

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00482/2016

Reserved on : 23.04.2019
Pronounced on: 26.04.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE Ms. ARCHANA NIGAM, MEMBER (A)**

Chandu s/o Shri Narain ji, aged 31 years, r/o Pabu Pura Civil Air Port Road, Jodhpur, Ex. Gardener, Air Force Museum, Air Force Station, Jodhpur

...Applicant

(By Advocate: Shri. Vijay Mehta)

Versus

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Officer In Charge, Air Force Museum, Air Force Station, Jodhpur.

...Respondents

(By Advocate: Shri K. S. Yadav)

ORDER

Per Mrs. Hina P. Shah, Member (J)

In this application u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

The applicant prays that the order of verbal termination of the applicant dated 21.10.2016 may kindly be quashed

and set aside and the respondents may kindly be directed to reinstate the applicant with continuity of service on the post of gardener in the Air Force Museum with all consequential benefits. Any other order, giving relief to the applicant may also be awarded to the applicant with costs.

3. Brief facts of the case, as stated by the applicant, are that the applicant was appointed as Gardener in Air Force Museum, Jodhpur belong to the Air Force after due selection by respondent No.2 in the year 2001. Since then he is continuously working and discharging his duties as Gardener. His attendance is being marked by the concerned officer along with other civilian workers in the attendance register. He was appointed on monthly wages of Rs.1400/- and the present salary of the applicant is Rs.7540/-. No appointment order has been given to any civilian worker in the office of respondent No.2 as per their practice. He is having civil temporary pass bearing No.2383 which was valid upto 31.10.2016. The applicant has challenged his verbal termination order dated 26.06.2013 in this Tribunal and this Tribunal vide its order dated 05.02.2016 in OA No.252/2013 along with Misc. Application No.64/2015 had directed the respondents to consider regularization of the applicant within a period of three months from the date of passing of the order (Annexure-A/5). Since the respondents did not comply the said order,

the applicant was constrained to file a contempt petition in this Tribunal on 26.09.2016, wherein this Tribunal vide its order dated 28.09.2016 issued notice to the respondent No.2. It is submitted that the respondent No2 verbally directed the applicant to withdraw the contempt petition, but when the applicant did not withdraw the same, the respondent No.2 with a revengeful attitude and with a view to deprive the applicant from the benefits of service and regularization, malafidely terminated his services by verbal orders on 21.10.2016, when the applicant reported on duty on 21.10.2016. The applicant sincerely worked since the date of his appointment and has several certificates showing his sincerity and good character. He further states that vide verbal order dated 21.10.2016, his services have been terminated but no written order has been given by the respondents to that effect. The applicant further states that Air Force Museum is an industry and the applicant is a workman. Therefore, provisions of Industrial Disputes Act apply to the present case. His services have been terminated by way of retrenchment in violation of the mandatory provisions contained in the Industrial Disputes Act. Neither any notice nor pay in lieu of such notice has also been paid to the applicant. No compensation has been

paid to him. Therefore, the applicant states that action of the respondents is arbitrary, discriminatory and in violation of Article 14,16, 21,39, 41, 42 and 43 of the Constitution of India. He, therefore, prays that the oral termination be quashed and he may be reinstated forthwith with all consequential benefits.

3. The respondents have filed reply on 26th November, 2017. Raising preliminary objections regarding maintainability of the OA, they have stated that the applicant was a casual employee working in a museum being operating by non-public fund and, therefore, he cannot be said to be a Central Government employee. As the applicant was not a Central Government employee, the OA is not maintainable due to lack of jurisdiction. The respondents have relied on the judgment of the Hon'ble Apex Court in Civil Appeal Nos. 2129-2130 of 2004 dated 4.3.2011 in the case of **Union of India & Ors. vs. Vartak Labour Union**, wherein the Hon'ble Apex Court opined that: -

“.... We are of the opinion that the respondent Union’s claim for regularization of its members merely because they have been working for BRO for a considerable period of time cannot be granted in light of several decisions of this Court, where in it has been consistently held that casual employment terminates

when the same is discontinued, and merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules.(See State of Karnataka & Ors. vs. Umadevi (3) & Ors; Official Liquidator vs. Dayanand & Ors.; State of Karnataka & Ors. Vs Ganpathi Chaya Nayak & Ors; Union and Anr Vs. Kartick Chandra Mondal & Anr; Satya Prakash & Ors vs. State of Bihar and Ors and Rameshwar Dayal vs. Indian Railway Construction Company Limited & Ors.”

