

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

OA No. 1009/2016

This the 18th day of September, 2019

Hon'ble Mr. S.N. Terdal, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Virinder Singh,
Age about 43 years
S/o Sh. Hari Singh
R/o WZ-10A/2A, New Sahib Pura
M.B.S. Nagar, Tilak Nagar
New Delhi-18. ...Applicant

(By Advocate: Ms. Priyanka Aggarwal)

VERSUS

1. GNCTD
Through its Secretary
Delhi Secretariat
Player's Building
IP Estate, New Delhi.
2. The Secretary,
DTTE Muni Maya Ram Marg
Pitampura, New Delhi-88.
3. The Director
DTTE Muni Maya Ram Marg
Pitampura, New Delhi-88
4. The Principal
ITI Pusa, New Delhi-12. ... Respondents

(By Advocate : Sh. Anuj Kumar Sharma)

ORDER (Oral)

Hon'ble Mr. S.N. Terdal:

Heard.

2. The relief prayed for by the applicant in the OA is as follows:

“(i) quash and set aside the impugned order dated 04.02.2016 (Annexure-A-1)

(ii) direct the respondents to assign further duty/assignment to the applicant alongwith consequential benefits of his service w.e.f 26.10.2012.

(iii) any other or further order may also pass any further order(s), directions(s) as be deemed just and proper to meet the ends of justice.”

3. The relevant facts of the case are that the applicant was engaged in the respondents' organization as contractual Instructor in September, 2007 in Dent Beating and Spray Painting at ITI, Pusa and since then, he was continued on contractual basis, year by year. Subsequently, on promotion and regular appointment of one Sh. Pramod Kumar to the said post, the contractual services of the applicant were terminated w.e.f. 26.10.2012. The applicant submitted a representation. On the representation made by the applicant, the respondents stated clearly in the impugned order dated 04.02.2016 that on the regular appointment of said Sh. Pramod Kumar, the services of

the applicant were terminated and on the date of termination, he was not eligible for any other trade as such he could not be accommodated in any other trade. The said order dated 04.02.2016 is extracted below:

“This is with reference to his letter dated 14.01.2016 addressed to Additional Director/Asstt. Director (Trg.) regarding joining in ITI. In this regard, Sh. Varinder Singh (Ex-CCI) is informed that his services were terminated on 26.10.2012 from the post of Dent Beating & Spray Painting Trade on joining of other regular Govt. Employee and Sh. Varinder Singh was not eligible for any other trade at that time according to his the then qualifications. Further, the letter of Services Department, GNCT of Delhi dated 16.02.2015 regarding non termination of services of Contractual Employees, is not applicable to him as he was not in service on or after the said date of letter i.e. 16.02.2015. Therefore, he can not be considered for re-engagement at this stage.

Sh. Varinder Singh is further informed that he may apply against any fresh post as and when advertised. His candidature will be considered as per Rules and his qualification at that time.”

4. Learned counsel for the applicant vehemently and strenuously submitted that the applicant has not received the termination letter dated 26.10.2012, but, however, from a perusal of Annexure R/1, it is clear that the termination order was received by the applicant.

5. In view of the fact that the contractual appointment of the applicant was terminated in view of the regular appointment of Sh. Pramod Kumar, we do not find any illegality or arbitrariness

in the action of the respondents. Learned counsel for the respondents, in support of his case has relied upon the law laid down by the Hon'ble Supreme Court in the Appeal (Civil) 3595-3612 of 1999. He, specifically brought to our notice Para 20 of the said judgment, the relevant portion of which is extracted below:

“20. We may now consider, State of Haryana Vs. Piara Singh and Others [1992) 3 SCR 826]. There, the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour. This Court started by saying:

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issued rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any governing the conditions of service"

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This Court then concluded in paragraphs 45 to 50:

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the

regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.”

6. In view of the facts and circumstances narrated above and in the light of the law laid down by the Hon’ble Supreme Court extracted above, we are of the view that there is no merit in this OA. Accordingly, the OA is dismissed. No order as to costs.

(A.K. Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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