

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00314/2016

with

Misc. Application No.197/2016

Jodhpur, this the 23rd August, 2019

Reserved on 29.07.2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Smt. Brij Lata W/o Shri Moti Lal Sirvi, aged 49 years, Waterman, Post Office, Shastrinagar, Jodhpur R/o 10/97, DDP Nagar, Madhuban, Basani 1st Phase, Jodhpur.

.....Applicant

By Advocate : Mr. Vijay Mehta

Versus

- (1) Union of India through the Secretary, Ministry of Communications, (Department of Post), Sanchar Bhawan, New Delhi.
- (2) Senior Superintendent of Post Office, Jodhpur.
- (3) Post Master General, Rajasthan Western Region, Jodhpur.
- (4) Post Master, Shastringar, Post Office, Jodhpur.

.....Respondents

By Advocate : Mr. B.L. Tiwari.

ORDER

Per Smt. Archana Nigam, Member (A)

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

“The applicant prays that impugned order Ann A/1 and order mentioned therein may kindly be quashed. The respondents may kindly be directed to reinstate the applicant with continuity of service and back wages. Any other order, as

deemed fit giving relief to the applicant may kindly be passed. Costs may also be awarded to the applicant."

2. Brief facts of the case as stated by the applicant are that the applicant was appointed as Water woman on 06.03.1992 on vacant post, however, no written appointment was given to her. She was handed over charge of the said post on 06.03.1992. After three years, she was transferred and posted in Shastrinagar Post Office, Jodhpur where she has been discharging her duties continuously. Now, she has completed 24 years of service. Her name has also been shown in the attendance register since her appointment. The applicant was informed by the respondent No.2 vide letter dated 13.08.2010 (Annexure-A/3) that she will be awarded Dak Ratna 2010 and on 15.08.2010 (Annexure-A/4) during the function of organization she was awarded for the same. On 17.05.1989 (Annexure-A/5), the Department of Posts has clarified that contingent paid staff are casual labour for all purposes and for the purposes of recruitment to Group D employee such contingent paid employees were put at priority No.3. It is submitted that since contingent paid staff which is treated as casual labour and is required to be regularized, the applicant made repeated requests to the respondent Nos. 2 & 3 to regularise her services. In the meantime, the Government of India issued OM dated 22.01.2015 (Annexure-A/6) whereby granting minimum salary in Pay Band-I (Rs.5200-20200) plus grade pay of Rs.1300/- to casual labour w.e.f. 01.01.2006. But, when the respondents did not make payment of arrear of salary, the applicant submitted representation dated 20.06.2016 (Annexure-A/7). It is submitted that the

respondent No.2 annoyed by her repeated representations and requests, vide its order dated 27.06.2016 (Annexure-A/1) terminated the services of the applicant with immediate effect. Further, the same has been issued as per order dated 21.06.2016 passed by the respondent No.3. It is submission of the applicant that the impugned termination order is non-speaking and has been passed in mechanically and malafidely to deprive the applicant from the said due benefits. It is submitted that the impugned order Annexure-A/1 has been passed with reference to order dated 19.11.2010, which is nothing but review of instructions on engagement of casual labourers and in which it has been mentioned that no casual labour shall be engaged w.e.f. 01.12.2010, however, this OM does not provide termination of the service of already engaged casual labour. Further, neither notice nor notice pay in lieu of notice was paid to the applicant before effecting retrenchment of the applicant and compensation was also not paid to her. It is case of the applicant that she has worked more than 24 years and thus the termination has been effected in utter violation of the mandatory provisions of section 25 F, G, N, H and rules 77 and 78. Therefore, she has prayed that the impugned termination order be quashed and set aside.

3. The respondents in their reply raised the preliminary objection that the applicant was engaged as part time contingency paid water woman and such type of engagements being not for any civil post, therefore, applicant is not entitled to invoke the jurisdiction of Hon'ble Tribunal. It is further submitted that the applicant has also pressed into service the provisions of ID Act, therefore, also the present OA is not maintainable. It is submitted

