

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.100/137/2014

New Delhi this the 30th day of November, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)**

Shri Anand Singh,
S/o Shri Bhopal Singh,
R/o F-228, Harsh Vihar, Hari Nagar, Part-III,
Jaitpur, Badarpur, New Delhi-110044. ..Applicant

(Argued by: Shri U. Srivastava, Advocate)

Versus

Union of India through

1. The Secretary,
Ministry of Law & Justice,
Department of Legal Affairs,
Shastry Bhawan, 4th Floor,
Dr. Rajendra Prasad Road, New Delhi.
2. The President,
ITAT, Pratishtha Bhawan,
(OLD CGO Building), 4th Floor, 101,
Maharshi Karve Marg, Mumbai-400020.
3. The Vice-President,
Income Tax Appellate Tribunal,
11th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
4. The Registrar,
Income Tax Appellate Tribunal,
11th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi. ..Respondents.

(By Advocate: Shri Rajesh Katyal)

ORDER (ORAL)

Justice M. S. Sullar, Member (J):

The epitome of the facts & material, culminating in the commencement and relevant for deciding the instant Original Application (OA), as set-up by the applicant, Anand Singh S/o

Shri Bhola Singh, and expository from the record, is that, the applicant was appointed as a Chowkidar purely on an ad hoc basis, for a period of six months, vide offer of appointment dated 22.05.2006 and order dated 26.6.2006 (Annexure A-2 Colly), w.e.f. 01.01.2006 by the competent authority of Income Tax Appellate Tribunal (for brevity "ITAT"), wherein, it was specifically stipulated that his appointment is purely on an ad hoc basis, as such it will not bestow on him any claim for regular appointment. It was further provided in it, that his services are liable to be terminated at any time, without assigning any reasons.

2. The case set-up, by the applicant, in brief, insofar as relevant, is that he has been highlighting the discrimination to the extent of regularising the services of his juniors, namely, Rajesh Kumar and Kailash Ram, ignoring his claim. The respondents became annoyed and started harassing him by way of issuing memos and awarding the penalty. Even he was verbally restrained from performing his further duties on 15.06.2012. He made representations dated 22.02.2011, 14.03.2011, 09.04.2011, 20.06.2012 and the memos dated 07.01.1010 & 28.02.2010 (Annexures A-3 Colly & A-4) respectively, but in vain. It necessitated him to file **OA** bearing **No.4335/2012**, which was disposed and respondents were directed to consider the representation dated 20.06.2012 and demand notice dated 04.09.2012 filed by the applicant, by passing a reasoned and speaking order, within a period of 2

months from the date of receipt of a copy of that order, vide order dated 20.11.2012 (Annexure A-5) by this Tribunal.

3. In compliance thereof, the competent authority has passed a detailed impugned order, conveyed to the applicant vide letter dated 01.03.2013 (Annexure A-1) rejecting his claim. The impugned order reads as under:-

“Hon’ble Central Administrative Tribunal, Principal Bench, New Delhi vide order dated 20.12.2012 has directed the Respondents that “to consider the representation dated 20.6.2012 and demand notice dated 4.9.2012 and pass a reasoned and speaking order thereon within a period of two months from the date of receipt of a copy of this order and convey their decision to the applicant.”

Shri Anand Singh was initially appointed as Chowkidar on adhoc basis w.e.f. 1.6.2006. In the past there were a number of complaints against him. Following Memoranda/Warning were issued to him, as per the instructions of the Hon’ble President, I.T.A.T. and the Hon’ble Vice-President (Delhi Zone)

Memorandum/Warning Date	Details of Memo/Warning
20.08.2008	During the surprise inspection made by Hon’ble VP(DZ) on 19.8.2008 at about 5.45 PM it was found that no Member’s Chambers, Court Rooms, Private Secretaries’ Rooms and other rooms locked even after the office hours. Current appeal files and other important files are being kept in Court rooms and other rooms. Immediately after the session are over in the Court rooms, and the officers have left for the day, Shri Anand Singh, who was in charge of chowkidar duties in 11 th floor, should have locked all such Chambers, Court rooms and other rooms.
23.12.2009	With reference to his joining report dated 21.12.2009 he has neither handed over the joining report to Dairy section nor attended duty on 21.12.2009 he has handed over the joining report on 22.12.2009 without revising but not attended duty on 22.12.2009. He has not attended the duty upto 5 PM of 23.12.2009.
07.01.2010	He has entered the chamber of higher authorities without any prior permission and started complaining about his superior officers and disturbing them. He had been visiting the residence of the higher authorities at odd hours and disturbing them. This attitude and conduct had been viewed seriously by the higher authorities. It has since long been observed that Shri Anand Singh is showing admancy in performing his official duties. A number of

	complaints from Senior Officers are already on record. Earlier also, as per directions of Hon'ble Vice President (DZ). Memoranda/Warnings were issued to Shri Anand Singh. In spite of these warnings, there is no improvement in his duties diligently and desist from such mischievous activities failing which appropriate disciplinary action will be initiated against him.
28.1.2010	Shri Anand Singh vide his application dated 15.01.2010, applied for 3 days leave from 15.1.2010 to 17.1.2010. On expiry of the leave he did not report for duty and it has been reported that he is unauthorisedly absent from duty till date.

