Central Administrative Tribunal
Principal Bench

OA No. 4218/2011

Order reserved on: 18.05.2016
Order pronounced on: 13.07.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

1. Sh. Shiv Kumar
   S/o Sh. Ram Baksh

2. Sh. Vikram Singh Latwal
   S/o Sh. P.S.Latwal

3. Sh. Dilwar Singh Rawat
   S/o Sh. Gabel Singh Rawat

All the three working as Casual Civilian
Telephone Operators,
Under the Commandant,
Indian Military Academy,
Ministry of Defence,
Government of India,
Dehradun.

- Applicants

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India Through

1. Secretary
   to the Government of India,
   Signal Directorate (Signal-IV)
   Ministry of Defence,
   South Block, New Delhi.

2. The Commandant,
   Indian Military Academy,

Ministry of Defence,
Government of India,
Dehradun.

- Respondents

(By Advocate: Sh. Subhash Gosain)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The present OA has been filed by the applicants, three in number, with the following prayer:

> "8.1 That this Hon'ble Tribunal may be graciously pleased to allow this application and direct the respondents to:
>
> (i) To produce the relevant records.
> (ii) To reinstate the Applicants on the post from which they are being illegally, arbitrarily and maliciously removed.
> (iii) To give the Applicants all consequential benefits.
> (iv) Since the Applicants have already worked for more than 10 years, the Respondents be directed to pay to the Applicants, salary at the lowest grade of employees as per law as laid down by the Hon'ble Supreme Court in case of Secretary, State of Karnataka &ors. Vs. Uma Devi and Ors. [SLJ 2006 (3) 1 pg 27].
>
> 8.2 That this Hon'ble Tribunal may further be pleased to grant any other or further relief to the applicant as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
>
> 8.3 That this Hon'ble Tribunal may also be pleased to award the cost of the proceedings to the applicant."

2. Brief facts of the case are that the applicants were appointed as casual Telephone Operators in the year 1998 on daily wages @ Rs.55 per day. The wage was revised to Rs.100 per day in 2009. The applicants submitted representations dated 23.09.2008 and

10.10.2008 to respondents for review of their emoluments citing various judgments of Hon'ble Supreme Court. When they did not receive any decision from the respondents, they filed OA No.156/2009. The Tribunal issued notice to the respondents on 22.01.2009 for filing the reply by 05.03.2009. However, the respondent no.2 stopped the entry of the applicants in the office complex after receiving the notice from the Tribunal and passed oral orders to SHO of the Police Station concerned area to seize the entry passes of the applicants because their services were terminated. The applicants filed MA No.344/2009 with a prayer for restraining the respondents from refusing to allow the applicants to perform their duties on which the Tribunal passed an order on 05.03.2009 to maintain status quo for a period of 14 days. The respondent no.2, however, did not comply with the order of the Tribunal. The applicants gave a legal notice to respondent no.2 which was replied on 28.04.2009 by side tracking the issues involved. In the OA No.156/2009 the respondents filed counter reply on 15.05.2009 and the applicants filed Rejoinder on 26.08.2009. On 25.02.2011 the Tribunal

considered the CP No.182/2009 along with MA No.344/2009 in OA No.156/2009 and passed the following order dismissing the MA and closing the CP:

> "2. We have heard both the counsel and perused the pleadings. In main OA applicants had sought equal pay for equal work. Notice was issued in OA on 22.1.2009. Thereafter MA No. 344/2009 was filed by the applicants seeking a direction to the respondents not to refuse the work to the applicants or to deny them the entry. On this MA, notice was issued on 26.2.2009 returnable on 5.3.2009. Respondents have specifically stated that copy of this MA was not served on them till 14.3.2009, therefore, they were not aware about it on 5.3.2009. Their averment seems to be correct because on 5.3.2009 it was mentioned in the order that counsel for the applicants undertakes to give another set of OA and MA to the counsel for the respondents the same day, yet copy was not served on respondents till about 14.3.2009. In these circumstances, naturally they would not have known the background of the order dated 5.3.2009.
>
> 3. In any case since the relief sought in OA was different and grievance in OA was different, it ought to have been agitated by a separate OA. Simply by filing MA without amending the relief clause in the OA, the scope of OA could not have been enlarged. If applicants are aggrieved by their termination, it would be open to them to challenge it separately. MA 344/2009 is, therefore, dismissed as not maintainable with liberty to the applicants to challenge it separately.
>
> 4. Since MA has been dismissed as not maintainable, no case for contempt is made out as copy of the MA was not even served on the respondents, therefore, we are satisfied it cannot be termed as a case of wilful disobedience. The main OA has already been dismissed by a separate order. Since CP was filed against an interim order, this CP is also closed. Notices are discharged. We, however, make it clear that it does not mean we have upheld the termination. That may be challenged separately."