in the reply that the applicant was not appointed on vacant post and that too after verification of her character and antecedents, whereas the applicant was engaged as contingent paid worker and such worker does not require procedural/statutory formalities. Further marking of attendance is only for the purpose of calculation of the number of working days for payment of wages. It is submitted that Annexure-A/5 dated 17.05.1989 was issued for the purpose of computation of eligible service for recruitment to the post of Group 'D' but the benefit of above letter could not be extended to any of the part time contingent paid worker, because no post of group 'D' remain vacant in the division. It is further denied that the services of the applicant has been terminated on the ground of repeated representations submitted by her, whereas no representations was received by the respondents and even otherwise applicant being a contingent paid worker is not entitled for payment of arrears of any ground and she was disengaged in furtherance of direction contained in Annexure-A/8. Further, provision of ID Act are not applicable in the present case and disengagement of applicant does not tantamount to retrenchment. It is submitted that the applicant engaged to perform work deferent from the work performed by the regular employee and that work now has been assigned to the MTS in addition to their already assigned duty. Therefore, the action of the respondents terminating the services of the applicant is just and proper and there is no illegality.

4. In rejoinder, the applicant while reiterating the facts mentioned in the OA denied that the applicant was engaged as part time contingency paid water woman. It is also denied that such type of engagement is not for any

civil post and therefore the applicant is not entitled to invoke jurisdiction of this Hon'ble Tribunal. Further, the respondents have failed to submit as to under which provisions and in what manner she was appointed. The applicant was given charge of the post of Water woman as per provisions contained in Rule 267 and P&T Financial Hand Book, Volume I in the prescribed form. The applicant was being paid salary on vouchers prepared under Note Below Rule 6 (b) of Appendix II to P & T Financial Hand Book. Therefore, it is clear that the applicant was appointed on vacant post and therefore the same does not contain signature of reliving officer. It is also denied that the benefits of Annexure-A/5 could not be extended to any contingent paid worker because no post of Group D remained vacant. It is also not believable that no post of Group D fell vacant since appointment of the applicant i.e. in the year 1992 to till date. Therefore, it is submitted that the applicant deserved to be reinstated back in service.

5. Heard Shri Vijay Mehta, learned counsel for the applicant and Shri B.L. Tiwari, learned counsel for the respondents and perused the material available on record.

6. Learned counsel for the applicant submitted that the applicant Smt. Brij Lata has completed service of 24 years as a Waterwoman, and draw our attention to the reward given to her namely "Dak Ratan Purskar-2010", wherein she has been acknowledged as working as Waterwoman. It is submitted by the learned counsel that suddenly vide Annexure-A/1 dated 27.06.2016, a Memo dated 27.06.2015 has been issued in terms of which, services of Smt. Brij Lata water woman Shastrinagar MDG Jodhpur was

disengaged with immediate effect. The service of MTS engaged in Shastrinagar MDG as well IQ attendant may be fully utilized as waterman as instructions contained in Directorate letter No.404/2009-PCC dated 19.11.2010. Learned counsel also draw our attention to Annexure-A/6 office memorandum dated 22 Jan 2015, wherein it has been stated that no casual labour is to be engaged and the said OM further deals about the remuneration payable to full time casual labour (other than temporary status)/part time casual labour/ workers engaged on contingency basis and stated that in this perspective it would be incorrect to state that persons engaged on casual basis as waterman cannot be made payment as not being holder of civil post. To fortify his stand, learned counsel also referred to the order of this Tribunal dated 15th May, 2014 passed in OA Nos.505/2011, 506/2011 & 68/2012 (Janki Lal & ors. V. Union of India & ors.) and submitted that the present case is also identical to these cases. In the aforesaid identical cases, it has been stated by the concerned respondents in that case that certain duties had been assigned to MTS Group C which were being performed by Group D contingent workers (applicants in that OA). It has been stated in the aforesaid cases, the respondent department had not formulated any scheme to govern the fate of those employees who had been engaged 20-22 years back and the respondent department had been unable to produce any documents before the Tribunal as to the Scheme formed there. The Article 39 of the Constitution of India stipulates that the policy the State shall be formulated in accordance with the directive principles, and also that the citizens, men and women equally, have the right to an

