CAT/7/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
## NEW DELHI

**O.A. No.** 521/88 **199**
~~**T.A. No.**~~

DATE OF DECISION 3.9.93

Shri Munaf A. **Petitioner**

Shri Raman Duggal **Advocate for the Petitioner(s)**

**Versus**

Union of India **Respondent**

Shri N.S. Mehta **Advocate for the Respondent(s)**

**CORAM**

**The Hon'ble Mr.** J.P. Sharma, Member (J)

**The Hon'ble Mr.** B.K. Singh, 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. **Whether it needs to be circulated to other Benches of the Tribunal ?**

**JUDGEMENT**

(of the Bench by Hon'ble Mr. J.P. Sharma)

The applicant was appointed as a Superviser by the appointment letter dated 29.2.1956, where his name is written as Abdul Munaf. Along with this letter, there is an Annexure which lays down certain terms and conditions of service. Inter alia, ~~it lays down (i) that~~ the appointment is temporary and will be terminated without assigning any reasons after ~~notice for a period of two months~~ giving two month's notice or two month pay in lieu thereof in lieu of notice; (ii) the applicant will be governed by the provisions of Central Civil Services (Temporary Service) Rules, 1949 till

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he is appointed quasi-permanent, or permanent substantively. By the order dated 8.3.1963, the Collector, Central Excise Collectorate, Hyderabad, passed an order terminating the services of the applicant as follows:-

> "Under Rule 5 of the C.C.S.(T.S.) Rules, 1949, Shri Abdul Munaf, temporary Sub-Inspector, Central Excise, is hereby given notice that his service is terminated with effect from the date of expiry of two calendar months from the date of the service of this order on him."

The applicant made a representation against the termination of his services under Rule 5 of CCS(T.S.) Rules, 1949 on 8.5.1963 to the Secretary, Central Board of Revenue, New Delhi. This representation was followed by another one dated 29.5.1963. The applicant was informed by the memo. dated 20.2.1964 that the Government of India do not wish to interfere with the order of termination dated 8.3.1963. This was in reply to his representation dated 2.5.1963. The applicant made another representation to the Secretary, Ministry of Finance on 15.6.1964. He was informed by the memo. dated 31.10.1964 that his representation dated 15.6.1964 had been considered and the President, after careful consideration, had rejected the same. He again addressed a representation to the President dated 11.6.1965 and was informed by the memo. dated 25.11.1965 asking him whether he intended to join as L.D.C. and if so, he should inform by submitting the enclosed form for that purpose.

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It was his re-employment as an L.D.C. as a fresh candidate without giving any benefit of the past service. He, vide letter dated 25.12.1965, informed the Secretary, Ministry of Finance that the relief given to him was not adequate. In the words of the applicant written in the said letter.... "That you acting on behalf of the President of India, decided to offer me a post of L.D.C. It is a shameful act on your part. It is not an adequate relief to me in any respect.....I will be waiting for favourable circumstances for a legal remedy." The applicant continued to make representations one after another. The Minister in the Ministry of Finance, by the memo. dated 27.5.1970, finally informed Shri Chaudhary Mohd. Shafi, who has written on behalf of the applicant, that the applicant was offered a post of L.D.C. in August, 1965, the pay-scale of which is more or less identical to that of S.I. of Central Excise. This was done on compassionate grounds, but he did not accept the offer which had to be cancelled. In the aforesaid circumstances, it is not possible to do anything in the matter. The applicant was informed again by the memo. dated 29.4.1978 that the Government of India, after careful consideration, had rejected his other representation dated 3.3.1978. He had also addressed certain letters to late, Shri Rajiv Gandhi, the then Prime Minister. He was informed by the

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memo. dated 8.9.1976 that it was not possible to accede to his request. Again, by the letter dated 17.3.1983, his representation was rejected.

2. In the present application, the applicant has assailed the order of his termination dated 8.3.1987 and the last order rejecting his representation dated 17.3.1987. The present application was filed on 16.3.1988. A notice was issued to the respondents who contested this application. However, the counter filed by the respondents is not traceable on record.

