

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
FA No.

1417/

1988.

DATE OF DECISION December 7, 1989.

Jai Pal

Applicant (s)

Shri P.T.S. Murthy

Advocate for the Applicant (s)

Versus

Union of India & Others

Respondent (s)

Shri P.P. Khurana,

Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, 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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.
yes.
No.
No.

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the impugned order dated 29.7.1988, by which his services were terminated by giving him one month's salary in lieu of notice under proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter to be referred as the 1965 Rules). He has prayed that the impugned order ibid be set aside and a declaration be issued to the effect that (1) he is liable to continue in service as a Peon and that (2) he is regular and permanent.

2. The relevant facts, in brief, are as under: -

The applicant joined as a Peon with Respondent No.2 on 26.3.1976. Vide order dated 26.5.1982, he was appointed as Peon in the pay scale of Rs.196 - 232 on a regular basis from the date of his initial appointment, i.e., 26.3.1976 until further orders, and the period of service rendered by him with effect

from 26.3.1976 till 26.5.1982 was to be reckoned for successful completion of his probationary period. That order was passed in supersession of order dated 20.4.76, which was probably the order by which he was initially appointed. He was asked by Memo dated 24/29-1-1986 to furnish his date of birth in writing. In his reply dated 30.1.1986, he stated that he had already given his date of birth, but again mentioned it in his reply and this was 3.3.1954. Vide Memo 9.3.1988, he was informed that in the educational certificate produced by him, his date of birth was recorded as 3.3.1954 while the reply received from his school showed the date of birth to be 3.3.1956. It was further stated that the certificate had used two different inks. He was, therefore, asked to explain as to how this difference of two years in his date of birth occurred and why two different types of ink had been used in the certificate produced by him. In his reply dated 16.3.88, he stated that he did not know what mistake and how it had been committed in his certificate and he should be given the two different certificates and a period of 10 - 15 days so that he could pursue the matter with the Headmaster of the school. In continuation of this reply, he sent another reply on 18.4.88 in which he stated that he had submitted the same certificate which was received by him from the school and he did not gain by making any alteration in his date of birth. He further stated that the person who was the Headmaster of the school in 1972 alone could explain how 3.3.1954 was written in place of 3.3.1956. He also stated that if he had been apprised about the two types of ink used in the certificate produced by him at the time it was initially submitted he could have got the deficiency removed. The impugned order was then passed on 29.7.1988.

3. The applicant's case is that the 1965 Rules do not apply to him as he is a regular and permanent employee. In the rejoinder, however, he has stated that he is a quasi-permanent employee. He has further pleaded that the impugned order is

discriminatory inasmuch as three peons junior to him were allowed to continue in service. He has filed a copy of the seniority list in support of this contention. His other main plea is that the impugned order is violative of Article 311(2) of the Constitution, as it is punitive. He has cited a number of judgements in support of his case.

4. The respondents' case is that the 1965 Rules apply to the applicant as he was neither permanent nor quasi-permanent. They have also rebutted the contention of violation of the principle of natural justice and have stated that the applicant was given an opportunity to explain the discrepancy in his date of birth etc. They have filed copy of letter dated 9.3.88 which was issued to the applicant and copies of his two replies dated 16.3.88 and 18.4.88. They have pleaded that the question of seniority is irrelevant.

5. We have carefully perused the documents filed in the case and have also heard the learned counsel for the parties.

6. It is not in dispute that the applicant had been in service for a period of over 12 years and had also been made regular before his services were terminated under the 1965 Rules. Firstly, it needs to be determined whether the impugned order which is prima-facie an order of discharge simpliciter is really based on any misconduct or misconduct is only a motive for passing this order. The fact that the applicant was asked after a period of about 10 years to give his date of birth