adequate means to livelihood, that the health and strength of workers are not abused, and the citizens are not forced by the economic necessity to entire avocations unsuited to their strength. If the applicant were working with the respondents for more than 18 years as averred by them and proved by the documentary evidences then by virtue of that alone, he acquires right to be considered for continued employment, unless other significant matters do not interdict it.. The Articles 41, 42 and 43 of the Constitution of India are also significant in the present matrix. The present case is also identical to the said case as she has also worked for more than 22 years so there is also violation of Article 39. Learned counsel also draw our attention to similarities between the order passed by this Tribunal in OA Nos. .505/2011, 506/2011 & 68/2012 (Janki Lal & ors. V. Union of India & ors.) and the present case in which the applicant who had similarly been disengaged from employment suddenly without any alternate scheme after working as Waterwoman for as many as 24 years. Learned counsel also draw our attention to Annexure-A/2 wherein it has been certified that the charge of the Office of Contingency paid water woman as assumed (vacant) by Smt. Brijlata on 06.03.1992 forenoon. Learned counsel for the applicant again highlighted the judgment of this Tribunal passed in Janki Lal & Ors (supra) and submits that the judgment given by this Tribunal on the issue of discontinuation of the services of the applicants therein and in those cases the impugned orders were correctly set aside as being arbitrary as there was violation of principles of nature justice. Thereafter, the Hon'ble High Court of Rajasthan in DB Civil Writ Petition No.5175/2014 (Union of India &

Ors vs. Nena Ram) referred to mandatory condition precedents for a valid retrenchment as prescribed under Section 25F of the Industrial Disputes Act, 1947 and further on setting aside the order of discontinuation from service held that the same amounts to retrenchment as defined under Section 2 (00) of the Act of 1947 and therefore, the employer is required to reinstate such applicants in the same capacity that he was having before retrenchment. The said writ petition of the department had been dismissed by the Hon'ble Hgih Court of Rajasthan vide its order 20.02.2015. Learned counsel for the applicant further submits that the present applicant was given charged by the respondents on the post of Water woman as per the provisions contained in Rule 267 of P&T Financial Hand Book, Volume-I in the prescribed form. The respondent was being paid salary on vouchers prepared under Note Below Rule 6 (b) of Appendix II to P&T Financial Hand Book. Further the attendance of the applicant was marked in attendance register of the staff of Post Master General, Jodhpur and thereafter in the attendance register o the staff of Shastrinagar Post office. Learned counsel for the applicant submits that the post of Water woman is a civil post in the respondent department as has been established that the salary of the applicant has been not been paid out of contingent fund whereas the same has been paid on vouchers prepared under Note Below Rule 6 (b) of Appendix II to P&T Financial Hand Book. The learned counsel for the applicant has also cited various case laws on the point of retrenchment under the Industrial Disputes Act and further on the point that the Central Administrative Tribunal has jurisdiction decide the case

pertaining to Industrial Disputes Act, and the case law regarding withholding of documents amount to playing fraud on the court and on the point of validity of order, which can be considered on the basis of reasons mentioned in the impugned order and the same cannot be supplanted by affidavit, reply etc., and also the cases regarding violation of principles of nature justice as well as on the fact that no contingent employee remains after completion of 240 days of service, which are as follows:-

- (i) The Telecom District Manager & Ors. V. Keshab Deb (JT 2008 (7) SC 257).
- (ii) Karan Singh vs. Union of India & Ors, (OA No.226/2018 decided on 09 September, 2009 of CAT Jodhpur Bench).
- (iii) Chain Singh vs. Union of India & Ors (OA No.342/2013 decided on 12th April, 2016 of CAT Jodhpur Bench).
- (iv) Management, Indian Institute of Horticultural Research (ICAR) vs. Smt. K. Shashikala (2005 LAB I.C> 1661 of Karnataka High Court).
- (v) Vijay Narain Singh vs. Supdt. Of Police, Bijnore (UP) and Ors. (1994 Supp (2) SCC 56).
- (vi) Mohinder Singh Gill & anr. Vs. The Chief Election Commissioner, New Delhi & Ors. (AIR 1978 SC 851).
- (vii) Rehmat Ullah Khan vs. Union of India & Ors, [(1989) 10 ATC 656].
- (viii) K. Ajit Babu & ors. V. Union of India & Ors. (Civil Appeal No.3520 of 1991).
- (ix) D.K. Yadav vs. M/s JMA Industries Ltd. (CA No.166 (NL) of 1983 decided on May 7, 1993.
- (x) Shridhar v. Nagar Palika, Jaunpur & ors, (Civil Appeal No.2967 of 1986 decided November 17, 1989.
- (xi) State of Karnataka & Anr. V. Pastor P. Raju (JT 2006 (7) SC 165.
- (xii) Mackinon Mackenzie & Company Ltd. V. Mackinon Employees Union (2015 (145) FLR 184).
- (xiii) Sudarshan Rajpoot v. UP State Road Transport Corporation (2015 (144) FLR 7.
- (xiv) Jasmer Singh v. State of Haryana and Anr. (2015 LAB IC 4217)
- (xv) Umralla Gram Panchayat v. Secretary, Municipal Employees Unsin & Ors. (2015 LAB IC 3765.
- (xvi) Harjinder Singh vs. Punjab Warehousing Corporation (2010 (124) FLR 700.

