Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1313/2013

Reserved on: 16.08.2016
Pronounced on:04.10.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon''ble Dr. B.K. Sinha, Member (A)

Jai Kant s/o Sh. Rajnath Ram,
R/o D-44, Molar Band Extension,
Badarpur, New Delhi- 44. ...Applicant

(By Advocate: Sh. Amit Kumar)

Versus

1. National Highway Authority of India,
Through its Chairman,
1, Eastern Avenue, Maharani Bagh,
New Delhi – 110 065.

2. Manoj Kumar
(Working as Group 'C'(MTS) employee)
(to be served through Respondent no.1) ...Respondents

(By Advocates: None)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The applicant in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, is aggrieved with the order dated 11.07.2001 issued by the respondents (Annexure A.1) terminating his services w.e.f. 30.09.2001, and continuance of his juniors as also appointing another set of contract employees to replace him.

2. The applicant has prayed for the following relief(s):-

"*(a) Call for the records of the case.*

(b) Quash and set aside the impugned order dated 11.07.2001 (Annexure A/1).

(c) Direct the respondents to restore services of the applicant with all consequential benefits including substantial appointment, seniority, promotion etc.

(d) To allow this OA with cost of litigation in favour of the applicant and against the respondents, and

(e) Pass such other and further order, which this Hon'ble Court deems fit and proper in existing circumstances of the case."

3. The facts of the case, briefly stated, are that pursuant to the advertisement issued by the respondent in October, 1996, the applicant applied for the post of Peon in the scale of Rs.750-950/- having fulfilled the requisite qualification of 8th pass. The applicant was selected following due process but he was not given any appointment letter to that effect. Instead, he was appointed on contract basis vide order dated 27.02.1997 [page 32 of the paper book] on a monthly fee of RS.2000/- initially for a period of one year. Subsequently, the period of contract was extended from time to time. The last of the extensions was granted vide communicated dated 11.07.2001 till 30.09.2001 on the consolidated salary of Rs.3000/- per month till the respondent's office was shifted to the new premises. Thereafter, the contract of the applicant has been allowed to lapse without being extended. The applicant submits that he is being replaced by another set of contract employees which is impermissible in law. It is the case of the applicant that the action of the respondent

is arbitrary as having been interviewed against the post advertised for regular vacancy, the applicant was appointed as contract employee; once he was interviewed against a regular vacancy advertised in scale of pay of Rs.750-940/-, he could not have been appointed on contract basis. The applicant further alleges violation of law of natural justice as not prior notice has been given to him. He submits that his service career has been impeccable and he has been appreciated on occasions more than one by the competent authority. The applicant also claims to have acquired prospective rights over the service. He has cited the case of one *Shiv Murti Tiwari* who had been similarly appointed as a contract Driver but was subsequently regularized/ confirmed. He has also pointed out to the instances of Rajender Singh and Hira Singh, Peons appointed in similar manner who have since been confirmed thereby making the action of the respondents discriminatory. It is also submitted by the applicant that one Mahinder Singh Bisht, who had been working as a Peon, had been elevated to the post of Stenographer whereby two posts of Peons remaining vacant need to be filled up. The case of the applicant is pending for confirmation before the Chairman and his representation dated 22.09.1999 is yet to be decided. The applicant has acquired a right of regularization in his favour which cannot be faulted. The applicant has also completed

240 days and, therefore, he claims to have acquired permanent status of the employees. The applicant alleges the action of the respondents discriminatory. The applicant has also relied upon decided case of Hon'ble Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu & Anr.* [AIR 1974 (SC) 555]. The applicant further submits that there are similar posts of Peon remaining against which he deserves to be regularized. The applicant also submits that he has filed a suit bearing Suit No.290/2001 before the Civil Judge, Tees Hazari Court, Delhi which was dismissed as withdrawn vide order dated 16.07.2012 with liberty to file fresh case before this Tribunal.

4. The respondent no.1 (official respondent) has filed the counter affidavit rebutting all the points raised in the OA and submitted that the applicant had never been appointed against the aforesaid post on regular basis. He has clearly admitted that he had been appointed on the post of Peon on contract basis. The applicant has never been selected against regular post of Peon advertised and instead he was appointed on contract basis w.e.f. 27.02.19997. A total of 308 candidates were shortlisted out of which 86 candidates attended the interview. Out of five posts, one each was reserved for members of SC, ST and OBC and two posts were for general category candidates. Out of the panel of

minimum three candidates shortlisted, the candidates at the top were recommended for selection against these five permanent posts. The panel had a life of one year starting from 12.02.1997 and since the applicant was at very low position in the merit, he was, therefore, not recommended for selection. This fact was very much within the knowledge of the applicant from the very beginning. However, he is deliberately and wilfully trying to mislead the Tribunal by alleging that he had never challenged these appointments on contract basis in the instant OA. The respondents allege that the applicant had prior knowledge of the contract coming to end [para D at page 68 of the paper book]. The respondents also submit that there are similarly situated persons who could not be appointed and the contract of all the persons were not getting renewed.

