

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1277/1988

New Delhi dated the 12th November, 1993

Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)
Hon'ble Mr. B.S. Hegde, Member(Judicial)

Sh. Garib Dass,
S/o Shri Mangala
R/o J.II/207, Madangir,
New Delhi-110062

.. Applicant

(By Advocate MS Kiran Singh proxy counsel
for Sh. D.C. Vohra, counsel for the
applicant)

Versus

1. Union of India
Through the Chief Secretary,
Union Territory of Delhi,
Delhi Administration, 5 Sham Nath Marg,
Delhi

2. Directorate of Health Services,
through its Director,
E-Block, Saraswati Bhawan,
Connaught Place, New Delhi-110001

3. The Surgeon Incharge,
Dr. N.C. Joshi Memorial Hospital,
Karol Bagh, New Delhi

.. Respondents

(None for the respondents)

ORDER(ORAL)

(Hon'ble Sh. N.V. Krishnan, Vice Chairman(A))

The applicant is aggrieved by the termination
of his service from the post of Sweeper-cum-Chowkidar
under the third respondent by the Annexure A-1 order
dated 9.5.1983 issued under Rule 5(1) of the Central
Civil Services(Temporary service) Rules, 1965. The appeal

filed was rejected by the competent Authority as stated by Administrative Officer, Directorate of Health Services vide the order dated 21.7.87 (Ann.A-8)

2. The brief facts of the case are as follows:-

2(i) The applicant was initially appointed at the Dr. N.C. Joshi Memorial Hospital by the Ann.A-2 office order dated 29.9.76 as sweeper on an adhoc basis until further orders with a stipulation that the appointment could be terminated without notice.

2(ii) While so, it is stated that the applicant had proceeded on leave to his home town Rajgarh, Tehsil and District Alwar, Rajasthan because of the illness of his wife. It is further, stated that the applicant extended his leave from time to time and remained in the village upto 1986. The copies of medical certificates regarding the illness of his wife from 13.3.83 to 15.6.1986 are placed at Annexures A-3 to Annexure-7.

3. After the recovery of his wife from illness, the applicant reported back to duty in June, 1986 when he was informed verbally that his services had been terminated in the year 1983 itself.

4. Based on this information, the applicant submitted a representation vide letter dated 18.3.87

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Ann.A-9 to the Deputy Director, Directorate of Health Services (Delhi Admn.). This was apparently treated as an appeal has been disposed of by the Annexure A-8 dated 21.7.1987 which states that the appeal has been considered by the competent authority and rejected.

5. It is in these circumstances, that the applicant has prayed that the impugned orders Ann.A-1 be quashed and the appellate order Ann.A-8/ and the period of absence i.e. from 13.8.83 onwards be regularised and treated as duty for all purposes without any break in service and the respondents be directed to pay and allowances for this period.

6. The Respondents have filed reply opposing the prayers. It is contended that the O.A. is barred by limitation because the cause of action has arisen in 1983. It is submitted that the applicant has deliberately suppressed the information about the receipt of the termination notice dated 9.5.1983. It is stated this was duly served by Regd.A/D at the residential address given by the applicant himself. It is also stated that the applicant absented and abandoned his work unauthorisedly and without intimation to his superiors. He had availed of 400 days leave during the period from 1977 to 1982. He continued to

be unauthorisedly absent w.e.f. 23.3.83 without any intimation to his superior. Therefore, the applicant was served with a Memorandum by Regd.A/D to the address given at the time of appointment. The applicant did not bother to reply to the same. Thereore, the respondents found him completely unsuitable for the job and issued termination notice dated 9.5.83 under Rule 5(1) of Central Civil Services (Temp Services) Rules, 1965 terminating his services with effect from one month from the receipt of the notice. The notice was sent by Regd.A/D and the acknowledgement has been annexed as annexure R-1.

7. It is, therefore, submitted that in these circumstances, the applicant is not entitled to the relief sought by him.

8. We have heard the ld.counsel for the applicant. Her contention is that the Ann.A-1 notice of termination was never received by the applicant. It was obtained from the respondents when the OA was filed in the first instance and direction was given on 15.7.1988 to the applicant to produce that document. It is stated that thereafter, the applicant requested the respondents for a copy and after obtaining the copy of Annexure A-1 the OA has been filed. It is also stated that the respondents have

U not considered the circumstances under which the

applicant could not resume duty.

9. We have perused the records. The question when the Ann.A.1 order of termination was served is only for the purpose of finding out whether this O.A. is barred by limitation as contended by the respondents. In our view, as the representation/ appeal has been dismissed by the Annexure A-8 order dated 21.7.87, limitation has to count that date. Thus this OA is not barred by limitation.

10. Admittedly, the applicant is absent from work allegedly under compelling circumstances. He had to proceed on leave to his village Rajgarh, Tehsil and District Alwar(Rajasthan) for about 3 years. It is, therefore, understandable that the Annexure A-1 order terminating the service may not have been received by him, because he allegedly was not in Delhi. This order was sent to him at the address given by him which is his residential address. The applicant has no case he had left some other address with the respondents for correspondence during his absence.

11. As a matter of fact, the Annexure A-10 representation makes it very clear that during the

entire period of his absence, the applicant did not formally send any leave application to his office. In fact, even in the O.A., while there is reference to certain medical certificates obtained by him, there is no mention that the applicant sent any application for leave.

12. In the circumstances, we are satisfied that the applicant had remained absent without the approval of the competent authority. Respondents have, therefore, terminated his services under the C.C.S. (Temp. Services) Rules, 1965 after giving notice for one month. This is strictly in accordance with the conditions of his appointment. The annual order also does not cast a stigma on him.

13. In the circumstances, we are of the view that the application has no merit and hence OA is dismissed.

B.S. Hegde
(B.S. Hegde)

Member (J)

N.V. Krishnan
12.11.93
(N.V. Krishnan)

Vice Chairman (A)

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