

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 276/1986
T.A. No.

198

DATE OF DECISION May 11, 1989Shri Ved Prakash PetitionerShri B.S.Charya, Advocate for the Petitioner(s)

Versus

Union of India and another Respondent sShri M.L.Verma, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. P.Srinivasan, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

P. Srinivasan
(P. Srinivasan)
Member (A)*Amitav Banerji*
(Amitav Banerji)
Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.276/1986.

Date of decision: May 11, 1989.

Shri Ved Prakash ... Applicant.

Vs.

Union of India and another ... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. P.Srinivasan, Member (A).

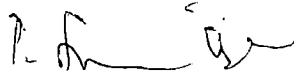
For the applicant Shri B.S. Charya, counsel.

For the respondents ... Shri M.L.Verma, counsel.

(Judgment of the Bench delivered in Court
by Hon'ble Mr. P.Srinivasan, Member (A)).

This Application under Section 19 of the Administrative Tribunals Act, 1985, came up for hearing before us on 8.5.1989 when at the conclusion of arguments on both sides, we requested counsel for the respondents to produce the records in which the impugned order was passed against the applicant terminating his services. It was adjourned for today only to enable us to peruse the records. Today, when the case was called, Shri B.S. Charya, counsel for the applicant is present. Shri P.C. Jain, Staff Assistant in the Office of the Superintendent of Post Offices, Sonipat (respondent No.2) appears in court and produces the relevant records which we have perused.

The applicant who was working as Wireman in the office of respondent No.2 on a temporary basis complains



in this Application that his services were illegally terminated by order dated 11.6.1985 passed by respondent No.2. Shri B.S. Charya submits that though ex facie it appears to be an innocuous order of termination simpliciter in pursuance of Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, it is in reality a disguised punishment. Two Memoranda - one dated 17.12.1984 and another dated 20.12.1984 were served on the applicant enclosing imputations of misconduct against him and calling upon him to submit his "representation" thereon. The applicant submitted statement of defence accordingly. Respondent No.2 then passed two separate orders on 10.5.1985 imposing on the applicant the punishment of withholding one increment for one year in respect of one Memorandum and withholding one increment for three months in respect of the other. Thereafter the applicant filed appeals against both the orders to the Appellate Authority in June, 1985. The said appeals were rejected by the Appellate Authority and the rejection was communicated to the applicant by respondent No.2 by endorsement dated 1.10.1985 (Annexure P-11). But before the appeals were disposed of, the services of the applicant were terminated by the impugned order dated 11.6.1985. The termination of the applicant's services during the pendency of the appeals indicated malice on the part of respondent No.2 against the

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applicant, Shri Charya urged. The impugned order of termination was, therefore, nothing but an order of punishment disguised as an innocuous order of termination.

Shri M.L.Verma, learned counsel for the respondents strongly opposed^M the contentions of Shri B.S. Charya and submits that in terms of Rule 5(1) of the C.C.S.(TS) Rules, 1965, the services of a temporary Government servant are liable to be terminated with one month's notice without assigning any reason and such termination cannot be termed a punishment.


We have considered the matter carefully. As stated earlier, we have also perused the records of the respondents. We find from the official notings that the termination of the applicant's services was proposed because he was inefficient and his work was found unsatisfactory. The note also refers to an alleged act of insubordination of the applicant, when he refused to perform a task assigned to him. This, in juxtaposition with the fact that he was punished in respect of two sets of charges levelled against him only a short while before his services were terminated and the added fact that appeals against the punishment were pending clearly indicate that the impugned order is not an order of termination simpliciter as it appears on the surface but is really a disguised punishment. That being so, the


P. S. Verma

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applicant was entitled to the protection of Article 311(1) of the Constitution which prohibits dismissal or removal from service of a Govt. servant without giving him an opportunity of being heard. It is well settled that the protection of Art. 311 (1) is also available to temporary Govt. servants where their services are terminated by way of punishment and not in terms of Rule 5(1) of the C.C.S.(TS) Rules, 1965. As we have already pointed out, ⁸⁷that this is not a case of termination simpliciter under the CCS(TS) Rules but disguised punishment. We have, therefore, no alternative but to set aside the impugned order and to allow the Application. Respondents will, however, be at liberty to take action against the applicant under the CCS(CCA) Rules if they so deem fit.

In the result, the Application is allowed and the impugned order dated 11.6.1985 and the Appellate Order dated 1.10.1985 are set aside. The respondents will regulate the period of absence of the applicant from the date of his removal from service in accordance with the rules governing the subject. They will do so as expeditiously as possible. Parties will bear their own costs.


(P.Srinivasan)
Member (A)
11.5.1989.


(Amitav Banerji)
Chairman
11.5.1989.