

1

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1563/2003

New Delhi, this the 25th day of May, 2004

Hon'ble Shri S.K.Naik, Member(A)

Ajay Kumar Gupta
787, Kamla Nehru Nagar
Behind ALT Centre, Ghaziabad .. Applicant

(Shri S.K. Gupta, Advocate)

versus

Union of India, through

1. Secretary
Department of ISMH
Min. of Health & Family Welfare
Indian Red Cross Society Bldg.
New Delhi
2. Director
Pharma Copoeial Laboratory for Indian
Medicines, CGO Complex
Kamla Nehru Nagar, Ghaziabad .. Respondents

(Shri Rajeev Bansal, Advocate)

ORDER

3. The applicant has assailed letter dated 22.4.2003 from Respondent No.1 addressed to Respondent No.2 seeking certain clarifications regarding extension service of the applicant as Key Punch Operator, PLIM, Ghaziabad as he apprehends that his services would be terminated with effect from 22.4.2003. On 20.6.2003, an interim order was passed by this Tribunal to the effect that his services should not be terminated till the OA is disposed. That order still continues.

2. Learned counsel for the applicants has submitted that the applicant was appointed as Key Punch Operator w.e.f. 18.6.1996 on daily wage basis. On 8.3.1999 applicant requested for grant of temporary status to him, upon basis

which R-2 addressed a letter to R-1 on 10.5.99 seeking ex-post facto approval. R-2 vide his letter dated 28.9.1999 informed R-1 that there is no sanctioned post and R/Rules for the post in question have not been framed. According to the counsel, applicant acquired B.A.Degree and an entry to this effect has been made in his service book. By letter dated 21.3.2002 R-1 has informed R-2 that proposal for regularization of the service of the applicant as Key Punch Operator on daily wages on a consolidated fee of Rs.5000 p.m. for a period of 4 months has been agreed to by the competent authority. Further extension of six months was given by letter dated 6.8.2002. When further extension upto December, 2004 was sought for by R-2, the impugned letter has been issued. Aggrieved by this, the applicant has filed this OA praying for quashing of the letter dated 22.4.2003 and to direct the respondents to consider his case for regularisation on Group D post in accordance with Govt. of India Scheme dated 7.6.1988.

3. The application has been contested. Learned counsel appearing for the respondents has contended that the applicant was appointed as Data Entry Operator - a Group C post - by R-2 at Ghaziabad on daily wage basis from 18.6.1996 although there was no such post in existence in that office. His service was continued from time to time with breaks. Although the audit had objected to the irregular appointment, R-2 brought it to the notice of R-1 only after about 3 years i.e. on 10.5.1999. In terms of DoPT OM dated 26.2.1990 there is a complete ban on engagement of casual workers for performing duties of Group D post. No permission was given by R-1 to R-2. Explanation of R-2 has been called for and he will be judged

dealt with in accordance with Rules and instructions. According to him, the post of Key Punch Operator/Data Entry Operator being a Group C post, the scheme relating to grant of temporary status/regularisation to casual labours is not applicable to the applicant. As such there is no question of regularisation of the services of the applicant.

4. According to respondents' counsel, there is a clear collusion between R-2 and applicant, inasmuch as R-2 never took any approval for engagement of applicant to a post which is non-existent. On the contrary, R-2 has asked R-1 to regularise the services of the applicant knowing it fully well that there was no such post in the Laboratory. Also, the applicant has annexed copies of correspondence exchanged between R-1 and R-2 unauthorisedly, a practice which has been deprecated and condemned by the apex court in **Puranjit Singh Vs. UT of Chandigarh AIR 1994 SC 2737** and **Surgical Electricals Vs. UOI 1996 (60) DLT 359**. Citing a number of judgements of the apex court on the issue of appointments made against the rules or through back-door entry, in particular referring to the judgement of the Supreme Court in **State of Himachal Pradesh Vs. Suresh Kumar Verma JT 1996(2) SC 455**, the counsel vehemently argued that "appointment as daily wage basis is not an appointment to a post according to the Rules. Court cannot give any direction to re-engage such person in any work or to appoint him against the existing vacancies. If the Courts do so, the judicial process would become another mode of recruitment de hors the Rules. Appointment on daily wages cannot be

made

a conduit pipe for regular appointment". In view of this position, the counsel contends that the application be dismissed and the interim order vacated.

4. I have heard the counsel for the parties and considered the pleadings.

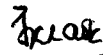
5. I notice that by order dated 18.6.96, R-1 has appointed the applicant as Key Punch Operator (Computer) for a period three months or till further orders on daily wage basis. Excepting this, there is no material available on record as to how his appointment was extended from time to time. It was only on 10.5.99 for the first time, i.e. after applicant made a request on 8.3.99 for regularisation, that R-2 wrote to R-1 about the appointment of the applicant inter alia seeking ex-post facto permission. By another letter dated 28.9.99, R-2 has admitted that there is no sanctioned post of Key Punch Operator in the Lab, R/Rules have not been framed and no approval of competent authority was obtained. On the face of it, it is not understood how R-2 took action on his own to appoint the applicant on daily wages basis, extended his service from time and time and sought ex-post facto permission after nearly three years.

6. I also note that the letter dated 22.4.2003, which is under challenge, is not addressed to the applicant but to R-2 seeking certain clarifications, which are vital, and therefore there is no question of quashing it. Again, as rightly contended by respondents' counsel, 1993 scheme of casual labour has no application in applicant's case.

7. Order

Photocopies of various correspondence exchanged between R-1 and R-2 annexed to by the applicant also will not come to the rescue of the applicant.

7. Having regard to the various judgements cited by respondents' counsel on the issue of appointments made dehors the rules, on which the apex court has come heavily against such appointments, I am afraid the applicant is not entitled for the relief prayed for. In the result, I find no merit in the present OA and the same is accordingly dismissed. Interim order stands merged with the main order.


(S.K. Naik)
Member(A)

/gtv/