It is the case of the respondents that no appointment order has been issued to the applicant. The applicant has not undergone selection process, therefore, his appointment is not in consonance with the rules. The respondents further state that the applicant is not possessing any appointment letter indicating terms and conditions of his service, therefore, he is neither a Government servant under CCS (CCA) Rules, 1965 nor is a holder of any civil post under the Union Government. The civilians employed in Air Force undergo a selection process and Board of Officers recommends such candidates for recruitment. The applicant never appeared for such selection process, but he was engaged as casual labour to work in the museum. No selection process was conducted by respondent No.2 in the year 2001 for appointing the present applicant. Therefore, mere submission of the applicant that he was appointed as

a Gardener in Air Force Museum, Jodhpur after due selection by respondent No.2 does not hold good as no documentary evidence has been produced by the applicant to that effect. It is further the case of the respondents that the civilian casual labour in museum is issued a temporary pass and the same is required to be renewed at specific time intervals. It is further clarified that the museum is being operated from non-public fund and as the applicant was never employed in Air Force unit, his salary was not paid from public funds. It is further stated that the Air Force Museum cannot be treated as industry and Industrial Disputes Act, 1947 is not applicable in the present case. Merely making an averment to the effect that Air Force Museum is an industry and applicant is workman without any documentary evidence to that effect cannot be accepted. It is further submitted that the applicant was continued in service since 19.08.2013 in pursuance of the directions given by this Hon'ble Tribunal by way of interim order dated 26.06.2013, the applicant was already in duty and further was continuously working till 21.10.2016 and thereafter absented himself from his duties without any intimation to the respondent No.2. Now, instead of joining the duties, instant OA has been filed on a false pretext that

his services have been terminated. Therefore, it is clear that in the absence of any termination order, the applicant himself is absent from duties, thus, no cause of action is available with the applicant to maintain the instant OA, and thus the same is liable to be dismissed. It is further stated by the respondents that the applicant has obtained directions of reinstatement vide order dated 05.06.2016 by suppressing material fact of continuance in duty. Therefore, as it is a settled principle of law, that when a person who comes to Court with unclean hands is not entitled for any relief. It is further submitted that the applicant being a casual labour, admittedly was not appointed against any sanctioned post but his services were hired on casual basis without undergoing any selection process. The provisions of various civil services rules including CCS (CCA) Rules, 1965 are not applicable upon applicant, simply for the reason that the applicant is neither a Central Government Employee nor is he holding any civil post. Therefore, this Hon'ble Tribunal has no jurisdiction to entertain the instant OA filed by the applicant.

4. The applicant has filed rejoinder reiterating the submissions made in the OA and denying the fact that he is casual labour working in the museum being operated by

non-public fund and paid out of Service-Institute (Non-Public Fund Account). He further states that the submissions of the respondents that he is not a Central Government employee cannot be accepted. According to the applicant, he is civilian employee posted on the post of Gardener in the Air Force Museum. He further adds that he received payment and salary which can be clear from the payment register. He further states that only civilian employees are made payment after obtaining signature in the payment register. The applicant further denies that no selection process of appointment at the time he was appointed was undertaken. As the civilian passes are issued to the applicant he is a regularly selected candidate and as he is working in the Air Force Museum, which is part of the Air Force Campus, his services cannot be terminated and, therefore, the respondents are bound to regularise his services. He further denies that the museum cannot be treated as industry and that Industrial Disputes Act is not applicable in the instant case. He further denied that no policy is available with the department to regularise services of casual labour in absence of permanent sanctioned posts. These averments are irrelevant as the present OA is filed for quashing the termination order and

for granting reinstatement. It is further submitted that the respondents have not submitted any document in support of the averments that order Annexure-A/5 has been challenged by them in High Court. Therefore, the order of Annexure-A/5 has not been stayed by the Hon'ble High Court and therefore the respondents are duty bound to implement the same. It is also denied that the applicant remained absent from duty from 22.10.2016 and in this regard, the respondents have not submitted any document. In case the applicant was remaining absent it was the duty of the respondents to issue notice to the applicant calling upon the applicant to attend duty. The respondents did not issue such order which is enough to establish that the averments made in para 4.9 and 4.10 in the reply are false.

