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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2412 of 1993

This 24th day of March, 1994

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

Hon'ble Mr. B.K. Singh, Member (A)

Surendra Kumar Dash,
S/o Shri Shyam Sunder Dash,
281, Aravali Apartments,
Alaknanda, Kalkaji,
New Delhi - 110 019

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Applicant

By Advocate: Shri Manoj Chatterjee

Versus

1. Union of India, through
Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Additional Collector,
Central Excise & Customs Department,
Civil Line, Raipur Zone,
Raipur (M.P)
3. Assistant Collector,
Central Excise Division,
Satna (M.P)

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Respondents

By Advocate: None present

ORDER

(By Hon'ble Mr. B.K. Singh, M(A))

This matter had come ^{up} before the Tribunal on 17.11.93 for admission. We heard the learned Counsel for the applicant, Shri Manoj Chatterjee, at considerable length on 17.11.93 and 18.11.93. We were not convinced about the ^{admissibility} facts of the case and the learned counsel wanted some more time to supplement the averments made in the OA. This was again taken up on 26.11.93 when it was adjourned to 7th December, 1993 on the request of the learned counsel for the applicant. On 7th December, the learned

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counsel prayed for time to obtain necessary permission of the Hon'ble Chairman under Section 25 of the AT Act 1985 for retention of this case in the Principal Bench. It was adjourned to 21.1.94. The Hon'ble Chairman granted permission on 24.2.94. The matter regarding admission was again argued at great length on 24.2.94 and the learned counsel for the applicant was asked to give relevant any/citation he deemed fit to rely in support of his contention that it was a fit case for admission. He has submitted his written arguments.

2. We have perused the O.A. supplemented by the written arguments of the learned counsel. The main ground raised by the learned counsel in the application was that termination from a retrospective date is bad in law and is invalid and in this regard he has quoted a ruling of the Hon'ble Allahabad High Court in the case of Ram Pal Singh Vs. UP Education Board 1983 (2) SLR 677 where the impugned order was set aside on the ground that termination from a retrospective date is bad in law and as such not sustainable. The petitioner in the afore-said case was reinstated with back wages. It was further argued that the termination letter is in contravention of Section 5(2) of the Central Civil Services (Temporary Service) Rules. It was further argued that termination is based on distorted facts and that it casts stigma and as such it attracts Article 311 (2) of the Constitution.

3. The admitted facts of the case are that the applicant was appointed as a UDC vide order No.30/1991 in the office of the Central Excise Department, Satna on

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a probation of two years. He was asked to report for duty by the 27th of March 1991 with all the relevant certificates including medical fitness certificate. The appointment letter and the terms and conditions of the appointment are collectively enclosed as Annexure A-II with the O.A. The first condition of the appointment says:

"His/her appointment will be purely temporary and he/she will be governed by the provisions of the Central Civil Service (Temporary Service) Rules, 1965".

The third condition of the appointment lays down that :

"He/she will have to pass a departmental confirmatory examination on such terms and conditions and within such period as is specified by the govt. If he/she fails to pass the examination within the time specified, he/she will be liable to be discharged from service."

The applicant remained on duty from 25th March to 27th March and thereafter he remained absent from duty without sanction of the competent authority. His services were terminated in pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

4. We have gone through the written arguments submitted by the learned counsel for the applicant and also the oral submissions made by him in this case. The learned counsel argued that there is a stigma attached since the wording used while terminating his services refers to absence without intimation and it is declared as unbecoming of a government servant.

5. In the terms and conditions of the appointment letter itself it was purely temporary appointment on probation of a period of two years. The applicant did not have the right to hold the post till he was confirmed in the post after successful completion of the probation. The applicant was appointed to a temporary post on probation for a period of 2 years and the very transitory character

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of the employment implies that the employment is terminable at any time in terms of the conditions of the appointment letter itself. The applicant was appointed to the post of UDC on probation and the express condition of the term of appointment was that it would be terminable on a month's notice and the same procedure was adopted in terminating his services after he had remained on unauthorised leave without the sanction of the competent authority. The termination of service brought about by the exercise of a contractual right or in terms of a specific rule as quoted above is not per se dismissal or removal as has been held by the Hon'ble Supreme Court in the case of Satish Chandra Anand Vs. Union of India 1953 SCR 655.

6. It is likely that the long unauthorised absence without the sanction of the competent authority might have been the motive or the inducing factor to resort to rule 5(1) of Central Civil Services (Temporary Service) Rules 1965. Nevertheless, if a right exists under the rules to terminate the service the motive operating on the mind of the authorities is not relevant and we cannot be required to tear the veil to know the motive or the inducing factor. If a right exists under rule and the government utilises that rule to terminate the service, and if the rule is wholly relevant, and the motive becomes irrelevant. In short, if the termination of service is founded on the right flowing from the contract of the service rules then prima facie the termination is not a punishment and carries with it no evil consequence and

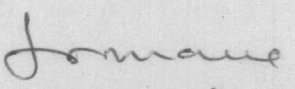
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therefore Article 311 is not attracted and the safeguards and protection of the Article are not available to the public servant. The long absence of the applicant itself is a statement of fact and it is compounded by remaining absent without the sanction of the competent authority and as such the authorities of the Central Excise Department resorted to the specific rules which govern the employment of the persons like the present applicant. We hold that there is no stigma attached. This is a mere statement of facts and no inquiry is necessary. It is an order simpliciter. This is not by way of punishment and it attaches no stigma to the applicant.

7. We are further fortified in our view by a recent decision of Hon'ble Supreme Court in the case of Governing Council of K. Memorial Institute Vs. Pandurang G. 1992 (23) ATC page 389. Thus we feel that no prima facie case for admission has been made out and accordingly the application is summarily rejected under Section 19(3) of AT Act, 1985.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)