- (xvii) Divisional Manager, New Indian Assurance Co. Ltd. V. A. Sankaralingam (2009 LAB IC 151).
- (xviii) State & Ors. Vs. Giriraj Prasad & Anr. (SBCWP No.4693/2005 decided on 21.05.2008 of Rajasthan High Court).
- (xix) The Divisional Engineer, Telecom Project, Department of Telecom, Telecom Colony, Jodhpur vs. Lacha Ram, (SBCWP No.5667/2000 decided on 03.12.2010 of Rajasthan High Court).
- (xx) Bhartiya Daktar Mazdoor Sangh vs. The Union of India & ors. (OA No.295/1988 decided on June 30, 1988 of CAT Jodhpur Bench).

7. Per contra, learned counsel for the respondents submitted that the contingency paid employees are not holder of civil post and also that Central Administrative Tribunal has no jurisdiction in such matters since the post held by the applicant is not a Civil Post. In support thereof, learned counsel for the respondents draw our attention to judgment of Hon'ble Supreme Court passed in the case of Sunil Kumar Biswas v. Ordinance Factory Board & Ors, (Civil Appeal No.3290 of 2009 arising out of SLP (C) No.4072 of 2016 decided on 29.03.2019, wherein the Hon'ble Supreme Court in para 4&5 held as under:-

“4. The appellant and respondents No.4-6 approached the Central Administrative Tribunal (CAT) Calcutta against respondent Nos.1-3 (Ordinance Factory Board & Ors) in OA No.159 of 2013 praying therein for a relief that they have been appointed by the Contractor to render their services with the Ordinance Factory Board (respondent No.1 herein) which they have been doing from the last 25 years, therefore, they claimed a relief that their services be regularized.”

Further, the Hon'ble Supreme Court in the said case decide the issue that whether the Tribunal and the High Court were justified in dismissing the OA and writ petition and the Hon'ble Supreme Court while dismissing the said case observed in para 9, which is as under:-

“9. In our opinion, the High Court was right in observing that the remedy of the appellant and respondent No.4-6 herein (writ petitioners) lies in applying to the Central Government to make an industrial reference to the Industrial Tribunal under Section 10 of the ID Act in relation to the dispute which has arisen between them but not to pursue their remedy for adjudication of their grievance by filing OA before the Tribunal or/and writ petition in the High Court.”

Learned counsel for the respondents submitted that in view of the aforesaid judgment, the CAT has no jurisdiction to decide the present case. Learned counsel also cited the judgment of Jitendra Vaiashnav vs. Union of India & Ors, (DB Civil Writ Petition No.15380/2016 decided on 11.12.2017 by the Hon’ble High Court of Rajasthan) and the order of this Tribunal passed in Jitendra Vaishnav vs. Union of India decided on 30th March, 2016 in OA No.199/2013. Learned counsel for the respondents further submitted that the applicant was not appointed on vacant post and that too after verification of her character and antecedents, whereas the applicant was engaged as contingent paid worker and such worker does not require procedural/statutory formalities. Further marking of attendance is only for the purpose of calculation of the number of working days for payment of wages. He further submitted that the provisions of ID Act are not applicable in the present case and disengagement of applicant does not tantamount to retrenchment. It is submitted that the applicant engaged to perform work deferent from the work performed by the regular employee and that work now has been assigned to the MTS in addition to their already assigned duty. Therefore, the action of the respondents terminating the services of the applicant is just and proper and there is no illegality and thus no interference is required from this Tribunal.

8. Considered the rival submissions made by both the parties and perused the judgments cited by learned counsels for both sides as well as the pleadings available on record.

