

DATE OF DECISION 30.9.99

Mrs. P. Safaya Advocate for the Respondent [s]

- 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 ?

M.U. Chauhan  
Peon,  
Regional Office of the  
Textile Commissioner  
Ahmedabad.

Applicant

Advocate: Kum. Kalpana J. Brahmbhatt

Versus

1. Union of India  
through: Textile Commissioner  
Post Box No. 11500  
Bombay- 20.

2. Regional Office-  
-notice to be served upon  
The Textile Commissioner  
People's Bank Bldg., Bhadra  
Ahmedabad-1.

Respondents-

Advocate: Mrs. P. Safaya-

ORAL ORDER

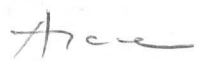
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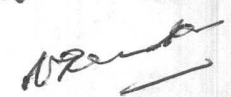
O.A./359 of 1993

Dated 30.9.99

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

N-either the applicant nor his counsel present.  
They were not present on the last occasion also. It  
was made clear on 20.9.99 that the O.A. would be  
taken up today and no further time would be given.  
In the absence of the applicant <sup>+ his counsel</sup> the O.A. is dismissed  
for default. Mrs. P. Safaya present.

  
(A.S. Sanghavi)  
Member (J)

  
(V. Ramakrishnan)  
Vice Chairman

pmr

<div>तारीख DATE</div>	<div>कार्यालय टिप्पणी OFFICE REPORT</div>	<div>आदेश ORDER</div>
20/10/99		<p>Adjourned to 21/10/99.</p> <p><i>PC</i> (P.C. Kannan) member(J)</p> <p><i>V</i> (V. Ramakrishnan) Vice Chairman</p>
21.10.99	<p>D.S. taken on 22-10-99. Proct. is awaited</p>	<p>Mr. Pathak has since filed Vakalatnama. He has filed M.A 625 of 99 praying for restoration of the O.A 359 of 93. A request is made on behalf of Mr. Pathak that direct service to the respondents may be permitted so as to get their reply on M.A 625 of 99.</p> <p>Direct service of M.A 625 of 99 to respondents is allowed.</p> <p>Adjourned to 28.10.99.</p> <p><i>PC</i> (P.C. Kannan) Member (J)</p> <p><i>V</i> (V. Ramakrishnan) Vice Chairman</p> <p>mb</p>
28.10.99	<p>Submitted.</p> <p>As per above chit from C-II, the matter be transfer to C-II and be placed on 29/10/99.</p> <p>Per orders pt.</p> <p><i>AS</i> 28/10/99 Hon'ble MCT</p>	<p>Reply filed by Mrs. Safaya. Adjourned for filing rejoinder if any to 19.11.99.</p> <p><i>A</i> (A.S. Sanghavi) Member (J)</p> <p>pmr</p>

<div>तारीख</div> <div>DATE</div>	<div>कार्यालय टिप्पणी</div> <div>OFFICE REPORT</div>	<div>आदेश</div> <div>ORDER</div>
29.10.99		<p>Heard Mr. Pathak. Mr. Pathak seeks restoration of the application. The respondents have filed reply M.A <del>rejecting</del> to it. In any case, order of dismissal has been passed by First court consisting of Hon'ble Vice Chairman and Member (J). We feel that it would be more appropriate that the matter is placed before the Hon'ble Vice Chairman immediately on re-opening of the vacation.</p> <p>Adjourned to 15.11.99.</p> <p><i>P.C. Kannan</i> (P.C. Kannan) Member (J)</p> <p><i>V. Radhakrishnan</i> (V. Radhakrishnan) Member (A)</p> <p>mb</p>
15.11.99		<p>As a mark of respect to the memory of advocate late Shri V S Mehta, the lawyers are abstaining from work today. Adjourned to <sup>19</sup>29.11.1999.</p> <p><i>A.S. Sanghavi</i> (A.S. Sanghavi) Member (J)</p> <p><i>V. Ramakrishnan</i> (V. Ramakrishnan) Vice Chairman</p> <p>vtc.</p>



19.11.99

Orders on MA/625/99 in OA/359/93.

We have heard Mr. P.H.Pathak, for the applicant as well as Mrs. P. Safaya for the respondents.

The OA/359/93 has been dismissed for default, on 30th September 1999. The applicant has removed for the restoration of the same in MA/625/99.

The main reason for the restoration of the O.A. given is that on the day when the application was dismissed, the learned advocate Mr. P.H.Pathak could not remain present as he was engaged in Court-II and had asked some other advocate to mention the matter. However, when the matter was called out none was present, the O.A. had to be dismissed.

Mr. Pathak submits that he was busy in the Court-II when the matter was called out and therefore could not remain present. Mrs. Safaya vehemently submits that this was not the first time when the matter was called out and the learned advocate for the applicant was not present. Previously also the matter had to be adjourned due to the absence of the advocate and therefore the Tribunal had no other alternative but to dismiss the same. She has emphasised that no sufficient reason is advanced by the applicant for the restoration of the O.A. on file.

It is no doubt true that except the reason that the learned advocate of the applicant was busy in Court-II, no other reason is advanced by the applicant for remaining absent on the day when the matter was called out and the same was dismissed. In fact Mr. P.H.Pathak the learned advocate had filed vakalatnama later on after the matter was dismissed. Be that as it may be it is settled position of law that for the negligence of the advocate, the party

DATE

OFFICE REPORT

O R D E R

should not be made to suffer and since it appears that in the instant case on account of the advocate's absence the matter was dismissed, we are of the opinion that there is sufficient reason to restore the O.A. on record. Mrs. Safaya at this juncture has stated that in the present case the party had failed to remain present and on account of the negligence of the applicant as well as the advocate concerned the matter was dismissed. There appears to be sufficient force in the statement of Mrs. Safaya. Ordinarily when the applicants are absent on the day on which the matter is called out we generally grant the adjournment, but only when we find that the advocate concerned or the party persistently remains absent and does not show any diligence to proceed with the matter, the same has to be disposed of. We however allow this M.A. as party cannot be made to suffer for the negligence of Advocate, no doubt subject to cost. Hence we direct that ~~xxxxxx~~ OA/359/93 be restored to file subject to payment of Rs.500/- by the applicant to Respondent No. 2 as costs. The M.A./625/99 stands disposed of as above. OA/359/93 is restored to file.

