

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 11th day of March, 2005

ORIGINAL APPLICATION No.385/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

Suresh Kumar Tinkar
s/o Shri Brij Mohan Tinkar,
aged about 29 years,
resident of 27, Jagdamba Colony,
(presently working as Stenographer Grade-III
in the office of Dy. Chief Controller of Explosive,
Near Amrapali Circle, Vaishali Nagar, Jaipur.

.. Applicant

(By Advocate: Ashok Gaur)

Versus

1. Union of India through
Secretary,
Ministry of Industries,
Govt. of India,
New Delhi.
2. The Chief Controller of Explosives,
Department of Explosives,
Government of India,
5th Floor, Block-A,
CGO Complex, Nagpur
3. Dy. Chief Controller of Explosives,
Department of Explosives,
Government of India,
New Amrapali Circle,
Vaishali Nagar, Jaipur.
4. Secretary, Staff Selection Commission,
Department of Personnel and Training,
Ministry of Personnel, Public

Grievances and Pensions, New Delhi.

.. Respondents

By Advocate:...

ORDER (ORAL)

The applicant has filed this Original Application, praying for the following reliefs:

- i) by appropriate order or direction the respondents No.1 to 3 may be directed to regularise service of the applicant since his initial appointment with all consequential benefits.
- ii) In alternative by appropriate order or direction the Hon'ble CAT may be pleased to direct the respondents to frame a time bound scheme for considering his case for appointment on permanent basis.
- iii) by appropriate order or direction the respondents be restrained to appoint any other person in place of the applicant.
- iv) by appropriate order or direction the applicant be allowed to continue to work as Stenographer grade-III till order of regularisation is issued in his favour.
- v) Any other appropriate order or direction, which the Hon'ble Tribunal considers just and proper in the facts and circumstances may also kindly be passed in favour of the applicant."

2. The brief facts of the case are that the post of Stenographer Grade-III fell vacant in the office of the respondent No.3 in February, 1997. For that purpose respondent No.3 took up the matter with the Staff Selection Commission (hereinafter referred as

SSC) to nominate suitable candidate. Accordingly, one Shri Gaurav Mehta was nominated vide letter dated 22.4.98 but he did not join the office of respondent No.3. Since the respondents wanted to fill up the post of Stenographer Grade-III, requisition was sent to the Employment Exchange for the purpose of giving ad-hoc appointment on the post. After conducting typing and stenographic test, the applicant was given appointment for the post of Stenographer Gr.III on ad-hoc basis vide office order dated 27.3.1998. It was made clear in the said appointment letter that the appointment is likely to continue for 89 days and is purely ad-hoc and temporary basis and his services can be terminated at any time without assigning any reason thereto. Since the office of respondent No.3 did not receive any candidate from the SSC, the appointment of the applicant was extended from time to time. However, his services were terminated vide order dated 15.6.99 (Ann.R4) after one year in conformity with para 6 of Chapter VII of Swamy's Master Manual for DDOs and Head of Offices which clearly provide that total period for which ad-hoc appointment may be made will be limited to one year and that practice of giving break periodically and appointing the same person is not permissible. In the meantime, the applicant approached this Bench by filing OA No.304/99. This Tribunal passed an ex-parte interim order dated 30.6.99 thereby directing the respondents not to dis-engage the

applicant from the post of Stenographer Gr.III till the next date. However, the said OA was ultimately disposed of on 11.1.2001 with the direction that the services of the applicant may not be dispensed with till a regularly selected candidate is appointed and joins on the post. It was further made clear in the order that the applicant will be free to participate in the process of selection, if initiated, for regular appointment on the post of Stenographer Gr.III. Now by way of this OA, the applicant has sought relief regarding regularization of his services against the post of Stenographer Gr.III, as according to the applicant, he has preferential right to continue in service till his case is regularized. It is further contended that the matter was also referred by respondent No.3 to the higher authorities for regularization of services of the applicant, but till date no action has been taken. It is on this basis, the applicant has filed this OA, praying for the aforesaid reliefs.