5. Heard learned counsel for the applicant Shri Vijay Mehta and for the respondents Shri K.S. Yadav and perused the material available on record.

6. During the course of arguments, the learned counsel for the applicant raised manifold contentions. He stated that the applicant was neither issued any appointment order nor any other person similarly situated as the applicant was ever issued appointment order, though his appointment was

as per rules and it was after due selection by respondent No.2 in the year 2001. The applicant further states that he was paid salary from whatsoever form of the fund, but he is not precluded by the respondents to state that he is not entitled for regularization. It is further stated that as per the Standing Orders relied by him in the OA (Ann.A/9 and A/10), his services are required to be regularised. The applicant had relied on a bunch of judgments where none of the judgments are on the issue as to whether Air Force Museum is an industry. The applicant has also relied on few judgments to show that the services are required to be regularized, but all those apply to the cases pertaining to industrial disputes. It is further submitted that no reasons whatsoever has been disclosed by the respondents for termination of the services of the applicant. The work for which he was appointed is available and is of perennial nature. The respondent No.2 with a revengeful attitude and with a view to deprive the applicant from the benefits of long service of more than 15 years and regularisation malafidely terminated his service by verbal order on 21.10.2016. It is the contention of the applicant that the respondent No.2 has passed the termination order without

passing any written order and the same is violative of the principles of natural justice.

7. On the other hand, the respondents contend that the applicant has not annexed any documentary evidence to show that he is duly selected as per rules. It was further stated that the salary paid to the applicant was from Service Institute (SI) fund which is Regimental fund generated through contribution raised by air warriors for welfare activities. This clearly shows that the applicant is not a civil servant and is not holder of civil post and, therefore, the OA is not maintainable. It is further contended that the applicant has neither gone through any prescribed selection process nor duly selected against any vacancy/sanctioned post as per rules, therefore, no right is created for regularization in the absence of any appointment letter. The respondents have further contended that the Air Force Museum is not industry as no fee has been charged by the museum at present under the directions of the AOC. In support of their contentions, the respondents have relied upon the following judgments:-

1. AIR 1999 SCC 376-Union of India & Anr. Vs. Chote Lal and Ors.
2. (2010) 4 SCC 179 - Satya Prakash & Ors. vs. State of Bihar & Ors.

3. (2010) 11 SCC 733 - Rameshwar Dayal vs. Indian Railway Construction company limited and ors.
4. (2010) 3 SCC 115, State of Karnataka & Ors. vs. Ganapathi Chaya Nayak & Ors.

The respondents state that the case of **Union of India vs. Chote Lal** clearly shows that Dhobis were paid salary from Regimental fund which is not a public fund and it was held that CAT has no jurisdiction to go into the question of service conditions of such Dhobis. The Hon'ble Apex Court observed that it cannot be concluded that such posts are civilian posts and payments to the holder of such post is made from out of the Consolidated Fund of India or from any public fund under the control of Ministry of Defence. In case of **Satya Prakash Vs. State of Bihar**, it is clear that the daily wage employees are not entitled to regularization in terms of one time relaxation granted in the case of Uma Devi (3) case, (2006) 4 SCC 1 as it was clarified that regular selection process was not undertaken. In the case of **Rameshwar Dayal**, the Apex Court has clarified the scope of interference and have further stated that Court cannot issue direction for regularization as it is an executive function. In the case of **State of Karnataka vs. Ganapathi Chaya Nayak**, the Apex Court was of the view that daily wage employee having not fulfilling the conditions

prescribed in Uma Devi's case and the case of Official Liquidator vs. Daya Nand, 2008(10) SCC 1 are not entitled for regularization.

