

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 359/98

(5)

New Delhi this the 30th Day of April 1998

Hon'ble Shri R.K. Ahoja, Member (A)

Shri Guman Singh Negi
Son of Shri B.S. Negi,
Resident of House No. 10,
NACEN Complex,
Sector No. 29,
Faridabad. Petitioner

(By Advocate: Shri Francis Paul)

-Versus-

1. Union of India,
(Through its Secretary),
Dept. of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. The Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi.
3. The Member (Personal & Vigilence),
Central Board of Excise and Customs,
North Block,
New Delhi.
4. The Chief Administrative Officer,
National Academy of Customs,
Excise and Narcotics,
NACEN Complex,
Sector 29, Faridabad.
5. The Director General of Inspections,
Customs and Central Excise, 5th Floor,
C.R. Building, I.P. Estate,
New Delhi. Respondents

(By Advocate: Shri Madhav Pacicker).

ORDER

The applicant claims that he was appointed as a casual worker on 5.5.1986 and since then he has been working with Respondent No. 4 as a Peon. He, claims that although his appointment was as a Peon, most of the time he was asked to perform the duties of a Driver

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(b)

since he possesses a valid driving licence. He was, however, not paid any extra allowance for discharging the duties of the Driver and he alleges that whenever he made a representation for the extra allowances, he was threatened that his services will be terminated. His case was also recommended for regularisation on the basis of the inclusion of his name at Serial No. 9 in the statement at Annexure 2 appended to the OA. The applicant states that on 20.12.1997 he was directed to drive office vehicle No. DL-1V 3105 in misty and cloudy weather against his wishes. The office vehicle met with an accident and a case under Section 279/304A IPC was registered vide FIR No. 160 at Faridabad.

2. The grievance of the applicant is that without giving him a chargesheet or show cause notice or holding any domestic enquiry, the respondent No. 4 has given him a notice of 30 days on 20.1.1998 indicating that his services would be terminated on the expiry of the notice. He has now come before the Tribunal seeking a stay on the operation of this notice dated 20.1.1998 and further to give a direction to the respondents to regularise his service as a Peon and also to allow him extra allowance for working as a Driver.

3. The respondents in their reply have stated that the directions to the applicant to drive the vehicle were given on 19.12.1997 to fetch officers from the railway station for the training course. They say that the police suspect that the applicant was driving

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under the influence of liquor and on that basis sent his blood sample for testing. As regards the applicant's plea for regularisation, the respondents state that he does not meet the requirement of recruitment rules as he does not have five years requisite experience of driving of motor vehicle. Finally, the respondents state that the impugned notice was served to him as per the requirements of casual labourers (Grant of Temporay Status and Regularisation) Scheme of the Government of India which came into force w.e.f. 1.9.1993, as his services were no longer required. This notice does not cause any stigma on the applicant and therefore there was no requirement to precede the action by issuing a chargesheet or holding a departmental enquiry.

4. On consideration I find that there can be no doubt that the termination of the applicant's services has a direct nexus to the accident which occurred to the vehicle which applicant was driving on 19/20/12/97. The question, however, is whether as a casual worker with temporary status, a disciplinary enquiry was called for in his case. The learned counsel for the applicant vehemently argued that there is no difference between a casual worker with temporary status and a temporary Govt. servant since the former also gets a regular pay scale and is entitled to the same benefits. This would be more so in the present case as his juniors have already been regularised in service. I, however, do not find this argument to be valid. Till such time that the casual worker is appointed against a specific post in temporary or

regular capacity, he is not a regular Government Servant. The essential test, of determining the status of the applicant is to see whether his appointment was made against a specific post, in accordance with the recruitment rules or any scheme or instructions of the Government. A worker drawing his wages from the muster roll or office contingencies cannot be regarded as a regular Govt. servant. In this case the applicant was initially recruited as a casual worker and all that happened was that he was granted temporary status in accordance with the scheme for the casual labourers. For this reason I find that the respondents are not required to issue any chargesheet or hold any regular disciplinary enquiry under CCS (CCA) Rules before terminating applicant's services.

5. There is, however, another aspect of the case which favours the applicant. The applicant has put in more than 10 years of service even though this service may be in the capacity of a casual labourer with temporary status. Nevertheless, the respondents cannot follow a policy of pick and choose. If no further work is available with the respondents and the applicant is the juniormost casual labourer, the notice of one month would be sufficient. This is, however, not the case here. The principle of natural justice demands that the applicant should have been given at least an opportunity to explain his position before the impugned action was taken by the respondents. As this was not done, the notice of termination of service was patently contrary to canons of natural justice and has therefore to be quashed.

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6. In the light of the above discussion, I allow the OA and quash the impugned notice dated 20.1.98. The applicant will be deemed to be in service and will be entitled to arrears of pay and allowance, if any. The respondents ~~were~~, however, be free to take any action for termination of the services of the applicant with prospective effect but only after giving an opportunity to the applicant to show cause. It will, however, not be necessary to hold any formal enquiry in terms of CCA (CCS) Rules.

7. The OA is disposed of with the above direction. There will be no order as to costs.

R.K. Ahooja -
(R.K. Ahooja)
Member (A)

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