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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH JAIPUR.

O.A No.100/99

Dt. of order: 5/11/99

Hemant Kumar Verma, S/o Shri Suraj Mal Verma, R/o Bandha ki Dhani, P.O Papurna, via Khetri, Distt.Jhunjhunu, presently working as Casual Labout in the Office of RMS, Jhunjhunu.

...Applicant.

Vs.

1. Union of India through the Secretary to the Govt of India, Deptt.of Posts, Dak Bhavan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Supdt, RMS, JP Dn, Jaipur.
4. Head Record Officer, JP Dln, Jaipur.
5. Sub Record Officer, JP Dn, Jhunjhunu.

...Respondents.

Mr.P.N.Jati - Counsel for applicant.

Mr.M.Rafiq - Counsel for respondents.

CORAM:

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

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

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order dated 4.2.99 at Annx.A1 and to direct the respondents to confer temporary status to the applicant w.e.f. 29.11.89 and to regularise his services with effect from that date.

2. In brief the case of the applicant is that he was appointed as casual worker in the Department of Posts on 9.1.84 after sponsoring his name by the Employment Exchange. Respondent No.3 disengaged the applicant without any reason but he was taken back on duty by respondent No.3 vide Memorandum dated 13.3.95. The applicant filed O.A No.517/98 before this Tribunal to confer temporary status to the applicant w.e.f. 29.11.89 instead of 10.5.96 and this Tribunal has issued a direction vide its order dated 17.12.98 to file a representation and the said representation was to be decided by the respondents keeping in view the scheme dated 12.4.91. The applicant submitted his representation dated 20.10.97 to the respondents but the respondents instead of giving temporary status to the applicant w.e.f. 29.11.89 has cancelled the benefit of temporary status which were given to the applicant w.e.f. 10.5.96. It is stated that the applicant was appointed in the Department as per rules and

the applicant has completed one year service prior to 29.11.89 (240 days in a year). Therefore, the applicant was fully eligible for conferment of temporary status as per the scheme dated 12.4.91. It is also stated that Shri Babu Lal and Shri K.G.Kumawat who were also disengaged were taken back and has been conferred with temporary status as per Scheme dated 12.4.91. It is further stated that the respondents on representation dated 20.10.97 instead of giving temporary status and regularisation of service of the applicant w.e.f. 29.11.89 has cancelled the temporary status given to him vide letter dated 10.5.97 without giving any opportunity of hearing/show cause and in this way grossly violated the principles of natural justice. Therefore, the applicant made a prayer in this O.A for the relief as mentioned above.

3. Reply was filed. It is admitted in the reply that the applicant has filed O.A No.517/98 before this Tribunal for conferment of temporary status w.e.f.29.11.89 instead of 10.5.96 and the said O.A was disposed of vide its order dated 17.12.98 by this Tribunal with the direction to decide the representation of the applicant keeping in view the scheme dated 12.4.91 within the period of 3 months. It is stated that in pursuance of the above direction, the applicant filed representation dated 20.10.97 which was examined and it was found that the temporary status given to the applicant w.e.f. 10.5.96 was erroneous for the reason as stated in the reply. Therefore, the temporary status conferred on the applicant erroneously was cancelled vide the impugned order and the respondents were perfectly within the rights and ambit of law.

4. Rejoinder was filed by the applicant reiterating the facts stated in the O.A.

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

6. The learned counsel for the applicant vehemently submitted that temporary status conferred upon the applicant vide letter dated 10.5.96 by respondent No.3 was cancelled without giving any opportunity of hearing to the applicant, thereby respondent No.3 has grossly violated the principles of natural justice. He has also argued that the applicant is entitled to confer temporary status w.e.f.29.11.89 instead of 16.5.96.

7. On the other hand the learned counsel for the respondents has argued that applicant was erroneously

(10)

conferred temporary status w.e.f. 10.5.96 as the applicant was not found to fulfill the conditions for conferring temporary status upon him w.e.f. 29.11.89 and not w.e.f. 10.5.96. Therefore, the order dated 10.5.96 was found irregular and was cancelled vide the impugned order dated 4.2.99 and no opportunity of hearing was required in case of rectification of mistake. In support of his contentions he has referred the following judgments:

- (i) 1998 (8) SCC 731, UOI Vs. R.N.Hegde
- (ii) 1998(8)SCC 736, Director Doordarsan Vs. S.Kuttan Pillai
- (iii) 1997 (11) SCC 121

8. I have given respectful consideration to the rulings cited by the learned counsel for the respondents and also perused the whole record.

