

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI.

O.A. 123/88.

Chander Prakash Sukhramani	...	<u>Applicant.</u>
-versus-		
Union of India and others	...	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri P.C.Jain, Member(Admn).

For the applicant- Shri Madhav Panikar, Advocate

For the respondents- Shri K.C.Mittal, Advocate.

Date of hearing - 10.5.90

Date of Order - 15.5.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

When the applicant was working as Inspector, Central Excise and Customs, his services were terminated under Rule 5 of the CCS(Temporary Service) Rules, 1965, for short, the Rules, by the order dated 11.6.1985. The applicant preferred an appeal before the Collector but it was rejected by the order dated 27.1.1986. Thereafter, a representation was filed by him before the Central Board of Excise and Customs which met with the same fate by the order dated 13.3.1986. A Memorial was filed before the President of India which was also rejected by the order dated 21.9.1987. The applicant prays for quashing the aforesaid orders and for reinstatement in service with consequential benefits.

2. It is urged that the termination of service was by way of disciplinary measure, and as the procedure prescribed under the CCS(CC&A) Rules was not followed, the order is bad. It is also alleged that the order is illegal being violative of Articles 14 and 16 of the Constitution of India inasmuch as persons junior to the applicant are retained in service. The orders passed in appeal are assailed on the ground that no personal hearing was afforded to the applicant.



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3. Though notices were served on the respondents and it is seen from the proceedings dated 1.3.1988 that Advocate, Shri K.C.Mittal, entered appearance for the respondents and undertook to file reply, no reply has been filed till date. On 26.4.1990, we heard the counsel of the applicant. On the request of Shri K.C.Mittal, the application was adjourned for further hearing to 30.4.90, and again to 2.5.90 and to 10.5.90. No arguments were advanced by counsel of the respondents. We have perused the records.

4. The applicant has alleged that he applied for leave on 6.1.1985 for the period from 11.2.1985 to 13.2.1985 on account of the illness of his mother, and that he sought extension of the leave by letter dated 13.2.1985. According to the applicant, the Assistant Collector issued a telegram on 23.3.1985 directing him to report for duty, in response to which the applicant sent a telegram on 29.3.1985 for extension of leave upto 30.4.1985 in view of the continuing illness of his mother. It is alleged that as the applicant developed piles trouble, in the meanwhile, and he had to undergo an operation, he applied for further extension of leave till 19.5.1985. It is stated that he was operated at the Lok-Nayak Jai Prakash Hospital on 16.5.1985 and was advised complete bed-rest till 8.6.1985 and hence he sent an application to the Assistant Collector for extension of leave till 8.6.1985 with medical certificate. It is ^{also stated} stated that when the applicant reported for duty on 12.6.1985, he was given the letter of termination of his service with effect from 11.6.1985. It is alleged that he immediately submitted representation to the Collector to reconsider the order bringing to his attention the various applications for leave submitted by him for bona fide and valid reason, when the Collector assured him that orders will be passed vacating the termination of service. The applicant

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alleges that since the Collector was thereafter transferred to Delhi, orders could not be passed and that the new incumbent refused to accede to the request for annulling the order of termination.

5. In view of the aforesaid facts, the applicant alleges that the termination of service cannot be considered on account of administrative reasons, but it was as a disciplinary measure. The applicant has also pointed out that as per the seniority list persons who were junior to the applicant are continuing to hold office.

6. Though the order of termination of service ex facie appears to be innocuous, from the aforesaid facts asserted in the application and which remained uncontroverted, it is clear that the order is founded on the omission of the applicant to report for duty pursuant to the direction issued in that behalf. Hence, we have to agree with the submission of the applicant that the order is really punitive, and as it has been issued without affording the applicant an opportunity of being heard, is vitiated in law.

7. There is also force in the plea of the applicant that there has been ^{illegal} discrimination, assuming that it is a case of termination simpliciter, for juniors to the applicant are allowed to continue in service.

8. In the result, we quash the order dated 11.6.1985, as confirmed by the subsequent orders dated 27.1.1986, 30.8.1986 and 21.9.1987. We direct the respondents to reinstate the applicant in service forthwith. He shall be treated as having

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been in continuous service from 11.6.1985 and shall be allowed consequential benefits except the wages during the period that he had not worked against the post. The respondents shall treat the period from 11.2.1985 till 10.6.1985 as eligible leave to the credit of the applicant, and if not eligible for leave as leave on loss of pay.

9. The application is allowed as above.

Cec
(P.C.Jain)
Member(Admn)

15/5/1990

G. Sreedharan Nair
(G.Sreedharan Nair)
ViceChairman.

15-5-1990

S.P.Singh/

11.5.90.

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