3. MA No.140/2009 and the OANo.156/2009 in which the prayer for revision of daily wages of the applicants was made, was dismissed by order dated 25.02.2011.

The applicants have now filed the present OA challenging their dismissal by respondent no.2 from employment as casual Telephone Operators.

4. Learned counsel for the applicants submitted that respondent no.2 has violated all canons of law by terminating the engagement of the applicants,who were working with them on casual basis since 1998, i.e., for more than 10 years, by an oral order without giving any reason. Relying on **Dhirendra Chamoli and anr. Vs. State of Uttar Pradesh**, ATR 1986 172 learned counsel submitted that Hon'ble Supreme Court had taken a view that it was not at all desirable that in management, particularly the Central Government, can employ persons on casual basis for a long period of time. In **Secretary, State of Karnataka & ors. Vs. Uma Devi and Ors.**, (2006) 4 SCC 1, the Hon'ble Supreme Court had directed that the daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre. In **Surinder Singh and anr. Vs. The Engineer in Chief, CPWD**, ATR 1986 (1) 76, the Hon'ble Supreme Court had directed the respondents to act as a model and enlightened employers and adhere to the principles of

"equal pay for equal work". According to learned counsel after working for 10 years the respondent no.2 should have considered the applicants for regularisation in accordance with the ratio laid down in **Surinder Singh** (supra) and could not have terminated the engagement of the applicants without giving any reason. It was apparent that the respondent no.2 had acted out of vengeance against the action of the applicants in approaching this Tribunal for direction to remove the discrimination in wages as compared to the regular employees when they were doing the same work. According to the learned counsel, the respondent no.2 should be directed to re-engage the applicants with all consequential benefits.

5. Learned counsel for the respondents, on the other hand, submitted that the applicants were working only as casual labours and the letter of appointment dated 07.10.1998 placed at Annexure A-1 had mentioned that the service of the applicants was liable for termination without assigning any reason or notice of discharge. Respondent no.2 organisation was a sensitive defence training institution and the security considerations were

of paramount importance. The respondents earlier had engaged casual Telephone Operators as the posts were vacant. Later, it was decided, as a matter of policy, that only regular employees will be utilised as Telephone Operators in the exchange and since then they are not engaging any casual employee in that position. He denied that the disengagement of the applicants in 2009 was prompted by the action of the applicants in filing the OA in the Tribunal. He further submitted that the respondent no.2 on its own had revised the daily wages from Rs.55 a day to Rs.100 a day in 2009. The OA, therefore, has no merit and deserves to be dismissed.

6. We have heard the learned counsels and perused the record. The applicants had earlier approached this Tribunal in OA No.156/2009 with a prayer to enhance their remuneration in accordance with the judgment of Hon'ble Supreme Court in **Surinder Singh** (supra) and **Dhirendra Chamoli** (supra). During the pendency of that OA, the applicants were discharged by the respondent no.2, which led to filing of the present OA. The prayer in this case is to reinstate the applicants on the post from which they have been "illegally, arbitrarily

and maliciously removed". It is also the prayer that the applicants should be given the pay equal to the salary at the lowest of the equivalent grade of employees. Therefore, the main issue to be considered is whether the dismissal of the applicants from the respondent no.2 organisation was a valid action whether the applicants had a right to continue that assignment indefinitely.