9. In view of the preponderance of judgments in favour of the availability of jurisdiction of the Central Administrative Tribunal in such matters, in our opinion, the applicant has rightly approached this Tribunal by way of filing the present OA, as the present case comes under the jurisdiction of Central Administrative Tribunal. As has been brought out by the counsel for the applicant any retrenchment without compensation or without due consideration for drafting of alternative scheme for retrenchment such in the case of the applicant Smt. Brij Lata who are low paid workers amounts to create injustice and this has also been held by the Hon'ble Supreme Court of India in plethora of judgments. Further, the manner in which the applicant's services were disengaged without giving any opportunity and in the absence of any alternate scheme, in our opinion, is clear violation of the principles of natural justice particularly when there is enough documentary evidence on record for the fact in Annexure-A/2 it is certified that the charge of the Office of Contingency paid water woman as assumed (vacant) by Smt. Brijlata on 06.03.1992 forenoon, in the prescribed format of the respondents. It is also clearly established that the applicant was given charged by the respondents on the post of Water woman as per the provisions contained in Rule 267 of P&T Financial Hand Book, Volume-I in the prescribed form. The respondent was being paid salary on vouchers prepared under Note Below Rule 6 (b) of Appendix II to

P&T Financial Hand Book. Further the attendance of the applicant was marked in attendance register of the staff of Post Master General, Jodhpur and thereafter in the attendance register of the staff of Shastrinagar Post office. In our opinion, the post of Water woman is a civil post in the respondent department as has been established from the fact that the salary of the applicant has been not been paid out of contingent fund whereas the same has been paid on vouchers prepared under Note Below Rule 6 (b) of Appendix II to P&T Financial Hand Book. It is also noted that the impugned order Annexure-A/1 has been passed with reference to order dated 19.11.2010, which is nothing but review of instructions on engagement of casual labourers and in which it has been mentioned that no casual labour shall be engaged w.e.f. 01.12.2010, however, this OM does not provide termination of the service of already engaged casual labour.

10. In this view, it is apparent that continuous employment of the applicant for a period over 24 years is established from the documents on record and therefore, retrenchment of her services without giving any opportunity of hearing and without following the principles of natural justice is illegally and the same is not tenable in the eyes of law. In this regard, the Hon'ble Apex court has deliberated upon the applicability of Principles of Natural Justice at great length in the Judgment delivered in the case of *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*; 1978 AIR 851, 1978 SCR (3) 272, by the Honorable Justice V R Krishna Iyer:-

“(f) The dichotomy between administrative and quasi-judicial functions vis a vis the doctrine of natural justice is presumably obsolescent after Kraipak which marks the watershed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems, and are not any 'new theology'. They are manifested in the twin principles of nemo index in sua causa and audi alteram partem. It has been pointed out that the aim of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice. These rights can operate only in areas not covered by any law validly made; they do not supplant the law of the land but supplement it. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened, the court has to decide whether the observation of that rule was necessary for a just decision on the facts of that case. Further, even if a power is given to a body without specifying that rules of natural justice should be observed in exercising it, the nature of the power would call for its observance. [300 F-G, 301 B-D, 303-D] Kraipak [1970] 1 SCR 457, In re: H.K. (an infant) [1967] 2 B. 617 and Ridge v. Baldwin [1964] AC 40 referred to.

11. As far as the judgment cited by the learned counsel for the respondents is concerned, it seen that the judgment passed by the Hon'ble Supreme Court in the case of S.K. Biswas (Supra) is not applicable in the present case because in that case the applicant therein was engaged through contractor, whereas in the present case the applicant was engaged directly on the vacant post of Waterwoman and not through contractor, which fact can be seen from Annexure-A/2 charge assumption report. Further, the case of Jainder We have also gone through the judgment of Jitendra Vaishnav (supra) passed by the CAT Jodhpur Bench as well as by the Honble High Court of Rajasthan, and we found that the facts of those cases are different from the facts and circumstances of the present case, as the applicant therein was a part time employee who was willingly absented himself from the engagement for the period from 24.01.2009 to 25.05.2010 and claiming therein regularization of his services, whereas in the present

case the applicant has served the respondent department more than 22 years and only seeks cancellation of her illegal retrenchment and a direction upon the respondent to reinstate her with continuity of service. Therefore, all the cases cited by the learned counsel for the respondents are different from the facts and circumstances of the present case.

12. In view of the observations made in the above paras, the impugned order dated 27.06.2016 (Annexure-A/1) passed by the respondents is not just and proper and therefore the same is hereby quashed and set aside, and the respondent are directed to reinstate the applicant with continuity of service within a period of three months from the date of receipt of a copy of this order, and also grant the back wages to her from the date of dismissal/termination of her services to the date of her reinstatement, as this Tribunal vide its interim order dated 08.07.2016 has stayed the effect and operation of termination of order dated 27.06.2016.

13. Accordingly, the OA is allowed to the above extent. No order as to costs.

14. In view of the aforesaid order, the MA No.197/2016 for vacation of IR is dismissed.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member