

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

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O.A. No. 244 OF 1989 & 199  
T.A. No. 10 OF 1990

DATE OF DECISION 7-6-1991.

Khushal Singh	Petitioner
Shri V.P. Sharma	Advocate for the Petitioner(s)
Versus	
Union of India and others	Respondent
Mrs. Raj Kumari Chopra	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair,	.. Vice-Chairman
The Hon'ble Mr. P.C. Jain	.. Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGMENT

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE MR.G.SREEDHARAN NAIR,VC)

The applicant in both these applications is the same. T.A.10 of 1990 relates to Civil Appeal No.139 of 1984 in the Court of the Additional Civil Judge, Ghaziabad which was an appeal filed by the applicant from the decision of the Munsiff, Ghaziabad in O.S.No. 93 of 1982 which ~~was~~ <sup>was</sup> suit filed by the applicant. Though the appeal was disposed of by the Additional Civil Judge dismissing the same by the judgment dated 5-1-1989, since the judgment was passed after the coming into force of the Administrative Tribunals Act,1985, as the jurisdiction of the civil Court was taken away by then, by the order passed by the Hon'ble Chairman on 10-9-1990 it was directed that the matter will be treated as a transferred application, since the records have been received here on transfer from the civil

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court, ~~it will be considered as a transferred application~~ and disposed of along with O.A.No.244 of 1989 filed by the applicant. It is accordingly that both these matters have come up before us.

2. The applicant joined the Indian Air Force as a civilian cook, and being surplus was transferred from Bidar to the Ordinance Factory, Muradnagar, under the third respondent. From 14-6-1969 he was working there as Labour 'B'. By the order of the third respondent dated 9-10-1974 he was transferred from the Ordinance Factory, Muradnagar to No.4 E.M.E.Centre, Kampte. It is alleged by him that he was not allowed to join his duties at Kampte and hence he came back to the Ordinance Factory, Muradnagar, but despite the orders of the Army Headquarters New Delhi to take him back on the strength of the Ordinance Factory, Muradnagar as Labour 'B', he was not allowed to join duty there. It is stated that the second respondent, the Chief of Army Staff, cancelled the order dated 16-12-74 and transferred the applicant to the Bengal Engineer Group Centre, Roorkee. According to the applicant, when he reported to the fourth respondent, he was not allowed to join at Roorkee, and hence he filed <sup>in</sup> a suit - O.S.No.93 of 1982 - in the Court of the Munsiff, Ghaziabad, which was dismissed on 12-11-1984. The Appeal preferred by the applicant was also dismissed on 5-1-1989.

3. In O.S.No.93 of 1982 the relief claimed was for a decree ~~for~~ mandatory injunction to allow the applicant to join duty as Labour 'B' at Muradnagar. That suit was resisted by the respondents who contended that the applicant who was Labour 'B' was reclassified as Cook and

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transferred to EME Centre, Kampte with effect from 11-10-1974 on his own request and consequently he was struck off <sup>from</sup> ~~on~~ the strength of the Ordinance Factory, Muradnagar from 11-10-1974 and directed to report for duty at Kampte on 14-10-1974. It is contended that the applicant did not join duty there deliberately and reported back at the Ordinance Factory, Muradnagar when he was again informed to join at Kampte as his services were urgently required there. The request of the applicant to allow him to work at Ordinance Factory, Muradnagar was not acceded to as it was without proper authority. and the applicant was not on the strength of the Ordinance Factory, Muradnagar since 11-10-1974. It is further stated that the applicant filed a suit - O.S.No.373 of 1980 - in the Court of the Mun-siff, Ghaziabad for the same relief as claimed in O.S.No.93 of 1982 which was dismissed on 14-8-1981 and hence this suit is barred by res judicata. It is pointed out that the applicant reported for duty at B.E.G.Centre, Roorki as Cook on 21-4-1975 and was taken on their strength, but he absented from duty unauthorisedly with effect from 28-4-1975 to 24-8-1975 and though he joined on 25-8-1975, again absented himself with effect from 26-8-75. In the circumstances it was contended in the suit that the relief of mandatory injunction cannot be allowed.

4. In the Original Suit 93 of 1982 the issue whether the applicant was entitled to join at Muradnagar was considered by the Mun-siff and was found against the applicant.

