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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO. 238(T) Of 1987

Virendra NarainApplicant

Versus

Union of India & others.....Respondents

Hon. S. Zaheer Hasan-VC
Hon. Ajay Johri -AM

(Delivered by Hon. Ajay Johri.....AM)

In this writ petition received on transfer from the High Court of Judicature at Allahabad under section 29 of the Administrative Tribunal Act 13 of 1985 the petitioner who was appointed as an Upper Division Clerk after selection by the Staff Service commission in 1979 in the Central Excise Department on 11.1.79 has prayed for the issue of writ of certiorari quashing the order rejecting his appeal against termination dated 18-12-81. The petitioner was earlier in the employ of the governt Pottery Project Phulpur. He had applied for the job in the excise department through proper channel but there was delay in his release from the project due to certain problems regarding shortage detected while handing over of the charge. The administration of the Pottery Project also

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asked the Central Excise Department not to appoint the petitioner till his clearance from that organisation. The petitioner who was appointed on 11.1.79 was given extension of time to join the department and the last letter received by him was that if he did not join by 10.3.79 the offer will stand withdrawn. He joined on 5.3.79 i.e. earlier to this date at Lakhimpur. The services of the petitioner were terminated by an order ^{as dated} ~~on~~ 27-3-79. According to the petitioner this termination was illegal because he had not been given opportunity to explain his case and the notice pay on the date of termination of his services. He represented against the order on 26.3.79 to respondent no.3 but he was advised to represent to respondent no.2 which he did on 11.8.79. His representation was rejected on 17.1.80. Against this he filed revision petition on 2.3.81 which was rejected by the impugned order of 17.12.81.

2. The facts of the case are not under dispute. According to respondent on 6.3.79 the respondents had received a letter from the Government Pottery Project reporting that the petitioner was ~~involved~~ involved in a case of defalcation of Government money and he has not deposited the same inspite of request and he was absconding from duties and the administration requested that he should not be allowed to join the Excise Department till he was finally relieved from the project. Yet another communication of 8-3-79 informed that there were allegations of defalcation of property, cheating,

indiscipline and forgery against the petitioner. In the above circumstances a decision was taken on 20.3.79 to cancel the appointment. However, before the issue of the orders the petitioner was allowed to join duty on 5.3.79 by Assistant Collector, Customs Lucknow who was not the competent authority. His services were, therefore, terminated under Rule 5(1) of the Central Civil Services Rules. The notice pay of Rs. 572.00 was paid to the petitioner, who had received the same. His representation was rejected since the termination was not punitive in nature. The petitioner had not been relieved by the parent department hence he could not have been allowed to join duty in the department of answering respondents. The respondents had denied that they were influenced by the complaint which were made by the Pottery Project.

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3. The petitioner has in his rejoinder attached copy of a judgment of the UP Public Service Tribunal dated 22.7.85 where the Tribunal has held that the petitioner's resignation be treated as accepted w.e.f. 31.1.79 and the Opposite parties would be at liberty to realize the amount of Rs.1987.69 from the indemnity bond submitted by the petitioner. The petitioner has maintained that the termination was motivated by the prejudicial complaint made by the Pottery Project. He has placed reliance on the observation made by the U.P. Tribunal that these were efforts on the part of the previous employer not

to permit the petitioner to join the new post which was perhaps better than the existing one.

4. We have heard the counsel for the parties. We have also perused the petition carefully. There is no document to show that the petitioner was relieved by his previous employer except the pronouncement made in 1985 by the U.P. State Tribunal that his resignation be considered as having been accepted w.e.f. 31.1.79. On the date, he joined the Customs Department at Lakhimpur he had still not been relieved by the department for reasons mentioned in their various communications to the Central Excise & Customs Department. So he could not have joined the new service and the action of allowing him to join duty on 5.3.79 was incorrect. He also conceded the fact that he had not yet been released from the Pottery Project. The respondents action, therefore, of terminating his service under Rule 5(1) of CCS (Temporary Service) Rules, 1965 cannot be assailed. A person cannot be expected to be on the roll of two organization.

5. The U.P. State Services Tribunal in their judgment had held that the petitioner's resignation be considered as having become effective w.e.f. 31.1.79. The Tribunal had also not cleared the petitioner of his liability to pay the amount of Rs. 1987.69 and

on the recovery of Rs. 10,715.72 also the Tribunal said that Opposite parties may adopt available course but instead cannot assert that the petitioner has not been relieved. In our opinion the picture of the petitioner that he was accused of defalcation of property, cheating, indiscipline and forgery ^{or also} cautioned the respondents about the type of person they were going to have at their hands if the petitioner got the employment. Since the Asstt. Collector, Customs, Lucknow had permitted him to join, the only alternative available was to terminate his services under Rule 5(i)a. The petitioner had accepted the notice pay on 27.9.79 as averred by the respondents in para-7 of the reply (Appendix CA1 & CA2). The petitioner has accepted that this payment was received by him in para-8 of his rejoinder but his plea is that this payment should have been simultaneous. We do not agree to this contention. The termination order was complied with in regard to the notice pay and the payment has been received by the petitioner. It is not necessary to make it simultaneous to make the order effective.

6. The termination order does not attach any stigma though the background may ^{or also} be the reports of the petitioner's previous employer. We do not agree that it was necessary for the respondents to probe or enquire into any such reports specially when

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they came from another government organization and when even the U.P. Services Tribunal has not exonerated the petitioner on that score. It was not incumbent upon the respondents to follow the Disciplinary Procedure in the background of the fact that at the material time the petitioner had not been released by his previous employer and he joined the respondents organization concealing the fact.

3/ 7. Under the circumstances, the petition fails. We accordingly dismiss the petition with costs on parties.

3GTR/JR

Member(A)

A. S. S.
Vice-Chairman

Dated: February 11/10 1988/
Shahid.