

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH JAIPUR.

O.A No.148/99

Dt. of order: 5/1/99

Mohammed Salim, S/o Shri Faiz Mohammed, R/o Jaipur,
presently working as Temporary Group-D in RMS Jaipur.

...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, RMS JP Dvn, Jaipur.

...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 2.2.99 at Anxx.A1 and to direct the respondents to pay salary of the applicant from the month February 1999 as were paid before February 1999.

2. In brief the case of the applicant is that he was appointed as casual worker in the Department of Posts on 25.8.1987 after sponsoring his name by the Employment Exchange. The applicant worked continuously with the respondents w.e.f. 25.8.1987 to 26.8.1990. Respondents No.3 disengaged the applicant on 27.8.90 without any reason but he was taken back on duty by respondent No.3 vide Memorandum dated 8.2.95 in pursuance of an O.A before this Tribunal which was registered as O.A No.494/92, decided on 21.9.94 with the directions to the respondents to consider the case of the applicant afresh in the light of D.G Posts letter dated 25.1.91. 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 stated the respondents 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 w.e.f 8.2.95 without giving any opportunity of



21

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.515/90 before this Tribunal for conferment of temporary status w.e.f.29.11.89 and the said O.A was disposed of vide its order dated 21.9.94 by this Tribunal with the direction to the respondents to consider the case of the applicant afresh in the light of DG Posts letter dated 25.1.91. It is also stated that the applicant has filed O.A No.127/97 to confer temporary status w.e.f. 29.11.89 instead of 8.2.95. It is stated that the applicant was granted temporary status irregularly w.e.f. 8.2.95 by respondent No.4. 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. 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 w.e.f 8.2.95 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.

7. On the other hand the learned counsel for the respondents has argued that applicant was erroneously conferred temporary status w.e.f. 8.2.95 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. 16.2.96. Therefore, the order dated 8.2.95 was found irregular and was cancelled vide the impugned order dated 2.2.99 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. As regards the prayer is concerned:

12. In State of Gujarat 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 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.

Vs. Sabata Mohanty

17. In Director of ESI Scheme, 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.

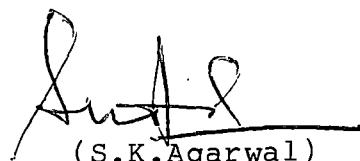
20. It is not disputed that the applicant has filed O.A No.127/97, to consider his case for conferment of temporary status w.e.f. 29.11.89. But the respondents has cancelled the temporary status already granted to him. This action of the respondents is definitely inflagrant violation of the principles 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 2.2.99 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 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 2.2.99 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 orders dated 2.2.99 and 8.2.99 and declare the orders as nonest. The respondents are directed to pay salary for the month of February 99 and onwards to the applicant as was paid in the month of January 99, 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).