temporary basis in anticipation of government order for creation of post. However, the Govt did not agree to create any post of Tea-maker for the departmental canteen. Therefore, the services of the applicant were terminated as per the terms of appointment order. The applicant was never appointed against a substantive post, therefore, the question of completion of probation period in the case of the applicant does not arise and no notice was required in such a case for termination of the services of the applicant, therefore, it is requested that the O.A is devoid of any merit and liable to be dismissed.

4. Heard the learned counsel for the parties and perused the whole record.

5. On the perusal of the order of appointment it clearly appears that the appointment of the applicant was on probation for two years but no order of confirmation on the post has been done as the applicant has not produced any such order of confirmation. On the other hand the respondents have admitted the fact in the reply that the applicant is yet to be confirmed on the post. In Samsher Singh Vs. State of Punjab, 1974 SCC (L&S) 550, it was held by the Hon'ble Supreme Court that a probationer has no right to the post, therefore, termination of services of the employee without show cause notice does not operate as forfeiture of any of his rights. A probationer does not acquire the status of a confirmed employee merely because he has completed the period of probation. Function of confirmation is an exercise of judgment by the confirming authority on the over all suitability of the employee for his permanent absorption in service and untill that is done he continues to be on probation. Therefore, the impugned order of termination seems to be only an order of termination simplicitor, hence, termination of services of a probationer/temporary Govt servant does not cast any stigma on the applicant. It is only an order of termination simplicitor and not punitive. Therefore, no show cause notice is required in such circumstances before terminating the services of such an employee.

6. In the reply filed by the respondents it has been categorically stated that the applicant was appointed as Tea-maker, purely on temporary basis in anticipation of Govt orders for creation of the post. But ultimately the Govt did not agree to create the post of Teamaker, therefore, the services of the applicant were terminated. This fact has not been controverted by the applicant as no rejoinder has been filed.

7. In view of the submissions of the respondents in the reply, the applicant was never appointed against a substantive vacancy. In Ashwini Kumar & Ors Vs. State of Bihar & Ors, JT 1997(1) SC 243, it was held by the Hon'ble Supreme Court that if the appointment has been made in derogation of relevant service rules and against non-existent post the principles of natural justice are not applicable. It was further observed




that the principles of natural justice will vary from case to case, from circumstance to circumstance and from situation to situation and further they cannot be subjected to strait jacket formula.

8. In the instant case, the applicant was never appointed against substantive vacancy, therefore, in view of the law laid down by the Supreme Court, the termination of the services of the applicant in such circumstances cannot be said to be illegal as no show cause notice is required in such circumstances before termination of the services of the applicant.

9. It is worthwhile to mention that the applicant was appointed as Teamaker vide order dated 6.4.89 after following due process of selection and the applicant rendered his services to the department for more than 6 years. Adoption of such a process would naturally have aroused legitimate expectations in the applicant about having got a regular employment. It is also not the contention of the respondents that the services of the applicant was in any way unsatisfactory. Therefore, equity demands that in case no vacancy is in existence for the post of Teamaker, in view of his services rendered for more than 6 years, the applicant should be adjusted against any future vacancy of Group-D Post.

10. We, therefore, dispose of this O.A with the direction to the respondents to adjust the applicant against any Group-D post arising in future.

11. No order as to costs.

  
(N.P. Nawani)

Member (A)

  
(S.K. Agarwal)

Member (J).