Apart from the above, Shri Anand Singh was warned orally on several occasions to maintain discipline and be punctual to his duties. Time and again he apologized for his irresponsible conduct. On last occasion he was given extension vide order No.F.74(A)-Ad/At/2009 dated 15th December, 2009, but he did not attend office upto 28th December, 2009. **On being issued the memo dt. 23.12.2009 and after a lot of persuasion, he joined duty on 29th December, 2009 and attended office only upto 14th January, 2010. Thereafter neither he attended duty nor given any satisfactory reason for his absence. His last extension expired on 12th April 2010 and he did not join till the last date of his extension. Since he was absent from the duty continuously for a period of more than three months and there was no improvement in his behavior, the Hon'ble Vice-President (Delhi Zone) vide his order dated 20th April, 2010 has observed as under:-**

“All the record shows that he has not improved himself despite warning. So there is no point in extending his service in the interest of office discipline.”

As a matter of fact, he has not obeyed the instructions of the Senior Officers of this and remained unauthorisedly absent from the duty. He has always been in the habit of arguing with the senior officers and by nature he is a habitual liar. It is a matter of record that Shri Anand Singh unauthorisedly remained absent from duty w.e.f. 15th January, 2010 onwards till 12th April, 2020. Under these circumstances, it will not at all be in the exigencies of administration to appoint him again to the post of Chowkidar/Peon on adhoc basis in the Income-tax Appellate Tribunal.

The application dated 20.06.2012 received from Shri Anand Singh was placed before the competent authority with all the previous details about him. The allegation made by Shri Anand Singh in his application that he was doing the duties of Chowkidar alone during night time as well as day time is not correct. There are two persons employed as Chowkidars in the Income-tax Appellate Tribunal, Delhi Benches, New Delhi as per details below:-

Sr.No.	Year	Name of the Employees	Period (From/To)

1.	2006	Sh.Anand Singh _____ Sh. Bharat Singh _____	01.06.2006 (initial joining) _____ Service performed Whole Year
2.	2007	Sh.Anand Singh _____	Service performed Whole Year- _____
		Sh. Bharat Singh _____	Worked till 29.06.2007 _____
		Sh.Krishnamurthy _____	Worked From 23.09.2007
3.	2008	Sh.Krishnamurthy _____	Service performed whole year _____
		Sh.Aanand Singh _____	-Do-
4.	2009	Sh.Krishnamurthy _____	Service performed whole year _____
		Sh.Anand Singh _____	-Do-
5.	2010	Sh.Krishnamurthy _____	Till 01.06.2010 _____
		Sh.Anand Singh _____	Worked till i.e. last date of extension 18.01.2010*

* Anand Singh absence from duty 18.01.2010 till last date of extension 12.04.2010.

The duty hours of the Chowkidar is fixed for eight hours that suits the Bench. However, the Chowkidars should attend the office $\frac{1}{2}$ hour early and leave $\frac{1}{2}$ hour after the scheduled time after depositing the key with the office.

Considering the details placed before the Hon'ble President, Income-tax Appellate Tribunal and after perusing the said details he has rejected his representation dated 20.6.2012.

Regarding the Demand notice dated 4.9.2012 U/s 2-A of the Industrial Dispute Act forwarded by Shri Anand Singh it is stated that Income-tax Appellate Tribunal is not coming under the purview of Industrial dispute Act and hence his demand notice cannot be considered.

This issues with the approval of the Hon'ble President, ITAT.

ASSISTANT REGISTRAR
INCOME-TAX APPELLATE TRIBUNAL
DELHI BENCHES, NEW DELHI".

4. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned order mainly on the

ground that respondents have regularised the services of similarly situated persons including one Rajesh Kumar and Kailash Ram, totally ignoring the claim of the applicant in the year 2008, despite his repeated requests. Instead of redressing his grievances, the respondents have discharged him from service deliberately and in an arbitrary manner and appointed freshers, namely, Krishna at Vishakhapatnam Bench of ITAT, vide order dated 23.07.2010 (Annexure A-6 Colly) and Vinod Singh Chauhan at Delhi Bench of ITAT as Chowkidar, vide order dated 15.02.2011 (Annexure A-6 Colly), which, according to him, is illegal.

5. The case of the applicant, further proceeds that the respondents have been issuing memos during the course of his employment. According to him, the respondents have terminated his services verbally on 15.06.2012, but though it reveals from the facts that the termination is based on misconduct and without any show cause notice or enquiry. The impugned order (Annexure A-1) was stated to be arbitrary, mechanical, non-speaking and illegal. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order in the manner indicated hereinabove.

