

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 99/1992

New Delhi, this the 29th day of October, 2001

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Shri Geesh Kaushik
S/o Shri Vareesh Kr. Kaushik
R/o 5/45D, Bima Nagar (Soot Mill)
G.T.Road (West), Aligarh - 202 001.

...Applicant.

(By Advocate Shri Chandershekhar)

V E R S U S

UNION OF INDIA : THROUGH

1. The Secretary
Ministry of Communications
Sanchar Bhawan
Ashoka Road
New Delhi - 110 001.
2. The Director
(Satellite Mtce. & Admn.)
Office of the Chief General Manager
(Maintenance)
Northern Telecom Region
New Delhi.
3. The Assistant General Manager (V)
Office of GMM (NTR)
36, Janpath, Kidwai Bhawan
New Delhi - 110 001.

...Respondents

(By Advocate Shri N.S.Mehta)

O R D E R

By Hon'ble Shri Govindan S.Tampi.

This OA has been remanded to the Tribunal for reconsideration and decision in terms of the Order dated 10-8-2001 passed by the Hon'ble Delhi High Court.

2. We have heard Shri Chander Shekhar and Shri N.S.Mehta, learned counsel for the applicant and the respondents respectively.

3. The facts as brought out in the OA, are that the applicant joined as Temporary Junior Engineer w.e.f. 16-1-1989 in the office of Chief General Manager, New Delhi and was re-designated as Jr.Telecom

Officer (JTO) on 12-7-1989. Earlier he was working as a Telecom Operator from 23-7-1984, in which post he was regularised on 28-5-1988. He had applied for the post of Jr. Engineer as far back as 1984, and was informed about his selection in 1985, but only in 1987, he was asked to join the training, following which he joined duties as JTO. Notwithstanding the service rendered by him since 23-7-84, first as Telecom Operator and then as JTO, his services were wrongly and illegally terminated by memo dated 26-9-1989/16-10-1989 issued by the Director of Satellite (Maintenance and Administration). On enquiries, he was told that Vigilance Officer of the respondents had found some discrepancies in his "Name and Date of Birth" against the relevant entries in the High School Certificate issued by the "Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad. This was confirmed by the respondents' letter dated 6-7-1990, which makes it clear that the termination order dated 26-9-1989 as a dismissal order for an undisclosed mis-conduct, camouflaged as "termination simplicitor". Thus a penalty of dismissal has been imposed on him without any enquiry and without granting reasonable, fair and adequate opportunity to the applicant. His Date of Birth is 8-5-1962 and his name is Geesh Kaushik which had been correctly entered in his school records. He had passed his High School Examination conducted by "Madhyamik Shiksha Parishad" in 1978. The transfer certificate issued to him also showed the above. While applying for admission in the Aligarh University, it was found that his name was mis-spelt as "Sheesh Kaushik", which was brought to the notice of the authorities, and was corrected after a few

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✓ years, but the date of birth was still shown wrongly as 8-5-1964. He had represented for correcting the above also but to no avail. Hence his submission of the High School Certificate with incorrect date. U.P. Board of Education, Allahabad has still not corrected the mistake. Thus for no fault of his, he has been penalised by the dismissal order camouflaged as termination simplicitor under Rule 5 (i) of the CCS (Temporary Service) Rules, 1965. The appeal filed by him on 9-11-1989 has been rejected on 19-2-92 making it clear that the termination was indeed a penalty for alleged misconduct.

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4. The applicant states that no adverse comments about his conduct or performance has been made by the Department and, therefore, no grounds or justification existed for terminating his service. Further, his case was not at all covered under CCS (Temporary Service) Rules, as he had worked in the Department from July 1984 and had applied for the post of Jr. Engineer through proper channel and he was selected accordingly. The applicant also relies upon the decisions of the Hon'ble Supreme Court in the case of Anup Jaiswal Vs. Govt. of India (1984 (2) SCR 453) and Jarnail Singh Vs. Govt. of Punjab (1986 (2) SCR 1022), which are applicable in his case, as his services had been terminated by an order couched in innocuous terms, but which in fact was a dismissal order for an alleged misconduct.