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- (1) Kondu Reddy Vs. P.M.G. (T.A. No.726 of 1986) - ATR 1987 (1) CAT 90.
- (2) Gopa Ram Vs. U.O.I. & Ors. (T.A. No.195 of 1986) - ATR 1987 (1) CAT 97.
- (3) Ram Chandra Hari Karmarkar Vs. Union of India & Ors. - (T-158/85) - ATR 1986 Vol. I CAT 164.
- (4) Kishanlal Vs. Union of India & Ors. (T.A. 144/86) - S.L.J. 1987 (2) Vol. 24).
- (5) S.A. Chiniwar Vs. DLI (NR) Belgaum (W.P. No.26679/1982 by Karnataka High Court) - SLJ 1987 (3) page 102 (Vol.25).
- (6) Sunny Augustine Vs. Superintendent R.M.S. "CT" Division Calicut (TA 78/1987 - CAT Madras Bench- SLJ-1987 (4) 319.
- (7) UT Pal Basu Vs. Union of India & Others (O.A. 113/1986) - ATR 1987 (Vol. 2) p. 64.
- (8) Rajendran Vs. DET Kumbakoram (CAT Madras Bench) - 1987 (2) ATR 421 (T. No.932 of 1986).
- (9) Pradip Deb Vs. Director of Census Operation, Arunachal Pradesh Shillong and Others (CAT Guwahati Bench) 1987 (2) ATR 750.
- (10) J.T. of Tripura Vs. Gopal Chander Dutta Choudhary 1963 Supp. 1 SC 266 AIR 1963 SC 601.

in writing and an inquiry was made from his school as to his correct date of birth and that the order has been passed after getting a reply from the applicant does show that the discrepancy in the date of birth as furnished by the applicant and as intimated by his school is the foundation on which the impugned order of termination is based. The respondents in their reply have not been able to show any other facts to the contrary. Para 6 (vii) of the counter-reply, inter-alia, states that "Since the certificate was a forged one, his services were terminated as per offer of appointment and acceptance given to this Institute while joining the post of Peon". The law by now is well settled that if an order terminating the services of a Government servant ex-facie innocuous was passed in fact with a view to punishing the Government servant, it would be a punitive order which can be passed only after complying with the provisions of Article 311(2) of the Constitution (Nepal Singh Vs. State of U.P. & Others (1985 SCC (L&S) p.1). No inquiry has been held in accordance with the C.C.S. (C.C.A.) Rules, 1965 with a view to meeting the requirements of Article 311 (2) of the Constitution.

7. The seniority list filed by the applicant shows that there are three persons junior to him on the provisional seniority list of peons as on 1.3.88. This has not been challenged by the respondents. Protection of Articles 14 and 16 of the Constitution is available even to temporary Government servants (Manager, Government Branch Press & Anr. Vs. D.B. Belliappa - 1979 SLJ 233 SC) and Jarnail Singh & Others Vs. State of Punjab & Others - 1986 (2) SLJ (S.C.). Thus, on the grounds of violation of the provisions of Articles 14 and 16 and non-compliance with the provision of Article 311(2) of the Constitution, the impugned order needs to be set aside.

8. The applicant has also prayed that he should be declared "as regular and permanent, which he really is". In the rejoinder however, he has claimed to be "a quasi-permanent employee in reality". He has, however, not adduced any evidence in support of his contention that he is either permanent or quasi-permanent. In the seniority list filed by him in support of his

case, he is shown to be temporary. He has not been able to produce any declaration as envisaged in Rule 3 of the 1965 Rules that he has been made quasi-permanent. In accordance with the provisions of this Rule, a Government servant shall be deemed to be in quasi-permanent service if he has been in continuous service for more than three years and if the appointing authority being satisfied, having regard to the quality of his work, conduct and character as to his suitability in employment in quasi-permanent capacity, has made a declaration to that effect. It is necessary that both these conditions are fulfilled. In this case, only one condition is met, i.e., putting in more than three years continuous service. Mere fact that his appointment was made regular will itself not make it either permanent or quasi-permanent. Therefore, we do not find any merit in this contention that he was either permanent or quasi-permanent.

9. In view of the above discussion, the impugned order dated 29.7.1988 by which the services of the applicant had been terminated with one month's pay in lieu of notice under proviso to sub-rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 is quashed. The applicant will be deemed to have continued in service and is entitled to consequential benefits in terms of arrears of pay and allowances admissible thereon from the date of termination and also the benefit of seniority. Respondents would, however, be free to initiate appropriate disciplinary proceedings for the alleged misconduct of discrepancy in the date of birth of the applicant in accordance with law, if so advised. The applicant's prayer that he may be declared permanent / quasi-permanent is devoid of any merit and is hereby rejected.

10. The application is partly allowed in terms of the directions given in para 9 above. The arrears of pay and allowances shall be paid to the applicant within one month of the receipt by them ^{with a copy} of this judgement.

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11. In the circumstances of the case, we are of the view that the parties be left to bear their own costs.

(12/11/89)
(P.C. JAIN)
MEMBER(A)

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(AMITAV BANERJI)
CHAIRMAN