6. The respondents refuted the claim of the applicant, and filed the reply, inter alia, pleading certain preliminary objection of maintainability of the OA, cause of action and locus standi of the applicant. It was pleaded that he was

appointed on ad hoc basis, initially for a period of six months, as a stop-gap arrangement and the same will not confer any right to regularisation of his services in the department. He cannot seek regularisation in view of ratio of law laid down by a Constitutional Bench judgment of Hon'ble Apex Court in case **Secretary, State of Karnataka Vs. Uma Devi (2006) 6**

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7. However, on merits, it was averred that on earlier occasions applicant was repeatedly verbally warned for his misbehaviour and misconduct with his other officials and superior staff. He was asked to improve his attitude which did not yield any result. He was provided ample opportunities to improve his conduct, behaviour, attitude towards his duties, which he failed to deliver. Having no other option left, the competent authority after thoroughly examining the facts and circumstances of the case, has decided to terminate his services as per prevalent rules. It was alleged that in pursuance of the pointed order of the CAT, all the issues raised by the applicant in the representations/demand notice were duly considered and negated, by passing a detailed reasoned impugned order dated 01.03.2013 (Annexure A-1), by the competent authority. It will not be out of place to mention here, that reiterating the validity of the impugned order, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

8. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the OA, the applicant filed the rejoinder. That is how we are seized of the matter.

9. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that there is no merit, and the instant OA deserves to be dismissed, for the reasons mentioned hereinbelow.

10. Ex-facie, the main arguments of learned counsel for the applicant, that since the services of the applicant were disengaged **verbally** on 15.06.2012, and was not allowed to perform his duty by the respondents, so the applicant is entitled to reinstatement in service, full back wages and impugned order (Annexure A-1) is liable to be set aside, are not only devoid of merit, but misplaced as well.

11. As is evident from the record, that the applicant has vaguely claimed that his services were **verbally** terminated on 15.06.2012 by the respondents, but he has miserably failed to substantiate this fact as he has not produced any document or evidence on record, in this regard. No material/evidence, much less cogent, is forthcoming on record to remotely prove that the applicant has worked till 15.06.2012, when his services were stated to have been verbally terminated. Moreover, the claim of the applicant is self contradictory. At

the first instance, his case is that he was restrained from performing his duty verbally on 15.06.2012. On the contrary, he has pleaded that, "it reveals from the face of the record that the termination order was passed based on misconduct, without making any enquiry". It remained an unfolded mystery as to how, in what manner and which authority has verbally disengaged the services of the applicant, particularly when the alleged termination order has neither seen the light of the day nor the door of the court. In that eventuality, it cannot possibly be saith that respondents have verbally passed the termination order of the applicant on 15.06.2012, based on his misconduct. The applicant cannot legally be permitted to blow hot and cold in the same breath, in this relevant connection. That means, the applicant has set-up a false claim for his reinstatement.

12. On the contrary, a perusal of the record/impugned order (Annexure A-1) would reveal that the applicant is a chronic defaulter, remained repeatedly absent. Subsequently, he joined duty on 29.12.2009 and attended office only upto 14.01.2010. Thereafter, neither he attended the duty nor gave any satisfactory reason for his absence. His last extension expired on 12.04.2010 and he did not join till his last date of extension. Since he was absent from the duty continuously for a period of more than 3 months and there was no improvement in his behaviour, so the Hon'ble Vice President

(Delhi Zone), ITAT, vide his order dated 20.04.2010 has observed as under:-

“All the record shows that he has not improved himself despite warning. So there is no point in extending his service in the interest of office discipline.”

13. Meaning thereby, the services of the applicants were disengaged, vide order dated 20.04.2010 by the competent authority, but he has not challenged the basic termination order within a stipulated period of limitation and filed the instant OA on 24.12.2013 on the speculative grounds, that his services were verbally disengaged on 15.06.2012, which he has utterly failed to substantiate by producing any material on record. Hence, he is not entitled to any relief at this inordinate belated stage.

14. Therefore, once it is proved on record that the services of the applicant, who was appointed purely on ad hoc basis, were disengaged, vide order dated 20.04.2010 in terms of conditions of appointment of service by the competent authority and unless the basic termination order 20.04.2010 is challenged & set aside, no relief can possibly be granted to the applicant. At the same time, he cannot be permitted to take the benefit of subsequent impugned speaking/reasoned order dated 01.03.2013 (Annexure A-1) for his reinstatement, which was passed on his representations/memos in pursuance of the indicated order of the CAT, by the competent authority. Therefore, it is held that the applicant has attended his duty in intervals till 14.1.2010 and his

services were disengaged on 20.04.2010 by the competent authority which was not challenged by him, so he is not entitled for reinstatement in service. Hence, applicant has set up a false claim of reinstatement, which is not legally permissible.

15. Be that as it may, the fact remains is that the services of the applicant were disengaged, vide order dated 20.04.2010 passed by the competent authority. Unless and until the basic termination order is challenged and set aside, applicant is not entitled for any relief in the garb of challenge of the subsequent impugned speaking order dated 01.03.2013 (Annexure A-1), in the obtaining circumstances of the case.

16. In the light of the aforesaid reasons, as there is no merit, the instant OA is hereby dismissed, as such. However, the parties are left to bear their own costs.

**(P.K. BASU)
MEMBER (A)**

Rakesh

**(JUSTICE M.S. SULLAR)
MEMBER (J)
30.11.2016**