5. Subsequent to the filing of the aforesaid suit, a memorandum of charges was issued against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'the Rules') on 24-9-1985

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for misconduct on account of unauthorised absence and the penalty of removal from service was imposed by the order dated 25-10-1986. This order is assailed by the applicant in O.A. No.244 of 1989. In the original application the applicant has reiterated that he should have been allowed to join duty at Muradnagar. He assails the dismissal of the Original Suit 93 of 1982 filed by him and has prayed for quashing the decision of the civil court in the original suit as well as in the appeal. It is urged that the decision of the appellate Court is without jurisdiction as it was given after the coming into force of the Administrative Tribunals Act.

6. The respondents have filed their reply in O.A. No.244 of 1989. It is contended that the application is barred by limitation since the challenge is against the order of dismissal passed on 25-10-1986. On merits it is stated that the applicant did not deliberately join duty at Kampte and he unauthorisedly absented himself with effect from 26-8-1975 and as such he was removed from service after the issue of a memorandum of charges and conducting an inquiry in accordance with the Rules. It is pointed out that the applicant did attend the inquiry on 17-3-1986 and on 16-6-1986. It is further stated that the order of removal dated 25-10-1986 was forwarded to the applicant by registered post, but the applicant refused to accept the same. It is contended that there is absolutely no ground for interference with the order of removal and that the application is not maintainable since the applicant has not preferred the departmental appeal against the order imposing the penalty.

7. From the facts narrated above, it emerges - and it was not rightly disputed by the counsel of the applicant - that unless the order imposing upon the applicant the penalty

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of removal from service is vacated, the relief of mandatory injunction that is prayed for in D.S.No.93 of 1982 cannot be claimed.

8. The only point that was urged by Advocate Mr. V.P.Sharma appearing on behalf of the applicant for interfering with the order imposing the penalty was that there has been denial of reasonable opportunity of defence since copy of the report of the Inquiry Officer who conducted the inquiry was not furnished to the applicant before the Disciplinary Authority imposed the penalty. Such a plea is actually not put forward in the application. It is also to be pointed out that it is not open to the applicant to successfully put forward the plea since the omission to supply copy of the report of the Inquiry Officer as constituting denial of the reasonable opportunity of defence can be urged only by invoking clause (2) of Articles 311 of the Constitution of India and not as an infringement of any of the provisions governing the procedure relating to the conduct of the inquiry under Rule 14 of the Rules, for those Rules obviously do not contain a prescription to that effect. Since the applicant was admittedly a civilian employee in Defence service drawing his salary from Defence estimates the protection of clause (2) of Article 311 of the Constitution of India is not available to him. We are fortified in this view by the decision of the Supreme Court in UNION OF INDIA AND ANOTHER v. K.S. SUBRAMANIAN (AIR 1989 Supreme Court 662). It ~~also~~ follows that the submission of the counsel of the applicant on this score has to be rejected.

9. The concerned file relating to the inquiry proceedings was made available by the counsel of respondents. We

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have perused the same. We notice that the applicant did participate in the inquiry and that the inquiry was conducted in accordance with the procedure laid down in Rule 14 of the Rules. Indeed no other ground was canvassed by counsel of the applicant for interference with the order of the Disciplinary Authority.


10. There is considerable force in the plea of the respondents that the original application is barred by limitation since it has been filed only in 1989. The order imposing the penalty was issued on 25-10-1986. This is not a case where the applicant was not aware of the order, for according to the applicant, he submitted a representation against the impugned order of dismissal on 19-11-1986.

11. The result is that O.A.No.244 of 1989 has to be dismissed and we do so.

12. ~~It~~ <sup>A</sup> is stated at the outset, ~~that~~ in view of the order removing the applicant from service the relief of mandatory injunction claimed in the original suit can, on no account, be allowed. Besides, it was on the ground that the applicant was struck off from the rolls of the Ordinance Factory, Muradnagar and he unauthorisedly absented himself that the disciplinary proceedings were initiated. Without complying with the orders directing the applicant to report at Kampte, he has no right to claim mandatory injunction to allow him to join as Labour 'B' on the strength of the Ordinance Factory, Muradnagar. As such, the suit was rightly dismissed by the Munsiff and the judgment under appeal does not require interferences..

13. T.A.No.10 of 1990 is also dismissed.

Cec 7/991  
(P.C. JAIN)  
MEMBER(A)

  
7.6.1991  
(G. SREEDHARAN NAIR)  
VICE-CHAIRMAN