5. In the short reply filed on behalf of the respondents, it is pointed out that the applicant's services were terminated under Rule 5 (i) of the CCS

(Temporary Service) Rules, 1965 on the ground of gross mis-conduct by way of submission of false certificates as well as erasing or tampering in the original certificates in respect of his date of birth and increasing the valuation in Mathematics, a fact which was confirmed by the Allahabad Board. Thee applicant had not brought this to the notice of the respondents earlier. In the circumstances, there was no question of enquiry and giving opportunity to the applicant and the termination order was justified, argue the respondents.

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6. In the amended OA as well, the same facts are reiterated by the applicant, who assails the appellate order as well. The respondents, however, add that the rejection of the mercy appeal was fully justified as the enquiries with the Allahabad Board, showed the applicant's capacity in tampering with the certificate and the applicant had admitted his guilt by seeking pardon for mistakes committed knowingly or unknowingly. Still, the appellate order was not punitive as alleged by the applicant, according to the respondents.

7. During the oral submissions before us, Shri Chander Shekhar, learned counsel for the applicant very forcefully reiterated the points raised in the OA and averred that the provisions of CCS (Temporary) Service Rules, 1965 could not have been invoked in his case, as he had worked with the respondents' organisation since 1984 and the termination order has been issued after five years of service. The order of his removal has been couched in

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an innocuous language as if it were a "termination" simplicitor, whereas the perusal of respondents' counter affidavit as well as the appellate order makes it clear that it was a punishment order. It is recorded that the applicant had produced a false certificate and/or that he had tampered with the certificate on the date of birth and marks, with the intention to cheat and that as it stood proved, imposition of penalty was called for. Shri Chander Shekhar, further pointed out that once the appellate order is issued, the original order gets merged in the same as brought out in the case of State of Madras Vs. Madurai Mills Co. Ltd. [(1967) 1 SCR]. Further, the applicant had not committed any mistake or irregularity and had made attempts to rectify the incorrect entries made in the Certificate Book. He had also not derived any benefit from the alleged mistakes in the certificate. Still he has been penalised. The counsel also referred to the decisions in Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors. (1999 (3) SCC 60), wherein the Hon'ble Apex Court examined the relevance of the alleged misconduct as the foundation or motive for termination and Radhey Shyam Gupta Vs. U.P. State Agro Industries Corpn. Ltd. (1999 (2) SCC 21). In this case the applicant has been dealt with on the basis of an enquiry held behind his back without giving him an opportunity for explaining his side, on the alleged misconduct. The respondents' plea that the order did not place any stigma on the applicant or that it was only an order of "termination simplicitor" was totally incorrect and

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deserves to be set aside, pleads the learned counsel for the applicant.

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8. Shri N.S.Mehta, learned Sr. Counsel appearing for the respondents points out that as the applicant had committed the offence of tampering with the School certificate for gaining certain benefits, the punishment of termination which has been ordered is fully justified. It cannot be called in question. He also invited our attention to the earlier order of the Tribunal, wherein the plea of the applicant has been rejected, which could be adopted by the present Bench, according to him.

9. We have carefully considered the rival contentions raised in the pleadings as well as during oral submissions. We have not referred to the earlier order passed by the Tribunal on 12-12-1997 as the same has been set aside by the Hon'ble High Court of Delhi for re-examination of the issue in accordance with law.

10. The first plea raised by the applicant is that as the applicant had been working in the respondents' organisation since September, 1984 had completed nearly five years of service, his services could not have been terminated under Rule 5 (i) of the CCS (Temporary Service) Rules, 1965. While it is true that the applicant had joined the respondents as Jr. Telecom Operator in 1984, his posting/appointment as JTO in January 1989 was not on promotion, but it was as fresh appointment as a direct recruit. Therefore,

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he was a temporary employee on 26-9-1989 and the respondents have correctly invoked the provisions of CCS (Temporary Service) Rules, 1965 in his case.

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11. Coming to the merits of the case, we find that there are two impugned orders - the order of the appointing authority dated 26-9-1989/16-10-1989 and the appellate order dated 19-2-1992. The original termination order reads as below :-

"In pursuance of the Proviso to sub-rule (i) of the Rule 5 of the Central Civil Services (Temporary Rules) 1965, I G.K.Saran, Director (Satellite Mtc. & Admn.) Northern Telecom Region, New Delhi hereby terminate forthwith the services of the undermentioned Junior Telecom Officers and direct that they shall be entitled to claim a sum equivalent to the amount of their pay plus allowances for the period of notice at the same rates at which they were drawing them immediately before the termination of their services".

