

Failiram Meena
C/o. Rupsing Meena,
598-A, Railway Colony,
'D' Cabin,
Baroda.

Applicant.

(Advocate: Mr. K.K. Shah for
Mr. B.B. Oza.)

Versus

1. Union of India
Through
General Manager W.Rly.,
Churchgate, Bombay.
2. Shri K.A. Karnik,
District Controller of Stores,
W.Rly. Dahod.
3. Chairman,
Railway Recruitment Board,
Ajmer.

Respondents.

(Advocate: Mr. N.S. Shevde)

ORAL - ORDER

O.A.No.320 of 1987

Date: 16-3-1990.

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

In O.A.320/87 the Petitioner Failiram Meena has sought relief under section 19 of the Administrative Tribunals Act, in terms of quashing the impugned order of termination dated 30-6-87 with consequential benefits. The petitioner's case argued on behalf of Mr. B.B. Oza by Mr. K.K. Shah is that on being appointed by an order dated 10-10-85 as Senior Clerk under the scale of Rs.330-560 the petitioner joined and after serving for two years suddenly received a termination order dated 30-6-88. On behalf of the respondents learned advocate Shri Shevde states that this is an order simpliciter and the petitioner has been paid one month's pay and allowance in lieu of notice. In the appointment of the petitioner a mistake was committed because the petitioner was ~~not~~ found to have secured adequate number of marks for being included in the list of successful candidates. He was not within the zone of eligibility on the basis of these marks for being called for viva-voce according to the cut off

level determined for calling the candidates for interview. An enquiry into such cases was made under the directions of the Jodhpur Bench ^{of the Tribunal} in Misc. Petition No. 30/1985 in O.A. 45 of 1985 and ~~the~~ as a result of this enquiry the petitioner's selection was found to be erroneous. The petitioner has no right to the posts and the respondents have a right to correct or rectify the error and as the appointment order was purely temporary and as the order is not by way of punishment but is termination simpliciter the respondents are within their rights to terminate the appointment with one month's notice which has been done.

2. We are unable to persuade ourselves that the impugned order is termination simpliciter. It is stated in the reply of the respondents that the petitioner has not secured the required number of marks to be eligible for being called for interview. This is the ground on which the selection after an interview ^{was} is held to be erroneous.

3. We do not agree that the impugned order can be upheld on the ground of its being described as an order of termination simpliciter and that the respondents are competent to correct or rectify their mistake by passing such an order without giving an opportunity to the petitioner by a notice to do so and hearing his explanation in reply. There is no doubt that whether the order is intended by way of punishment or not, the effect and consequences of the order is adverse to the petitioner and there are judgments of this Tribunal to the effect that when any order is to be passed which visits a person or affects him by it with evil consequences, it is necessary in the interest of justice that a prior notice to do so should be given to him and opportunity provided to consider his representation or explanation in reply. If any order

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is passed without doing so, it is contrary to justice and the petitioner will be left with a valid grievance about which he will have right to be upheld. Accordingly, in this case also we consider that the impugned order suffers from the infirmity and is quashed and set aside. The petitioner will have to be ~~x~~ reinstated with consequential benefits which be paid within ~~four~~ four months from the date of this order. No order as being

G.S. Nair
(G.S.Nair)
Vice Chairman.

P.H. Trivedi
(P.H.Trivedi)
Vice Chairman.

nrm/-

MA/571/87

in


OA/320/87

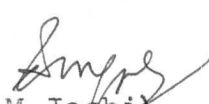
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Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman
Hon'ble Mr. P.M. Joshi : Judicial Member

24.11.1987

Mr.K.K.Shah learned advocate for the applicant requests that OA/320/87 also to be heard with TA/1004/86 which is fixed for further direction on 16.12.1987. Allowed. With this, MA/571/87 stands disposed of.


(P.H.Trivedi)
Vice Chairman


(P.M.Joshi)
Judicial Member

a.a.bhatt