

4

CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
A H M E D A B A D      B E N C H  
~~XXXXXXXXXX~~

O.A. No.                      184                      1987  
~~XXXXXX~~

DATE OF DECISION 26/4/1990

Mohmad Yusuf Ibrahim Bayad                      Petitioner

Mr. J. R. Nanavati                      Advocate for the Petitioner(s)

Versus

Union of India and Anothers                      Respondent

Mf. J. D. Ajmera                      Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N. Dharmadan                      .. Judicial Member

The Hon'ble Mr. M. M. Singh                      .. Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

O.A. No. 184 of 1987

Mohmad Musuf Ibrahim Bayad

.. Applicant

Versus

Union of India & Anr.

.. Respondents

Counsel for the Applicant : Mr. J.R. Nanavati

Counsel for the Respondents : Mr. J.D. Ajmera

CORAM : Hon'ble Mr. N. Dharmadan .. Judicial Member

Hon'ble Mr. M.M. Singh .. Administrative  
Member

O R D E R

Date : 26.4.1990

Per : Hon'ble Mr. N. Dharmadan .. Judicial Member

The applicant in this case challenges the termination order dt. 31.3.1987 which reads as follows :

OFFICE ORDER

On the basis of the instruction contained in the Dte's Memo No.5(2)/87-5-II dated 25.3.1987, the services of Shri M.I. Bayad, Clerk Gr. II (adhoc) are hereby terminated with effect from 31.3.1987(A.N.). He may come to his original post of Motor Driver."

2. The contention raised by the applicant is that he was originally appointed as a Driver in 1971 and was promoted as Clerk Gr. II on ad hoc basis <sup>and posted to</sup> in the Office of Station Director, All India Radio, Bhuj on the scale of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400. The order of promotion is dated 13.5.1981. It <sup>contains</sup> various conditions but does not make mention of passing of any test. The applicant submits that the impugned order is violative

of principle of natural justice.

3. The respondents have filed a counter affidavit in which it has been stated that passing of the test <sup>prescribed by</sup> ~~is~~ by Staff Selection Committee is a condition for the regularisation of the applicant in the post of Clerk Gr. II. The applicant who appeared for the test for three times held by the Commission failed and he has also given an undertaking to the effect that he will not claim any right to regular appointment to the post of Clerk Gr. II, <sup>unless he passes such test.</sup> On this <sup>in d</sup> averment, the respondents content that the applicant has no right to be continued as Clerk Gr. II because his original appointment itself is ad hoc. Answering the reply, the applicant filed a rejoinder in which he demanded production of the undertaking by the respondents so that he may verify and make his submission. Till today respondents have not produced the undertaking referred to in counter affidavit. Learned counsel for the respondents read the undertaking from the file. We are not giving much <sup>in ce</sup> important to the undertaking. If any person gives any undertaking <sup>without reserving this</sup> ~~there is no~~ legal position <sup>and implicating himself in a position</sup> ~~that he did not~~ be given much weight. If the passing of the test was a condition precedent for the regular appointment of the applicant as Clerk Gr. II, the applicant should have been informed about the same. There is no record to show that such information has been given to the applicant ~~to the~~ <sup>by</sup> ~~applicant~~ before passing the impugned order. The respondents also by order dt. 10.3.1987 allowed the applicant to pass EFFICIENCY BAR in 1987. It is thereafter the impugned order has been passed without affording him any opportunity of being heard.

4. The impugned order speaks by itself, no prior notice was issued to the applicant and it is clear from the impugned order and the submissions made at the bar. The learned counsel for the respondents produced before us two paragraphs (typed copy not attested as true) of a judgment in O.A. 105/86 and submitted that this Tribunal decided identical issue in favour of the Govt. We wanted the full text of the judgment. But it was not made available. Hence we did not look into this issue. According to us it is necessary for facts and circumstances of this case.
5. On the facts and circumstances of this case

we are unable to sustain the order and we are of the view that it is to be quashed. ~~the same and~~ We direct the respondents to reinstate the applicant with all consequential benefits, but this will not prevent the respondents from passing appropriate orders in terms of the relevant rules and in accordance with the law against the applicant. There will be no order as to costs.

M. M. Singh  
( M M Singh )  
Administrative Member

N. Dharmadan  
( N Dharmadan )  
Judicial Member

\*Mogera