

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 31st DAY OF JULY, 2001

Original Application No.1317 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Tilak Raj, a/a 23 years,
Son of Shri Vishwa Nath Prasad, R/o EWS
91-92, ADA Colony, Pritam Nagar,
Dhoomanganj, Allahabad.

... Applicant

(By Adv: Shri Rakesh Verma)

Versus

1. Union of India through the
Secretary, Ministry of Finance
(Department of Revenue), Lok
Nayak Bhawan, Khan Market
New Delhi.
2. The Commissioner of Income Tax,
Income Tax Building, 38, Mahatma
Gandhi marg, Allahabad.
3. The Assistant Commissioner of Income
Tax(Admn), Income Tax Building
38, Mahatma Gandhi Marg, Allahabad.

... Respondents

(By Adv: Shri Amit Sthalekar)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of A.T.Act 1985 applicant has challenged the order dated 25.11.1997 by which services of the applicant were terminated by respondents no.3 under CCS(CCA) Rules 1965.

The facts in short giving rise to this application are that applicant was engaged as Casual generator Operator from April 1992. He worked upto 30.11.1993. The total working days were 258 days during the year 1993. The respondent however by oral order disengaged

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his service after 30.11.1993. Aggrieved by the action of the respondents he filed OA 1226/94 in this Tribunal which was allowed on 11.8.1997 by the following order:

"In view of the forgoing, the OA is partly allowed. The applicant shall be reinstated in service forthwith. He shall be continued to be in service with temporary status. The respondents however shall be at liberty to take appropriate action against the applicant in accordance with law in case his services are found to be unsatisfactory."

The learned counsel for the applicant has submitted that O.M. dated 10.9.1993 had already come in force. On the basis of the work and service already rendered by the applicant he was entitled to be regularised in service. To deprive him of the benefits of the O.M. dated 10.9.1993 he was disengaged by an oral order. When the applicant was reinstated in pursuance of the order of this Tribunal dated 11.8.1997 merely after 18 days the impugned order of termination was passed against him. The learned counsel has submitted that the action of the respondents was arbitrary and illegal and ^{can} ~~can~~ not be sustained. It is submitted that through out his working under the respondents he was never served any notice of warning or misconduct and there was no question of his work and conduct being unsatisfactory without which the order of termination could not be passed.

Shri Amit Sthalekar, learned counsel for the respondents on the other hand, submitted that as the applicant's work and conduct was not satisfactory the impugned order of termination was passed and it does not



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suffer from any error of law.

We have carefully considered the submissions of counsel for the parties. It cannot be disputed that under OM dated 10.9.1993 applicant was entitled for consideration to be appointed on regular basis as he was under employment when the scheme came into force on 1.10.1993. The respondents were under legal obligation to consider the claim of the applicant under circular dated 10.9.1993 instead they tried to get rid of him by passing the impugned order of termination under CCS(^{Temporary}~~Pen~~^{ionary} Service) Rule 1965. The Apex court as well as Hon'ble High court and this Tribunal in number of judgements have repeatedly disapproved such a course to terminate the services of the employee when he is to get benefit under some scheme of regularisation introduced by the government.

The Hon'ble Supreme court in case of Dr(Mrs) Sumati P.Shere Vs.Union of India & Ors (1989) 11 ATC 127 held in para 5 that employee should be made aware of the defects in his work and deficiency in his performance. Timely communication of the assessment of the work in such cases may put the employee on the right track. Without any such communication the order of termination shall be arbitrary. The para 5 of the judgement is being reproduced below:

"We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency

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in his performance. Defects or deficiencies indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability."

This Tribunal while giving liberty to the respondents to take appropriate action clearly provided that the action may be taken against the applicant in accordance with law in case his services are found to be unsatisfactory. In our opinion, if the work and conduct was found unsatisfactory and that was foundation for passing the order, opportunity of hearing was a must which, in the present case, ~~it~~ has not been done. In the impugned notice/order the respondents have not said that services of the applicant are not required. The order only say that his services shall stand terminated after a month.

Shri Amit Sthalekar learned counsel appearing for the respondents also relied on the judgement of Hon'ble Suprme court in case of State of U.P. and another Vs.

Kaushal Kishore Shukla (1991) 1 SCC 691.

- ii) Commissioner Food and Civil Supplies
Lucknow U.P. & Another Vs. Prakash Chandra
Saxena and another, (1994) 5 SCC 177
- iii) State of U.P. and another Vs. Ram Krishna
and another (1999) 7 SCC 350

and has submitted that impugned order of termination is simplicitor this Tribunal could not interfere. However, we are not inclined to accept the submission of the learned counsel for the reasons stated above. ~~It~~ is not ~~disputed~~ that applicant was entitled for the benefit of OM dated 10.9.1993. Without considering his claim under the said OM at this juncture when he was entitled for the benefit, the action of respondents can be termed

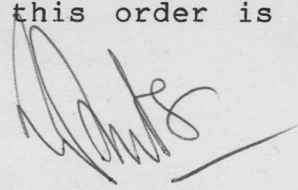


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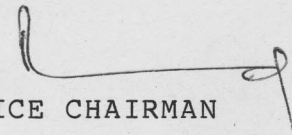
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arbitrary and cannot be sustained. This aspect distinguishes the cases relied on by the learned counsel for the respondents.

For the reasons stated above, the OA is allowed. The order dated 25.11.1997 and order dated 4.12.1997 are quashed. The respondents are directed to reinstate applicant with continuity in service. However, he shall not be entitled for backwages. It is further directed that applicant shall be considered for regularisation in terms of the OM dated 10.9.1993. This order shall be given effect within a period of three months from the date a copy of this order is filed. No order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated:31.7.2001

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