3. The applicant in this application has claimed for the grant of the following reliefs:-

(a) to set aside the impugned order;

(b) direct reinstatement of the applicant with respondent No.2 with full back wages and all benefits that may have accrued to him had he been in service;

(c) grant cost of the application; and

(d) any such other orders as the Hon'ble Tribunal may, in the circumstance, deem fit.

4. We have heard the learned counsel for the parties at length and perused the records. The learned counsel for the respondents, Shri N.S. Mehta, took the preliminary objection of limitation. The cause of action arose to the applicant by the order of termination of his services

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passed under Section 5(1) of the CCS(TS) Rules, 1949 which governed the conditions of service of the applicant at that time and was annexed with the letter of appointment dated 29.2.1956. The applicant made a representation against the termination order which was rejected by the memo. dated 20.2.1964 (page 30 of the paper-book). The applicant made another representation to the Secretary, Ministry of Finance as said above and the same was also rejected by the memo. dated 31.10.1964. The applicant persisted ~~with~~ in making further representations and he was informed by the memo. dated 25.11.1965 that he could ~~not~~ be re-employed as an L.D.C. as a fresh candidate. This was in reply to his representation dated 11.6.1965 addressed to the President of India. However, the applicant did not accept this offer and by the letter dated 25.12.1965 (p.35 of the paper-book), he has written that he would be waiting for favourable circumstances for a legal remedy. Thus, giving the maximum benefit to the applicant on the point of limitation, the cause of action though has accrued to the applicant on 8.3.1963 and subsequently, on the rejection of his representation by the memo. dated 20.2.1964, still the applicant himself, by this letter of 25.12.1965, gave notice to the Secretary, Ministry of Finance for getting

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a legal remedy. In view of this fact, the application which was filed in 1988, is patently barred by time. The applicant should have filed the application in the competent forum at the relevant time. The Tribunal has no jurisdiction to entertain an apolication the cause of action of which had arisen three years earlier than coming into force of A.T. Act, 1985. It goes to show that only the Tribunal can adjudicate upon such matters or grievances in which the cause of action has arisen after November, 1982. Thus, the Tribunal has no jurisdiction in such a matter. Section 21, sub-caluse (ii) (a) lays down that the grievance in respect of which an application is made, had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal become exercisable under this Act in respect of matters to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be by the Tribunal if it is made within the period referred to in clause(a) or as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later. Section 21 is an injunction on the

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Tribunal which begins ~~xxx~~ with the sentence "The Tribunal shall not admit an application"and in clause (1)(a) and (b), the limitation is provided and sub-section (2) quoted above, is a proviso to the same. Thus, the Tribunal has no jurisdiction in this matter.

5. In view of the case of S.S. Rathore Vs. the State of M.P. reported in A.I.R. 1990 S.C. 10, it is laid down by the Hon'ble Supreme Court that repeated unsuccessful representations not provided by the law, do not enlarge the period of limitation. It was further held that repeated representations and memorials to the President, etc., do not extend limitation. In the case of State of Punjab Vs. Gurdev Singh reported in 1991 (4) SCC 1, the Hon'ble Supreme Court has held that the party aggrieved by an order, has to aporoach the Court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation, since after the expiry of the statutory time limit, the Court cannot give the declaration sought for. Thus, the present application is not maintainable and is barred by limitation also.

6. The learned counsel for the applicant, however, argued on the legal aspect that Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949 and

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1965, is unconstitutional and should be struck down for doing a violation of the Fundamental Rights of the applicant. The learned counsel has referred to the case of Central Inland Water Transport Corporation Vs. B.N. Ganguli, reported in 1986, Vol.I, SCALE, 799, where the Hon'ble Supreme Court has referred to the fact that the Service Rules should not be arbitrary. The learned counsel has highlighted para.379 wherein such a rule or condition of service will be opposed to the public policy and would be void. However, in the present case, the applicant in the grounds, has taken a challenge to CCS(T.S.) Rules, 1949. The learned counsel for the applicant forcefully relied upon the decision of the Central Inland Water Transport Corporation, cited above. Firstly, the authority of that case is simply on the scope of infringement of Article 14 of the Constitution of India. In that case, the matter under consideration was whether an unconscienable term in a contract of employment is void under Section 23 of the Indian Contract Act, 1872 as being opposed to public policy and without such a term contained in a contract of employment entered into with a Government company, is also void as infringing Article 14 of the Constitution of India. The Hon'ble Supreme Court has considered Rule 9

