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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.NO./154/91

T.A.NO.

DATE OF DECISION 26.4.1999

Saiyed J.A. Petitioner (s)

Mr. J.D.Ajmera Advocate for the petitioner(s)

VERSUS

Union of India & Ors Respondent (s)

Mr. B.N.Doctor Advocate for the Respondent(s)

CORAM

THE HON'BLE MR. V.RADHAKRISHNAN : MEMBER [A]

THE HON'BLE MR A.S.SANGHAVI : MEMBER [J]

JUDGMENT

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

Saiyed J.A.
Civil Hospital Compound,
Dwarka,
Dist. Jamnagar.

Applicant

Advocate Mr.J.D.Ajmera

Versus

1. Union of India, Through :-
The Secretary,
Ministry of Defence,
New Delhi.
2. Shri R.S.Rana or
his successor in office [Navy]
Col. Commander Works,
Engineer [P], Valsura,
Jamnagar.

Respondents

Advocate Mr.B.N.Doctor

JUDGMENT

IN

O.A.NO. 154 OF 1991

Dt:- 26/4/1999

PER HON'BLE MR.A.S.SANGHAVI : MEMBER [J]

The applicant by this application has challenged the order dated 8.9.90 passed by the respondents whereby the services of the

applicant as Wireman [Mate] were terminated and consequent to the termination, he was reverted to the post of Mazdoor. The applicant was originally appointed as regular Mazdoor on dated 17.5.83 and had worked for more than 5 years. The post of Wireman was advertised for filling up by direct recruitment. The applicant had applied for the said post and was ultimately selected as such on dated 12.5.88. His appointment was made on probation for a period of 2 years and at the time of his appointment, he has produced all the relevant documents regarding his training, caste, etc. However, on dated 10.2.90, the Major Garrison Engineer [Navy] asked for the explanation of the applicant for seeking the appointment as Wireman against the S T vacancy on the basis of the certificate produced by him. It was alleged that the applicant was not belonging to S T category and had produced a false certificate for obtaining the appointment against the S T vacancy. The applicant even though having replied to this letter of Major Garrison Engineer, and pointing out that he had nowhere claimed that he was S T candidate and that certificate produced by him was the true certificate regarding his belonging to OBC category, the services of the applicant were terminated by an order dated 8.9.90 which was conveyed to him by Major Garrison Engineer, on dated 10.9.90.

2. We have heard learned counsels of both the parties at length. Mr.J.D.Ajmera, the learned advocate appearing for the applicant has submitted that the termination order is passed without holding any inquiry against the applicant even though the applicant was asked to explain about furnishing a false certificate. He has pointed out that the applicant had never submitted any false certificate and that he had submitted the certificate of his belonging to BCSC and not S T category. He has conceded the position that the post of Wireman which was advertised was

for the S T vacancy and that the same was ought to be filled up by the respondents by S T candidate but according to him when this was not done by the respondents and the post was filled up by another candidate, he could not have been removed by the respondents without holding due inquiry. He has further submitted that the applicant has been reverted to the post of Mazdoor and this reversion amount to a penalty and therefore, the penalty could not have been imposed by the respondents without due inquiry and as such the order of the termination of service is illegal and void.

3. Mr.Doctor, the learned advocate appearing for the respondents on the other hand has pointed out that the applicant was on probation and the order terminating his services is termination order simplicitor not attaching any stigma. Mr.Doctor has also submitted that the work and conduct of the applicant was quite satisfactory and there was no question of holding any inquiry against the applicant. He has further pointed out that since there was irregularity in filling up the post meant for S T candidate by general category candidate, the appointment itself was ab initio void and therefore the services of the applicant were terminated. He has further submitted that the applicant has even resigned as a Mazdoor also and therefore now no question of any grievance survives.

4. There appears to be a lot of force in the submission of Mr.Doctor. The appointment of the applicant was against the reserve category post of S T candidate and since the applicant did not answer the required qualification of being S T even though he was appointed by mistake, the same appointment being against the rules required to be quashed and therefore, there was nothing wrong in the respondent

terminating his services during his probation period. The submission of Mr. Ajmera that the posting of the applicant as Mazdoor after the termination of the services amounted to reversion and since the reversion was affected without giving any opportunity of being heard, the same should be considered as by way of penalty, cannot be upheld. It is no doubt true that the Wireman posts were filled up by direct recruitment but then the applicant was a departmental candidate and on the termination of his services as a Wireman was required to be sent back to the department. Had he been directly recruited as a general candidate, the termination of his services would have resulted in his losing the job. However, since he was a departmental candidate and was not found eligible for promotional post even though the same was filled up directly by selection, on account of his holding lien on his earlier post, he was required to be re-posted to the post he held before the termination of his services. Hence, there is no substance in the submission that re-posting of the applicant was a reversion and as such, the applicant was penalised without giving him any opportunity of being heard.

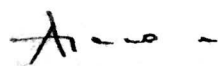
It is a settled position that when an employee is on probation, his services can be terminated without assigning any reason or holding an inquiry. The say of Mr. Ajmera that the allegations of his producing false certificate were made against him and thereby stigma was casted does not appeal to us. On the contrary it appears from the reply filed by the respondents as well as the correspondence between the parties, that except the ground of his irregular appointment, there was nothing against the applicant so far as his services were concerned. Hence, it cannot be said that his services were terminated on account of some misconduct on the part of the applicant.

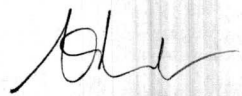
Another significant aspect is that the applicant has even resigned as Mazdoor and at present he is no more in service of the respondents . Since the application is based on the allegations that he has been reverted to the post of Mazdoor by the respondents without any inquiry or giving him an opportunity of being heard, this conduct of the applicant in resigning the post of Mazdoor also suggest that the application has become infructuous. If the applicant considered the impugned order as that of reversion and the same was being challenged by him on the ground of his being reverted then the resignation from this reverted post suggest that he is no more interested in re- gaining the promotional post, and that the application is now infructuous.

For the above discussed reasons, the application fails on both the counts. The services of the applicant cannot be said to have been terminated on account of misconduct but it was a termination simplicitor and since the applicant's appointment itself was void ab initio , no inquiry was required to be held by the respondents and as such the termination order can not be held to be illegal or in valid. The appointment cannot be held to be reversion to the post of Mazdoor and further more since the applicant has resigned the post of Mazdoor also, this application become infructuous . For these reasons the application deserves to be rejected and hence , we pass the following order.

ORDER

The application is rejected without any order as to costs.


[A.S.SANGHAVI]
MEMBER [J]


[V.RADHAKRISHNAN]
MEMBER [A]