

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXVXXXDXXLXIX

AHMEDABAD BENCH

O.A. No. 501  
XXXXXX

1987

DATE OF DECISION 18.2.1991

Vimal Swaroop

Petitioner

Mr. R.S. Dinkar

Advocate for the Petitioners)

Versus

Union of India &amp; Ors.

Respondent

Mr. P.M. Raval

Advocate for the Respondents)

## 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?

Vimal Swaroop,  
Mohalla Sagar,  
(Bandipur),  
Post & Town : Mallawn,  
Dist. Bardoi,  
Uttar Pradesh.  
(Advocate - Mr. R.S. Dinkar)

.. Applicant

Versus

1. Union of India,  
(Notice to be served  
through the Secretary,  
Ministry of Finance,  
Revenue Department,  
North Block, New Delhi)
2. The Chairman,  
Board of Central Excise & Customs,  
North Block, New Delhi.
3. The Collector,  
Central Excise & Customs,  
Ahmedabad Collectorate,  
Navrangpura, Ashram Road,  
Ahmedabad.
4. The Deputy Collector,  
Central Excise & Customs,  
Ahmedabad Collectorate,  
Navrangpura, Ashram Road,  
Ahmedabad.

.. Respondents

(Advocate - Mr. P.M. Raval)

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

O.A. No. 501 of 1987

O R D E R

Date : 18.2.1991

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

In this case, the applicant under section 19  
of the Administrative Tribunals Act, 1985, has  
challenged the order of termination dt. 13th Feb., 1986  
by which in exercise of the powers conferred under  
section 5(2) of the C.C.S. (Temporary Service) Rules,  
1965, the petitioner's services were terminated by a

notice of one month. The petitioner's appointment is by memo dt. 8.12.1978, Annexure A to the petition in which the substantial and relevant condition of appointment is that the petitioner's case will be on probation and will have to pass departmental examination within two years from the date of his appointment. The petitioner has averred that he has passed the necessary examination but no order confirming him has followed. The petitioner has relied upon the decisions of the Courts which has referred to in the pleadings to bring out that on successful completion of the probationary period by passing departmental examination and the expiry of the period of two years the effect is that he stands confirmed as any action against such confirmation has to be taken by the respondents within the period stipulated.

2. The petitioner has also brought out that in para 6 of the petition certain circumstances by which malice could be inferred to get rid of him on the part of the respondents.

3. The respondents have not filed any reply inspite of several opportunities being given. The case has been admitted on 14.10.1987 and thereafter it has come up on 8.2.1988 in which further time was given to the respondents. Learned advocate for the respondents has not been present when the case came up for hearing.

4. In these circumstances, when no reply has been filed and learned advocate for the respondents is not available for making oral submissions, the case can be decided on merit on the application filed alongwith the

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annexures for proof of the statement therein has been adduced. The question is whether the petitioner attracts the provision of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 in these circumstances. The petitioner has stated that he was confirmed as L.D.C. as shown from Annexure A-2 by memo dt. 14.2.1980 from the General Manager Telecom., U.P. Circle, Lucknow, to the effect that the petitioner was confirmed as U.D.C. w.e.f. 1.6.1979. Without any challenge to this memo adduced by the petitioner <sup>of his</sup> the stand on the record and from which the inference follows that the petitioner is a confirmed civil servant, the irrelevancy and inapplicability of the impugned orders under section 5 of the C.C.S. (Temporary Service) Rules followed because obviously these Rules are not meant for application <sup>to</sup> ~~of~~ the persons who hold substantive post in Government. It is not necessary to go into the evidence of the petitioner having been confirmed in the post on completion of his period of probation as urged by him or whether the impugned orders are <sup>for</sup> tainted by malafide as alleged by the petitioner on account of certain proceedings in which he brought certain uncomfortable facts to the notice of the respondents as alleged by him because even on the narrow ground of the relevancy and applicability of the impugned orders of the case of the petitioner, the respondents failed.

5. In these circumstances, we find that the impugned order is without any legal basis whatsoever and cannot be supported. There is merit in the petition. The impugned order is quashed and set aside and the

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petitioner is held to be entitled to receive back wages and other consequential benefits. So directed. The petitioner be reinstated in service with immediate effect. No order as to costs.

*Neru*

( R C Bhatt )  
Judicial Member

*Patel*

( P H Trivedi )  
Vice Chairman

\*Mogera

M.A. Stamp No. 166/91

in

O.A./501/87

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman  
Hon'ble Mr. S. Santhana Krishnan .. Judicial Member

16.4.1991

Learned advocate Mr. M.R. Raval for Mr. P.M. Raval  
for the applicant present. The case be adjourned to 22nd  
April, 1991 when the Bench of Hon'ble Mr. P.H. Trivedi (V.C.)  
and Hon'ble Mr. R.C. Bhatt (J.M.) available.

( S Santhana Krishnan )  
Judicial Member

( P H Trivedi )  
Vice Chairman

\*Mogera

M.A. Stamp No. 166/91

in

O.A./501/87

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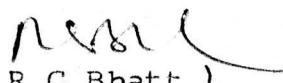
CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

Hon'ble Mr. R.C. Bhatt .. Judicial Member

(21-4-91)

22.4.1991

Heard learned advocate Mr. M.R. Raval for Mr. P.M. Raval for the applicant. He presses for the stay of the order on the ground that he wants to appeal against the order dt. 18.2.1991 immediately reinstating the petitioner in that case and holding that the order of termination is not ~~free from~~ <sup>free from</sup> the tent of malafide. He states that there would be no great harm if the order is stayed and the procedure will take time for Special Leave Petition being heard by the appellate forum. Considering the plea made in the petition and submissions, we find no sufficient ground for allowing the petition and therefore reject the same.

  
( R C Bhatt )  
Judicial Member

  
( P H Trivedi )  
Vice Chairman