

7

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1461/98

New Delhi this the 11th day of May, 1999.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Mahraj Singh,
S/o Late Shri Nirbhay Singh,
R/o Sector C-1075,
Vasant Kunj,
New Delhi. Applicant

(through Sh. V.K. Rao, advocate)

versus

1. Union of India through
Secretary,
Deptt. of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
3. Chief Commissioner of Customs,
New Customs House,
Ballard Estate,
Bombay-1.
4. Commissioner of Customs,
New Customs House,
Ballard Estate,
Bombay-1. Respondents

(through Shri R.R. Bharti, advocate)

ORDER

Hon'ble Shri S.P. Biswas, Member(A)

Applicant, an Appraiser (non-expert) under the respondent department of Central Excise & Customs challenges A-1, A-2 and A-3 orders dated 20.5.98, 4.3.98 and 18.12.95 respectively. By A-3 order, the applicant has been terminated from the services under proviso to sub rule(1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. By A-2, his

2

representation has been rejected and by A-1, his appeal to the authority concerned stands rejected. Consequently, the applicant prays for quashing those orders and issuance of direction to respondents to reinstate him with all consequential benefits.

2. Shri V.K. Rao, learned counsel for the applicant has assailed the above order of termination on several grounds. We, however, bring out the most important ones. It has been alleged that the order dated 18.12.95 has been passed by the Commissioner of Customs (R.No.4) who is not the appointing authority of the applicant. Principal Collector of Customs (R.No.3) is the only competent authority to issue such orders. In terms of the judgement of the Apex Court in the case of Krishna Kumar Vs. Divisional Asstt. Electrical Engineer (1979 SC 1912), the order of termination could not have been passed by an authority subordinate to R.No.3.

3. Rule 5 of CCS (Temporary Service) Rules is not applicable to the applicant inasmuch as he had put in more than 5 (five) years of service on the date of termination and has also acquired the status of regular employee having successfully completed the probation period of two years. By virtue of being a permanent employee, he is entitled to protection under Articles 14, 16, 21, 311(1) and 311(2) of the Constitution of India.

9.

4. The learned counsel for the applicant further contended that the order dated 18.12.95 is a bald order as it does not mention any reason for which the services of the applicant have been terminated. The order has been passed only to circumvent and dispense with the departmental proceedings contemplated pursuant to suspension of the applicant. It is vitiated with malafide both in facts and law and is liable to be set aside. In support of his contentions, Shri Rao relied upon the decisions of the Hon'ble Supreme Court in the following cases:-

1. State of Punjab Vs. Dharam Singh (AIR 1968 SC 1210)
2. The Anglo American Direct Tea Trading Co. Ltd. Vs. The Commissioner of Agricultural Income Tax, Kerala (AIR 1968 SC 1213)
3. Paramjit Singh & Ors. Vs. Ram Rakha & Ors. (1979(3) SCC 478)

5. Shri R.R. Bharti, learned counsel for the respondents submitted that the appointing authority in the case of Appraisers under the rules is Commissioner of Customs and, therefore, the order of termination dated 18.12.95, passed by the Commissioner of Customs under whom the applicant was posted, is perfectly valid and lawful. The offer of appointment happened to be signed by R.No.3 (Sh. S.A. Govinda Raj) since he was holding the dual charge of Collector of Customs as well as Principal Collector of Customs.

6. It is condition in the offer of appointment issued to directly recruited Appraisers that they have to pass the prescribed departmental examination before their cases for confirmation could be considered. The applicant was under a period of probation for two years as per offer of appointment and did not pass the departmental examination even though he continued in service for more than 5 years. Consequently, he was not a confirmed employee and continued to be under probation. Hence his services were terminated by an appropriate authority under Rule 5 of the CCS (CCA) Rules. There is no violation of any of the provisions under the Constitution.

7. The order of termination, as at A-3, is reproduced below:-

"In pursuance of the proviso to Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, S.S. SEKHON, COMMISSIONER OF CUSTOMS, BOMBAY hereby terminate forthwith the services of SHRI MAHARAJ N. SINGE, APPRAISER and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice i.e. one month at the same rates at which he was drawing them immediately before the termination of his service."

