

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~
A H M E D A B A D B E N C H

O.A. No. 216 and 217 of 1987.
~~xxxxxx~~

DATE OF DECISION 18.2.1991

N.I. Kuruvilla

and

Ishwarlal Haribhai Rathod

Petitioner

Mr. J.J. Yajnik

Advocate for the Petitioner(s)

Versus

Joint Director Marine & Ors

(Customs Marine Headquarter)

Respondent

Mr. P.M. Raval

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi Vice Chairman

The Hon'ble Mr. R.C. Bhatt Judicial 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?

N.I. Kuruvilla,
Mohamed Building,
Room No. 7,
Bhairavnagar,
Bhestan, Surat.
(O.A./216/87)

6

Ishwarlal Haribhai Rathod,
Tradesman, MST-1 at Okha,
Nr. Garden Factory,
Rampura Tuki,
Surat.
(O.A./217/87)

.. Applicants

(Advocate - Mr. J.J. Yajnik)

Versus

1. Joint Director Marine,
Customs Marine Headquarters,
Hotel Waldorf, 2nd floor,
16, Arthur Bunder Road,
Colaba, Bombay-400 005.
2. Deputy Collector (P&E),
Central Excise & Customs,
Vadodara.
3. The Marine Officer,
Central Excise & Customs,
Hotel Waldorf, 2nd floor,
16, Arthur Bunder Road,
Colaba, Bombay-400 005.
(O.A./216/87)

1. Joint Director,
Marine Customs Marine
Headquarters,
Hotel Waldorf, 2nd floor,
Arthur Bunder Road,
Colaba, Bombay-400 005.
 2. Deputy Collector (P&E),
Customs and Central Excise,
Rajkot.
 3. Assistant Collector of
Customs,
Jamnagar.
(O.A./217/87)
- (Advocate - Mr. P.M. Raval)

.. Respondents

O.A. Nos. 216 & 217 of 1987

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. R.C. Bhatt .. Judicial Member

O R D E R

Date : 18.2.1991

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

9

These two cases O.A./216/87 and O.A./217/87 being analogous in facts and identical in issues on law, have been heard together. The applicants in both cases under section 19 of the Administrative Tribunals Act, 1985, are aggrieved by the order of termination which are annexed dt. 8.1.1987 followed by 19th February, 1987 in O.A./216/87 and 2.9.1986 in O.A./217/87. The petitioners' contention can be summarised as follows.

2. Both petitioners are working against sanctioned posts since 13th November, 1976 in O.A./216/87 and 18th September, 1976 in OA/217/87. The petitioners were transferred to Okha by order dt. 23rd April, 1986 in both cases. The petitioners represented against such transfer orders on account of hardships due to transfer having been within one year on their refusal to move to Okha. The petitioners were called for their explanation and thereafter their services were terminated by the said orders treating their absence as unauthorised. In the case of O.A./217/87, there is a memo at Annexure 'D' dt. 18th July, 1986 detailing the reasons and averments about insubordination or indiscipline. In para 3 thereof it is stated that for disobedience the petitioner in O.A./217/87 rendered himself liable to disciplinary proceedings.

3. In both cases, the respondents have stated in reply that the impugned orders have been passed under section 5 of the C.C.S. (Temporary Service) Rules, 1965 and one month's notice having been given, the petitioners stand terminated on expiry of that period.

Ru

②

The respondents have urged that the petitioners' services being on a temporary basis, the petitioners are governed by the said Rules and the respondents are at liberty to terminate their services under the said Rules by which no reasons are expected to be given or any other proceeding initiated.

4. After hearing the learned advocate, it is first necessary to ascertain whether the impugned orders of termination are of termination simplicitor or are ^{franked} ~~franked~~ with being ^{a cloak} ~~clocked~~ for avoiding disciplinary proceedings. If there is any reason attributed to consider that they are of the nature of punitive orders. It is clear from the pleadings and especially from the reply of the respondents that the petitioners have been treated to have violated discipline and offended due obedience required of them for which reasons, the respondents have terminated their services. On these pleas of the respondents there is established a clear nexus between the alleged inordination and disobedience of the petitioners with the impugned termination orders. It is a law established in several decisions that when there is a clear nexus, thus establishing ^a ~~a~~ a plea of termination simplicitor cannot be said to hold any water and must fail. We, therefore, find that the impugned orders under section 5 of C.C.S. (Temporary Service) Rules, 1965 cannot be validly passed in the facts of the case and deserve to be quashed and set aside.


R

5. We cannot refrain from making certain observation, regarding the way in which the respondents have treated the petitioners' status. The petitioners

9

are admittedly in service since 1976 and even granted that their nature of service required them to be transferred on occasion from one place to another in the exigency of service, the respondents cannot claim to do so arbitrarily and without establishing if the punishment is needed to be given ^{without} ~~by~~ taking recourse only to disciplinary proceedings. Treating the petitioners as temporary for a long period as the respondents have treated the petitioners and thereafter using the ^{clock} ~~clock~~ of termination simplicitor for avoiding disciplinary proceedings in which the petitioners would have been ^{enabled} ~~applied~~ to present their cases, can only be regarded as a practice unworthy of the respondent Government and therefore must be visited with serious structure, as otherwise, this practice is likely to be wide spread. ~~In the~~

6. In the circumstances, we find the petitions to have merit and direct that the impugned orders be quashed and set aside and the petitioners be reinstated and be given their back wages from the date of their termination. No order as to costs.


(R C Bhatt)
Judicial Member


(P H Trivedi)
Vice Chairman

*Mogera