Sl.No. Name of the Candidate Unit where serving

1. S/Sh.Subhash Chander D.G.M.(OP)MTNL, ND.
(JE-3302)

Geesh Kaushik JE-3311 & C.G.M.Mtce NTR ND

Station : New Delhi
Dated : 26th Sept.1989

This reads as an innocuous order of termination simplicitor, but the appellate order gives a different picture. Relevant portion of the appellate order shows as below :-

"The undersigned carefully examined the case, the report from Allahabad Board as well as the representation and appeal submitted by the official, the charges of false certificate and intention to cheat against Shri G.Kaushik are proved. This is very serious inn nature, which justify deterrent punishment as already awarded. The undersigned is not convinced there is any justification for modification to the punishment already awarded. The appeal, therefore, is hereby rejected.

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Once an appellate order is issued, the earlier order by the lower authority gets merged in it, on the basis of the doctrine of merger, as laid down out by the Hon'ble Apex Court in Madurai Mills case (supra), which only survives. Further, the Hon'ble Apex Court has held in Jarnail Singh's case (supra) that when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of (emphasis added). As the termination order is undoubtedly couched in totally innocuous terms, which does not cast any stigma on the individual concerned, but the allegation of the applicant is to the contrary, we have normally to go behind the order and appreciate the positions. However, in this case, the appellate order in which the original order is merged is couched in unambiguous terms, which leave no doubt at all that the termination order was imposition of a penalty. We, therefore, proceed accordingly.

12. The applicant has been removed from service, on account of the alleged misconduct of having manipulated or tampered with his High School Certificate, both in respect of his age and the marks obtained by him in respect of one subject. This allegation is based on some enquiry conducted by the respondents at the back of the applicant. On the other hand, the applicant has averred in the OA that no mistake at all has been committed by him and if any mistake had arisen, it was only on account of the

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Madhyamik Shiksha Parishad, UP and that he had made attempts to have the same rectified. According to him he had also kept the Deptt. informed. The fact that the Board had corrected the name earlier shown wrongly shows that some mistake had taken place at their end. That being the case, evidently a closer investigations was called for followed by enquiry proceedings, instead of resorting to the short-cut method of termination under CCS (Temporary Service) Rules, 1965. The respondents also have not shown as to what exactly was the benefit/advantage, which the applicant derived by the alleged tampering of the Certificate, which has not been conclusively proved as yet. When the alleged misconduct was the foundation for the termination, it was imperative that disciplinary proceedings were initiated and action taken after putting the concerned Govt. servant on notice. By not doing so, the respondents have acted in an illegal manner and their action deserves to be quashed. Our findings gain support from the decisions of the Hon'ble Supreme Court in the cases of Dipti Prakash Banerjee Vs. S.N. Bose National Centre for Basic Sciences, Calcutta and Ors as well as Radhey Shyam Gupta Vs. U.P. Agro Industries Corp. (supra).

13. In the above view of the matter, the application succeeds and is accordingly allowed. The respondents are directed to reinstate the applicant immediately and in any event within one month from the date of receipt of the copy of this order. This does not, however, come in the way of the respondents in initiating proper disciplinary proceedings against

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the applicant, if so felt and so advised, after conducting necessary investigations to the charge of alleged manipulation in the Certificate. The applicant, on reinstatement would be entitled to pay and allowances in the scale in which his post is placed, but would not be entitled for any back wages for the period from the date of termination of his service to the date of his reinstatement. The same shall be regularised, by the disciplinary authority, in accordance with the decisions to be arrived at in the proceedings if any being initiated. Needless to say, the applicant will be entitled to all the consequential benefits, including fixation of pay, arrears of pay and allowances and seniority, if he is exonerated in the proceedings, in view of the Hon'ble Supreme Court's decision in the case of Union of India & Ors. Vs. K.V. Jankiraman (1991 (2) SCALE SC 423). No costs.

(Govindan S. Tampi)
Member (A)

/vikas/

(Kuldip Singh)
Member (J)