5. The applicant in the rejoinder application, by and large, has reiterated the earlier averments.

6. We have carefully gone through the pleadings of the parties and documents so adduced as well as the law citations relied upon by them. We have also patiently heard the oral submissions advanced by the learned counsel for the applicant.

7. It is an admitted fact that an advertisement for regular appointment had been issued against which the applicant

had applied for and was called for interview vide letter dated 06.02.1997 [page 31 of the paper book]. However, we take note of the submissions of the respondent that the applicant could not have been appointed on being placed low in the merit list. Therefore, he had to be appointed on contract basis. The respondents drew our attention towards the fact that the services of the applicant had been dispensed with because there was a change in the policy. It was decided that henceforth no tea, coffee, snacks, lunch etc. would be served to the officers as distinct from the earlier practice and, therefore, the persons appointed in regular course would get affected.

8. We also take note of the submission of the respondents that no distinction or pick and choose had been made and each person has been given opportunity at par with others. However, the applicant had not been terminated but his contract had been allowed to lapse. Thus, we find that since the persons appointed were insufficient to cater the needs of the organization, some more candidates in lower position were taken in. There was nothing wrong in this practice. The only other choice was that no one could have been appointed except those against permanent posts that would have been even worse as the applicant would not have the liberty to serve at all. We find nothing pernicious in this

practice. We also find that the services of the applicant were not extended as a result of policy shift and hence the applicant and others were rendered surplus. Hence, a direction had to be made. It is an admitted fact that the Tribunals/Courts cannot interfere with the policy of the Government and the Hon'ble Supreme Court in *Michigan Rubber (India) Ltd. v. State of Karnataka & Ors.* [2012 (8) SCC 216] has propounded the ratio that the Government and their undertaking shall have free hand in deciding their policies and the courts cannot interfere unless it is found to be arbitrary, discriminatory, actuated by *mala fide* or bias. The Hon'ble Supreme Court in arriving at this decision also noted its earlier decision in *Union of India & Anr. vs. International Trading Co.*[2003 (5) SCC 437] wherein it had been held as under:-

> *"15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the*

impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

22. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See Parbhani Transport Coop. Society Ltd. v. Regional Transport Authority, Shree Meenakshi Mills Ltd. v. Union of India, Hari Chand Sarda v. Mizo District Council and Krishnan Kakkanth v. Govt. of Kerala.)"

9. It is clear from the above pronouncements of the Hon'ble Supreme Court that the decision not to extend the services of the applicant had been taken for cogent reasons and the respondents cannot be blamed for the same.

10. We also take into consideration that what is the right of a contract employee. It is an admitted position that the

services of a contract employee would be governed by the terms of the contract drawn up under the Indian Contract Act and not by the regular service conditions as would be available to a regular employee. In the case of *Bank of India & Ors. Vs. O.P. Swarankar* [2003 (2) SCC 721], the Hon'ble Supreme Court held as under:-

> *"48. It is difficult to accept the contention raised in the bar that a contract of employment would not be governed by the Indian Contract Act. A contract of employment is also a subject matter of contract. Unless governed by a statute or statutory rules the provisions of the Indian Contract Act would be only applicable at the formulation of the contract as also the determination thereof. Subject to certain just exceptions even specific performance of contract by way of a direction for reinstatement of a dismissed employee is also permissible in law."*

11. We also take note of the fact that the examples of Rajinder Singh, Hira Singh etc. which have been cited by the applicant as discriminatory towards him are not applicable to the facts of the case in had as these persons were recruited as regular employee and, therefore, they do not belong to this category. We also take note of the fact that the applicant has never challenged the order during his tenure and became active once the respondents have not renewed his contract. We also take note of the denial of the respondents at para 4.15 that the Chairman, NHAI had not ever decided to make the applicant regular, nor had he been given to understand that his services would be made regular. The applicant had worked as contractual employee knowing

that it was for a limited period and had never been objected to at that point of time [para 4.18 at page 67 of the paper book[.

12. In view of our above consideration, we find that the applicant has miserably failed to demonstrate that any of his rights have been transgressed by the respondents. His services could not be regularized on account of the policy shift. The allegation of discrimination having not been substantial, hence, we have no option but to dismiss the instant OA without costs. We order accordingly.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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