9. As regards the prayer of the applicant regarding conferment of temporary status w.e.f 29.11.89 is concerned, the applicant is a daily rated casual labour. It is settled law that a casual labour has no right to a particular post. He is neither a temporary Govt servant nor a permanent Govt servant. The protection given by Article 311 does not apply to him. He is asked to do a job on a daily wage basis. His tenure is precarious. His continuance is dependent on the satisfaction of the employer. A temporary status conferred upon him by the Scheme only confers on him those rights which are spelt out in Clause 5 namely wages at daily rates with reference to minimum pay scale for corresponding regular Group-D official including DA, HRA and CCA. The conferment of temporary status would not involve any change in the duties and responsibilities and the engagement will be on daily rates of pay on need basis. The grant of temporary status does not depend upon seniority or existence of vacancies and an employee has only to satisfy the condition regarding service for specified number of days. The question of seniority would come only when the casual labourer is to be regularised. Para 1 of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme reads as under:

1. "Temporary Status" would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year. During the year, they must have been engaged for a period of 240 days (206 days in the case of offices observing five day's weeks)."

10. In view of the above provisions it can be said that the temporary status has to be conferred on the casual labourers who were in employment as on 29.11.89 and further those who continued to be currently employed and have also rendered continuous service of at least one year.

11. In the instant case the applicant was initially engaged as casual labourer on 9.1.84 to work as unapproved candidate in RMS Jaipur Dvn, Jaipur, after sponsoring his name from Employment Exchange. The Scheme of conferment of temporary status and regularisation has been drawn-up by the respondent department in compliance with the directions of the Supreme Court and in consultation with the Ministries of Law, Finance and Personnel, in terms of letter dated 12.4.91. The applicant is seeking conferment of temporary status w.e.f. 29.11.89 and in accordance with the provisions mentioned in Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, the applicant is entitled to the relief claimed by him in this O.A. As regards the other prayer:

12. In State of Gujrat Vs. Amba Lal Haider Bhai etc, AIR 1976 SC 2002, it is held that Rule of natural justice are not rules embodied always expressly in a statute or in rules framed therein, they must be implied from the nature of duty to be performed under a statute. What particular rule of natural justice should be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of the case.

13. In Olga Tellis Vs. Bombay Municipal Corporation, (1985) 3 SCC 545, it was held that the applicant was deprived of his livelihood without even being heard in the matter and without any notice merely on the basis of an on going police investigation. Right to life includes right to livelihood and thus the order is violative of Article 21 of the Constitution of India.

14. In Menaka Gandhi Vs. Union of India, (1978) 1 SCC 248, it was held that before any punitive action is taken which deprives the employee of the benefits he is enjoying, an opportunity has to be given.

15. In H.L.Trehan & Ors Vs. Union of India & Ors, (1989) SCC (L&S) 246, it is held "it is now settled principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Govt servant without complying with the rules of natural justice

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by giving him an opportunity of being heard.

16. In Delhi Transport Corporation Vs. DTC 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 to any punitive action.

17. In Director of ESI Scheme, Vs Sabata Mohanty SLP No.15023, 24A/1993, decided on 2.9.91, it was held that if the principles of natural justice in respect of any decision it is indeed material whether some decision would have been arrived at the absence of departure from the essential principles of natural justice. The decision must be declared to be 'no decision'.

18. In Sardar Gulzar Singh Vs. Union of India & Ors, SLJ 1998(1) CAT (PB-ND) 21, it was held that action having civil consequences should not be done without giving notice.

19. In Laxmi Chand Vs. UOI & Ors, 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.

20. It is not disputed that the applicant has filed representation in this case in pursuance of the orders of this Tribunal in O.A No.517/97, to consider the case of the applicant for conferment of temporary status w.e.f. 29.11.89. But the respondents has cancelled the temporary status already granted to him. This action of the respondents is definitely a flagrant violation of the principles of natural justice because before passing such an order which entails the civil consequences the opportunity of hearing must have been given. It was expected from the respondents to be fair and straight forward and should have acted like a model employer. But by not providing an opportunity of hearing to the applicant the respondents have acted against the principles of natural justice and in this case the impugned order dated 4.2.99 is not sustainable in law.

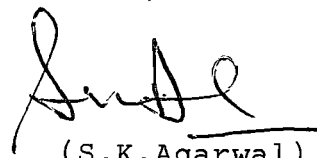
21. In the instant case admittedly no opportunity of being heard was given to the applicant and there had been ⁱⁿ flagrant violation of the principles of natural justice in passing the impugned order. Even a mistaken order requires the compliance of the principles of audi alteram partem.

22. In view of above all and the legal position as cited above, I am of the considered opinion that the impugned order

dated 4.2.99 is not sustainable in law as it has been passed in flagrant violation of the principles of natural justice and therefore, liable to be quashed and set aside. The legal citations as referred by the learned counsel for the respondents do not help the respondents in any way looking to the facts and circumstances of this case.

23. I, therefore, allow this O.A and thereby quash and set aside the impugned order dated 4.2.99 and declare the order as nonest. The impugned order by which the applicant was granted temporary status w.e.f. 10.5.96 is held inoperative so far as the date of conferment of temporary status w.e.f. 10.5.96 is concerned. The respondents are directed to issue necessary modified orders in favour of the applicant conferring upon him the temporary status w.e.f. 29.11.89 within a period of two months from the date of receipt of a copy of this order.

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


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