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of the Central Inland Water Transport Corporation(CIWTC) Ltd. Service (Discipline & Appeal) Rules, 1979. Rule 9 provided termination of employment for acts other than misdemeanour. This related to the permanent employees in the company. The Hon'ble Supreme Court held that this Rule confers absolute and arbitrary powers on the Corporation. It does not even state who, on behalf of the Corporation, is to exercise that power. There are no guidelines whatever laid down to indicate in what circumstances the power given by Rule 9(1) is to be exercised by the Corporation. Thus, the present Rule 5 of CCS(TS) Rules, 1949 which has been assailed by the learned counsel for the applicant, is in no way, analogous to Rule 9(1) which was assailed in the reported case.

7. The learned counsel for the applicant also referred to the case of Swadeshi Cotton Mills Vs. Union of India reported in 1981 (2) SCR 533. The learned counsel highlighted the principles of natural justice and the audi alteram partem rule and in this reported case, it has been held that the rules of natural justice are implicit in every decision making function, whether judicial or quasi-judicial, or administrative. It is also laid down that in certain circumstances, the principles of natural justice can be

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modified and in exceptional cases, can even be excluded (Tulsi Ram Patel's case, 1985 (3) SCC 398). However, the learned counsel for the respondents referred to the case of Champak Lal Chiman Lal Shah Vs. Union of India reported in A.I.R. 1964 SC 1854. This is a constitution bench decision and also considered the vires of Rule 5 of CCS(TS) Rules, 1949. The Hon'ble Supreme Court rejected the contention that the rule is ultra vires of Article 16. In this authority, it was also considered whether any such temporary employee whose services are terminated under Rule 5 of the aforesaid Rules, is entitled to protection of Article 311 (2) in the same manner as a permanent Government servant. It has been held that it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the Government servant, one of the three major punishments indicated in Article 311 that the Government is entitled to the protection of that Article. It is further held that the motive or the inducing factor which influences the Govt. to take action under the terms of contract of employment or the specific service rule, is irrelevant.

8. The learned counsel for the respondents also referred to the decision of the case of the Union of India

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and Others Vs. Arun Kumar Roy, reported in 1986 (1) SCALE, 88. In this case also, there was a termination simplicitor under Rule 5 (1) of the C.C.S.(Temporary Service) Rules, 1965. The Division Bench of the Calcutta High Court set aside the judgement of the Single Judge. The Hon'ble Supreme Court set aside the judgement of the Division Bench referring to the decision of the case of Raj Kumar Vs. Union of India reported in 1975 (3) SCR 963, referring to the amendment brought into Rule 5(1)(b) w.e.f. May 1, 1965. The relevant portion is reproduced below:-

> ".....The effect of this amendment is that on 1st May, 1965 as also on 15.6.1971, the date on which the appellant's services were terminated forthwith it was not obligatory to pay to him a sum equivalent to the amount of his pay and allowances for the period of the notice at the rate at which he was drawing them immediately before the terminating of the services or as the case may be for the period by which such notice falls short. The Government servant concerned is only entitled to claim the sums hereinbefore mentioned. Its effect is that the decision of this Court in Gopinath's case (supra.) is no longer good law. There is no doubt that this rule is a valid rule because it is now well established that rules made under the proviso to Article 309 of the Constitution are legislative in character retrospectively.."

9. In view of the above facts and circumstances, the applicant could not establish that the Rule 5(1) of the CCS(TS) Rules, 1949, is ultra vires of the Constitution.

10. We find no force in the above application which is

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patently barred by limitation and is also devoid of merit and is dismissed, leaving the parties to bear their own costs.

(B.K. Singh)
Member(A)

(J.P. Sharma) 3/9/93
Member(J)