3. The respondents in their reply have taken objection regarding maintainability of this OA on the ground that the present case is barred by principle of res-judicata, inasmuch as, the present application is based on the similar reliefs which was decided earlier by this Tribunal and the relief was restricted to the extent of continuance in service till duly selected

candidate are made available. On merits, it has been stated that nomination of the candidate for the said post has been received in the office of respondent No.3 and complying with the Hon'ble Tribunals order dated 11.1.2001 passed in earlier OA, there is no question for regularization of services of the applicant, rather the respondents have no option but to terminate his ad-hoc services.

4. The applicant has filed rejoinder thereby reiterating that it was not permissible for the respondents to terminate the services of the applicant when they have taken work from him for more than 5 $\frac{1}{2}$ years. The applicant has now become ineligible due to crossing the maximum age for any other employment.

5. Pleadings in this were completed on 6.1.2004 and after admission the matter was listed for regular hearing. Thereafter the matter was adjourned from time to time and on more than one occasion it was observed that no further adjournment will be granted. The learned counsel for the applicant appeared and made submissions. We have heard the learned counsel for the applicant and perused the material placed on record.

6. From the material placed on record, it is evident that the applicant was initially appointed as Stenographer Gr.III purely on ad-hoc basis for a

period of 89 days as the SSC has failed to sponsor the candidate for the said post despite repeated requests made by respondent No.3 in that behalf. It is also apparent from the material placed on record that the ad-hoc period of the applicant was extended from time to time and he continued in that capacity for a period of about one year when his services were terminated vide order dated 15.6.99 in conformity with para 6 of Chapter VII of the Swamy's Master Manual for DDOs and Head of Offices which stipulates that total period of ad-hoc appointment will be limited to one year only. Thus, the contention of the applicant that work was taken from him for a period of about 5 $\frac{1}{2}$ years, as such it is not permissible for the respondents to terminate the services of the applicant, cannot be accepted. However, the applicant continued to work after his termination of services w.e.f.15.6.99 in terms of order dated 11.1.2001 passed by this Tribunal in OA No.304/99 which was in the following terms.

"We allow this OA and quash the impugned order Ann.A3 dated 15.6.1999 by which the applicant was terminated, and respondents are directed not to dispense with the services of the applicant till a regularly selected candidate is appointed and joins on the post. The applicant will be free to participate in the process of selection, if initiated, for regular appointment on the post of Stenographer Grade-III."

7. Thus, in view of what has been stated above, we see no infirmity with the action of the respondents in

case the services of the applicant were not regularized. Further, we are of the firm view that the applicant is not entitled for the relief as prayed for in view of the decision rendered by this Tribunal in the earlier OA and principle of res-judicata is clearly applicable in the instant case. Further, the view which we have taken is also in conformity with the law laid down by the Apex Court in the case of Dr. (Mrs.) Chanchal Goyal vs. State of Rajasthan, 2003 (2) SCSLJ 92 whereby the Apex Court has held that services of the ad-hoc appointee unless the initial recruitment is regularized through prescribed agency, there is no scope for demand of regularization even though there was a selection which is inconsequential. That was a case where the appellant was appointed as Lady Doctor in the Municipal Council. The appointment was to be made through PSC. Initially the appellant was appointed on ad-hoc basis for a period of six months or till the regularly selected candidate through PSC is available. There was a Rule 27 of Rajasthan Municipal Service Rules, which deals with temporary or officiating appointment. It was provided in that rule that no such appointment will continue beyond one year till the concurrence of the PSC is obtained. The appellant there has continued for a period of 14 years on temporary basis when the order of termination from service was passed. Thereafter she continued for further period of 14 years on account of stay order of

the court. The Apex Court held that mere continuation beyond the period of one year as prescribed under Rule 27 does not mean that rule of recruitment shall be relaxed and regularization be made. Thus, the present case is squarely covered by the ratio as laid down by the Apex Court in Dr. (Mrs) Chanchal Goyal (supra) and ~~hathay~~ is on better footing. Here, the services of the applicant were terminated after a period of one year as against 14 year which was done in the case of Dr. Chanchal Goyal. Thereafter the applicant continued to remain in service only on account of judgment rendered by this Tribunal in earlier OA. Thus, according to us, the present OA is bereft of merit and is liable to be dismissed for the reasons stated hereinabove.

8. Accordingly, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)