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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.736/94

New Delhi, this the 12th August, 1994.

HON'BLE SHRI J.P.SHARMA MEMBER(J)
HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Surjit Singh Sethi,
33/14, Old Rajinder Nagar,
New Delhi.

..Applicant

(By Vinay Sabharwal, Advocate)

vs.

Union of India, through:

1. Secretary, Ministry of Communication,
Dak Bhawan, Sansad Marg, New Delhi.

2. The Member (Production)
Telecom Commission,
Govt. of India, Deptt. of Communication,
Dak Bhawan, New Delhi.

3. Shri KK Kulshrestha,
Engineering Authority &
Asstt. Director General(DI)
Ministry of Communications,
Dept. of Telecom,
Sanchar Bhawan, New Delhi.

...Respondents.

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

The applicant joined the services of the respondents as Assistant Engineer in April, 1979 and was ^{on} extended probation upto 31-12-1980. It is his case that he submitted his resignation on 10-4-84 and had given notice of one month under rule 5 of the CCS(Temporary Service) Rules 1965.

In this application he has stated that ~~the~~ Memo containing articles of charges was issued to him on 27-8-88. The applicant sent his denial, denying each and every article of charge vide his letter dated 15-11-88 (An.7 to OA). Thereafter by ~~the~~ order dated 10-2-89 one Shri SK Roy, CDI Jamnagar House Mutments was appointed as an inquiry authority ^{to} to inquire into the charges of the applicant. ~~was~~

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changed on 8-4-93 and this has been followed by instructions to the applicant to attend the hearing on 10-8-93 and further instructions to submit the list of documents of different witnesses. In addition, a Memo dated 23-2-94 has been issued by the Inquiry Officer whereby the applicant has been directed to inspect the latest documents in the office of the Presenting Officer on 16-3-94. This O.A. has been filed with a prayer to restrain the respondents in proceeding further with the O.E. proceeding and for setting aside the same.

2. Separately, the applicant has been pursuing with the respondents for the settlement of his dues consequent to his resignation/notice of one month given in the month of April, 1984, since such settlement has not taken place. The second prayer in the O.A. is for a direction to the respondents for payment of all post-resignation benefits.

3. At the stage of admission, we wanted to be convinced about the maintainability of the O.A. The main ground advanced by the 1d. counsel for the applicant is that the applicant had submitted his resignation alongwith the notice of one month under rule 5 of CCS(Temporary Service) Rules and this notice having been given on 10-4-84 the applicant ceased to be an employee of the respondents from 10-5-84. Disciplinary rules are no more applicable to him after May 1984 and hence the entire disciplinary proceedings should be held to be illegal.

4. To further support his case the 1d. counsel for the applicant drew our attention to the findings of the Inquiry Officer in another disciplinary case for which a Memorandum had been served on 14-5-91. The related articles of charge were

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with reference to the unauthorised absence of the applicant with effect from 2-4-84. In the statement of imputations attached to the Memorandum of 14-5-91 para 2 reads as under:-

"Shri Sethi tendered his resignation dated 10-4-84 which was duly considered but was not accepted on account of administrative reasons and a communication to this effect was sent to Shri Sethi vide S.E. (Civil) Ambala letter No.1(208)SE P&T/A8/4396 dated 7-5-84. In his representation dated 23-5-84 Shri Sethi stated that under Rule 5(1) of the CCS(TS) Rules, 1965, he ceased to be in service with effect from 10-5-84 on the expiry of one month's notice."

5. The Inquiry Officer in his findings had concluded that the applicant ceased to be in employment of the department after expiry of one month's notice given under rule 5(1) of CCS (Temporary Service) Rules 1965 and had held the applicant to be on unauthorised absence under the rules from 13-4-84 to the date of expiry of notice period.

6. Thus it is the case of the applicant that notice under rule 5(1) of CCS (Temporary Service) Rules 1965 had to be accepted and respondents had no choice for withholding the acceptance of resignation/notice since the relevant rule does not permit any choice with the employer.

7. We note that the applicant had assumed that he is a temporary government servant but has not been able to produce any document supporting this. The copy of the appointment order which was produced by the 1d. counsel for the applicant reads as under:-

"On the basis of the Combined Engineering Services Examination held by the Union Public Service Commission in 1975 the P&T Board is pleased to offer you an appointment against the post of Assistant Engineer (Civil) in the General Central Service, Group 'B' on the following terms:-

- 1) The appointment is against a temporary post likely to be made permanent and you

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will be on probation for a period of two years from the date of appointment which may be extended or curtailed at the discretion of the competent authority. During the period of probation, you will be required to undergo such training and take such departmental tests as the Government may prescribe. Failure to complete the period of probation to the satisfaction of the competent authority or to pass the prescribed test will render you liable to discharge from service/reversion to your substantive post on which you may be retaining a lien."

The other conditions stipulated in the appointment order dated 19-2-1977 are not material to the disposal of this O.A.

8. It is admitted by the applicant that the two years period of probation was extended by a few months so that the probation lasted from the date of joining in April 1977 to 31 December 1980. In S. Mukherjee Vs. LB Thanga, 1975 SLJ 258 it has been held as under:-

"31. Termination after period of probation invalid.- It is clear that the appointment offered to the petitioner was permanent subject only to the condition that he had to undergo a period of probation of two years. If his work was found unsatisfactory, his services could be terminated within the period of probation. After the period of probation, no separate order of confirmation was necessary because he had been given a permanent appointment to begin with. The petitioner had acquired the status of permanent servant after the expiry of period of probation and he should not have been dealt with under the rules pertaining to temporary employees."

In Praduman Kumar Jain v. UOI reported in JT 1994(4) SC 507 reference to the earlier orders of Hon'ble Supreme Court on the subject of holding of a post in a substantive capacity has been made in the following terms:-

"...A person is said to hold a post in a substantive capacity when he holds it for an indefinite period, especially of long duration in contradistinction to a person who holds it for a definite or a temporary period or holds it on probation subject to confirmation. If the

appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been prescribed and has been approved, one may well say that the post was held by the incumbent in a substantive capacity."

9. In the case in question we find that the applicant had been appointed as a result of the Combined Engineering Services Examination held by the Union Public Service Commission. An appointment offer is not for definite or a temporary period. Probation has been prescribed and has been approved. Hence applicant's appointment after the probation should be held to be in a substantive capacity. It is well established law that resignation submitted by an employee should be accepted for becoming effective. It is not disputed that the respondents had advised the applicant of the non-acceptance of the resignation well within one month of the period of the notice. In our view the temporary service rules will not be applicable in the present case. In the circumstances, we do not find it necessary to interfere with the disciplinary proceedings. Also since resignation has not been accepted, the question of releasing of termination benefits would not arise at this stage.

10. Thus the O.A. is liable to be dismissed at the stage of admission itself. We are, however, constrained to point out that the disciplinary proceedings have taken enormous time and we ~~hope~~ ^{expect} that the respondents will finalise the proceedings most expeditiously. It would not be fair to the applicant to further delay the proceedings and we hope that the applicant will also cooperate with

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the proceedings which should be brought to an end at the earliest. With these observations, we dismiss the O.A at the admission stage. No costs. We also direct that a copy of this order should be sent to the respondents.

P. J. Tha

(P.T.THIRUVENGADAM)
Member (A)

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Sharma

(J.P.SHARMA)
Member (J)