We are required to see if the order is a termination simpliciter or there is need to lift the veil and determine the motive/foundation behind the same. The order on the face of it appears to be innocuous and non-stigmatic. It is well settled in

g
f

law that unless an order for confirmation is passed, probationer would continue to be on probation. The applicant has not placed any material on record to show that there was any order of confirmation in his favour and that he had obtained the status of a regular employee. On the contrary, it is seen that the applicant did not qualify in the prescribed departmental examination, the condition precedent for confirmation in this case. The applicant did not cease to be a probationer after the probation period of two years in the absence of any specific order of confirmation. In the offer of appointment letter, there is no stipulation restricting the authorities from extending the period of probation. We are satisfied that in the absence of any statutory rule, the matter would be governed by the provisions of the various OMs issued by the Ministry of Home Affairs included in Swamy's Complete Manual on Establishment and Administration for Central Government Offices. The conditions in the appointment letter have to be read as a whole and on such reading it would be evident that it was only after satisfactory completion of probation period that the applicant could claim to have acquired temporary status and his services terminated with one month's notice or pay in lieu thereof. Before the passing of the impugned order, no order was passed which may indicate that the applicant had completed his probation satisfactorily. If an employee who is on probation or holding an appointment on temporary basis is removed from service with a

9

stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation there was no requirement of holding any enquiry affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge and as such the same is penal in nature. The appropriate authority has to look into the performance and work of the official during the period of probation and if they record a finding that during the probation period the work and performance of the official concerned was unsatisfactory, they are entitled to terminate the services on grounds of unsuitability. This would not amount to any stigma. If the record does not support such a conclusion reached by the authorities, a different conclusion could be taken. In the present case, the respondents have apparently taken the stand that the performance of the applicant has not been upto mark. It is on this basis, the respondents would argue, that the order of termination has been issued and does not cause any stigma on the applicant. (See State of U.P. & Anr. Vs. Kaushal Kishore Sharma (JT 1991 (1) SC 108). Records are not before

9

us However, we may not go into details in them to see if there is a finding on applicant's unsuitability or the order was issued to avoid the rigors of departmental proceedings. This is because there is an apparent illegality in the issue of A-3 termination order dated 18.12.95. A-3 has been issued by the Commissioner of Customs i.e. R.No.4 who is not competent to do so. It is not in dispute that the letter of appointment was issued by R.No.3. It is well settled in service jurisprudence that if an authority is holding two official positions, the lower one merges with the higher one. Respondents cannot take the plea that A-4 was signed by R.No.3 presuming that it was signed as if by a lower functionary (i.e. R.No.4) because of R-3 holding dual charges. What is important in such cases is to ensure that the order of termination is not issued by an authority lower in rank than the one who issued the appointment order. Here the word subordinate would mean lower in rank not in terms of functionary. Since the order of termination has been issued by an authority lower in rank than R.No.3, the same has to be held as impermissible in law.

8. In view of the details as aforementioned, we allow the O.A. partly with the following directions:-

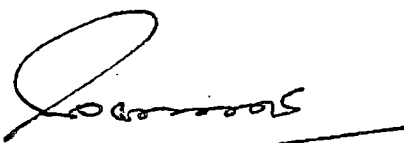
- (a) A-3 order of termination is set aside.

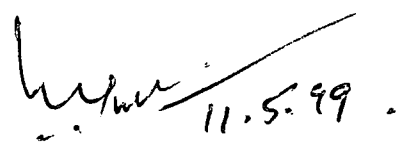
2

(b) The case shall stand remitted to competent authority i.e. R.No.3 who shall re-examine the matter in terms of rules and regulations on the subject and pass appropriate orders on reinstatement or otherwise within a period of 3 months from the date of receipt of a certified copy of this order.

(c) The status quo of the applicant, as on date, shall be maintained till a final decision is taken by Respondent No.3 in terms of our orders aforesaid within the time limit provided.

(d) There shall be no order as to costs.


(S.P. Misra)
Member(A)


(T.N. Bhat)
Member(J)