7. From the records it is seen that the applicants were appointed on 07.10.1998 (Annexure A-1) as causal operators. The letter of engagement stipulates the wages to be @ Rs.55 per day with maximum days of employment in a month as 24 days. The employment was purely on casual basis and could be terminated at any time by the appointing authority without notice. The respondents have submitted that in the interest of the security of the respondent no.2 organisation they have decided to do away with the services of casual workers in the Telephone Exchange. This Tribunal on 06.01.2016 had directed the respondents to file additional affidavit disclosing the total number of casual Telephone Exchange Operators (CTEOs) presently working with their respective dates of engagement and total number of

sanctioned posts which are today lying vacant. Accordingly, the respondent no.2 has filed the additional affidavit on 15.02.2016. This affidavit reveals that authorised strength effective from January 2010 in respect of Civilian Switch Board Operators (CSBOs) is 10. Out of these only one post of CBSO is vacant. There is no CTEO engaged at present.

8. Thus, there is substance in the submission of the learned counsel for respondent no.2 that keeping in view the security scenario, the respondents are not resorting to engagement of any casual workers to operate telephone exchange even if there is any shortage. We, therefore, do not find any justification, notwithstanding more than 10 years' service put in by the applicants before their termination in 2009, to direct the respondents to re-engage them as CTEOs contrary to their policy of not employing casual workers in the Telephone Exchange. It has been held by the Hon'ble Supreme Court in several cases that the services of contractual employees cannot be replaced by another set of contractual employees but they can certainly be

disengaged once the regular appointments have been made.

9. What strikes us, however, is the timing of disengagement of the applicants from their work in 2009. The applicants filed OA No.156/2009 on 05.01.2009 and the Tribunal issued notice and status quo order on 22.01.2009. The respondent no.2 thought it appropriate to disengage them through an oral instruction w.e.f. 20.02.2009 when this Tribunal was seized of the matter relating to the revision of their wages. The applicants have filed a copy of the counter affidavit filed by the respondents in OA No.156/2009 as Annexure A-9. It is interesting to note that in para 4.10 of this document the respondents have taken the following stand:

> "That in reply to para no.4.10 it is submitted that the reply to the representation made by the casual labours and it was assured to them that their case would be looked into and further action will be taken but applicants preferred the present OA before the Hon'ble Tribunal."

10. The respondents have admitted that there was a representation made by the 'casual labours' and they were assured that their grievances would be looked into, but the applicants preferred to file the OA before the Tribunal. Two things are clear from this statement

(i) That the respondents had not yet taken any policy decision that they would not engage any CTEO in the telephone exchange when the applicants were disengaged, and,

(ii) There could be an element of annoyance over the fact that the applicants had filed an OA before the Tribunal.

11. The respondents had pleaded in their reply in CP no.182/2009 in OA no. 156/2009 that they were not aware of the interim order dated 22.01.2009 directing them to maintain status quo. Accepting this plea of the respondents this Tribunal had closed the CP. What remains unexplained is the timing of the disengagement of the applicants. We are, therefore, of the view that the circumstances do indicate that the disengagement of the applicants could be prompted by the action of the applicants of filing the OA before the Tribunal.

12. In the background of the foregoing discussion, we are of the view that once the respondent no.2 has taken a decision not to engage CTEOs in the telephone exchange, this Tribunal will not give any direction that will be in conflict with that policy. However, the fact is that the

applicants after serving for more than 10 years were disengaged from their work at a juncture when they filed an OA seeking parity in wages with the regular employees. The facts and circumstance do not support, what the respondents would like us to conclude, that it was a mere coincidence. The applicants were deprived of the opportunity to earn their livelihood, without giving any notice, or assigning any reason, or examining the possibility of their redeployment giving due regard to their long years of service. The case of **Olga Tellis v. Bombay Municipal Corporation**, AIR 1986 SC 180, was brought by pavement dwellers against eviction of their habitat by the Bombay Municipal Corporation claiming that the right to livelihood is born out of the right to life guaranteed under the Art 21 of the Constitution, as no person can live without the means of living, that is, the means of livelihood. The Hon'ble Supreme Court observed:

> "....the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean, merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life an equally important facet of that right is the right to

> livelihood because, no person can live without the means of living, that is, the means of livelihood."

13. We, therefore, in the interest of justice, direct the respondents to consider re-engaging the willing applicants in any other wing of respondent no.2 organisation where there is need for casual employment of civil workers and the applicants are suited to perform that job. The applicants may be informed of the outcome of such consideration within two months from the receipt of a copy of this order.

(V.N.Gaur)
Member (A)

(M.S.Sullar)
Member (J)

'sd'