The respondents, therefore, concluded that as all these judgments clarify that if the selection/appointment of a person for a particular post is not as per rules, though they may be working for a number of years, he/she is not entitled for regularization/reinstatement. Therefore, it is wrong to say that the services of the applicant have been terminated by any revengeful action. The true facts is that the applicant himself remained absent from duties since 22.10.2016 without any intimation, thus, the action of the respondents is just and proper and no interference is called from this Tribunal.

8. Considered the rival contentions of both parties.
9. It would be relevant to mention here that though the learned counsel for the applicant raised manifold contentions regarding regularisation, industrial dispute etc. but as per observations of the Hon'ble Rajasthan High Court in DB Civil Writ No.14570/2016 decided on 4.9.2018, the central issue to be decided by this Tribunal is whether the gardeners employed by Air Force Museum were holding civil

post and thereby conferring jurisdiction upon the Tribunal to decide a service dispute. In this regard, contention of the applicant is that he was paid salary from whatsoever form of the fund, but he is not precluded by the respondents to state that he is not entitled for regularization. On the other hand, the stand of the respondents is that the applicant was paid from the Service Institute fund, which is a Regimental Fund, generated through contributions raised by Air Warriors for welfare activities and relied upon the judgment of the Hon'ble Apex Court in the case of **Union of India vs. Chotelal and ors.** wherein the Hon'ble Apex Court held as under:-

"5. In view of the characters of the Regimental Fund, as discussed above, we have no hesitation to come to the conclusion that the said fund cannot be held to be public fund by any stretch of imagination and the Dhobis paid out of such fund cannot be held to be holders of civil post within the Ministry of Defence so as to confer jurisdiction on the Central Administrative Tribunal to issue direction relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such Dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such post is made from out of the Consolidated Fund of India or of any public fund under the control of Ministry of Defence.

6. In the aforesaid premises the contention of Mr. Mahajan, learned counsel that the Central Administrative Tribunal has no jurisdiction to go into the question of service conditions of such Dhobis has to be sustained and consequently, the impugned order of the Tribunal has to be set aside. We accordingly, set aside the impugned judgment of the Tribunal and dismiss the OA. The appeal is allowed, but in the circumstances without any order as to costs."

In the instant case, since the applicant was paid wages from the Regimental Fund, therefore, applying the ratio in the case of Chotelal (supra), it cannot be said that the applicant was holder of the civil post and the payment of holder of such post is made from out of the Consolidated fund of India or of any public fund under the control of Ministry of Defence. Therefore, this Tribunal has no jurisdiction to go into the question of service conditions of the applicant.

10. So far other contentions raised by the applicant are concerned, needless to add here that the applicant in the present case was working as Gardener in Air Force Museum, Jodhpur since 2001, but without any documentary evidence/proof to show that his appointment was as per rules. The applicant has not produced any letter for his appointment/engagement. He has only made an averment that there is no practice in respondent No.2 museum to give written appointment order to such civilian workers. Also at the time of hearing of the matter, the applicant was unable to show, the procedure and manner in which he was duly selected. He also failed to produce any order/letter which would have clarified the terms and conditions of his appointment. Merely making an averment cannot help the

applicant as the burden of proof lies on the applicant, who has presented the present case before the court to show that his selection was as per rules. Also, the question of granting temporary pass does not entitle him or create any right in his favour for regularization. In such defence organisation, even the casual/temporary persons working gets a temporary pass for a particular period and after expiry of the said period, the pass is renewed. Pertaining to the question whether Air Force Museum is an industry, the applicant has not produced any documentary evidence to show that it is an industry. Pertaining to the question of payment of salary, the applicant himself has signed on his salary slip which receipt was produced by the respondents in their reply. This slip clearly shows the signature of the applicant and it clearly states the purpose for which the same was granted.

11. In view of above discussions, it is very clear that this Tribunal has no jurisdiction to entertain the matter. Even otherwise, the applicant has neither any right for continuity in service nor for regularisation. Therefore, in the totality of things, the submission of the applicant that the oral termination order be quashed and set-aside cannot be accepted.

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

(ARCHANA NIGAM)
Administrative Member

(HINA P.SHAH)
Judicial Member