Copy of the order be given to both the counsels.

Direct service to Respondent No.2 permitted.

Adjourned to 23.12.99.

*A. S. Sanghavi*  
(A.S. Sanghavi)  
Member (J)

*V. Ramakrishnan*  
(V. Ramakrishnan)  
Vice Chairman

D.S. Tolare  
on 24.10.11  
~~order~~  
Copy of the  
order collected  
by Mr. Patil on  
25.11.99 Mrs. P.  
Safaya on  
24.11.99  
Ankur  
061269 pmr  
MA 705789  
JWIR 11  
place on 08-11-99  
as per chit  
COI Ankur  
06116

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
<p>08.12.99</p> <p>08.12.99</p>		<p>Mr. Pathak present. Mrs. Safaya says that some of the contentions in the M.A are factually wrong and prays for time to file reply. Call on 21.12.99.</p> <p><i>PC</i> (P.C. Kannan) Member (J)</p> <p><i>VL</i> (V. Ramakrishnan) Vice Chairman</p> <p>mb</p>
<p>21.12.99</p>	<p><i>As the learned Member of the Bench is not available, the matter is adjourned to .....</i></p>	<p>Mrs. Safaya files reply to the M.A. Adjourned to 5/1/2000.</p> <p><i>A</i> (A.S. Sanghavi) Member (J)</p> <p><i>VL</i> (V. Radhakrishnan) Member (A)</p> <p>pmr</p>
<p>5.1.2000</p>		<p>Adjourned to 6.1.2000.</p> <p><i>A</i> (A.S. Sanghvi) Member (J)</p> <p><i>VL</i> (V. Ramakrishnan) Vice Chairman</p> <p>pmr</p>
<p>6.1.2000</p>		<p>Heard both sides. Oral order dictated in the open court.</p> <p><i>A</i> (A.S. Sanghavi) Member (J)</p> <p><i>VL</i> (V. Ramakrishnan) Vice Chairman</p> <p>pmr</p>

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A.NO.**/359/93 with MA/705/99  
**T.A.NO.**

DATE OF DECISION 6.1.2000

M.U. Chauhan

Petitioner

Mr. P.H. Pathak

Advocate for the Petitioner [s]

Versus

Union of India and another

Respondent

Mrs. P. Safaya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.

V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr.

B.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 ? ~



M.U. Chauhan  
Peon  
Regional Office of the  
Textile Commissioner  
Ahmedabad.

Applicant

Advocate: Mr. P.H. Pathak

Versus

1. Union of India  
Through Textile Commissioner  
Post Box No. 11500  
Bombay- 400 020.

2. Regional Office  
Notice to be served upon  
The Textile Commissioner  
People's Bank Bldg., Bhadra  
Ahmedabad. 380 001.

Respondents

Advocate: Mrs. P. Safaya-

ORAL ORDER

IN

OA/359/93 with Dated 6.1.2000  
MA/705/99

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

We have heard Mr. Pathak for the applicant and Mrs. P. Safaya for the respondents. The applicant was engaged as a Group D employee on 31.12.81. The department issued a notice dated 21/25th May 1993 as at Annexure A-1 which seeks to terminate his service after a period of one month under Rule 5(1) of the CCS (TS) Rules 1965. This order which is impugned reads as follows:-



" No. 9/9/88/EST.II/592

Notice of termination of service issued under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965.

In pursuance of sub-rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I the undersigned hereby give notice to Shri M.U. Chauhan that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

Sd/-  
21/25.5.93"

2. After the applicant had filed the O.A. before this Tribunal, the Tribunal by its <sup>interim</sup> order dated 25.6.93 had stayed the operation of the impugned notice dated 21.5.93 and consequently the applicant was continued in service. However, when the matter came up for hearing the applicant or his counsel had not appeared on many occasions and by its order dated 30th September 1999 the O.A. was dismissed for default. The applicant had filed M.A. for restoration which was allowed by the order dated 19.11.99. We are however informed that despite this order, the applicant had not been taken back. An M.A./705/99 has been filed seeking re-engagement where certain allegations have been made by the applicant including an allegation that the applicant was not taken back in service on instructions from Mrs. Safaya their counsel. These allegations are emphatically

denied by the department. Mrs. Safaya for the respondents says that the allegation that she has been instrumental in the applicant for not being taken ~~him~~ back in service is totally baseless. *nl*

In the light of the clear reply of the department that there was no such move from the advocate we do not know as to how the applicant could have made such a misleading statement

in the M.A. He is cautioned to be more responsible and not to make any **baseless** allegations which will be viewed seriously in future.

3. Mr. Pathak submits that the applicant having joined as a peon in 1981, could have been on probation for a maximum period of four years and in any case from 30.12.1985 he should be regarded as a permanent employee on the post of peon. Mr. Pathak also brings out that there is an order dated 29th April 1987 which is enclosed with the rejoinder which says that the work and performance of the employees including the present applicant having been found satisfactory during the probation period ended on the dates shown against each of them, (in this case 29.12.85,) the competent authority has decided to close the probation period and allowed him to continue in the respective post on the long term basis. Mr. Pathak submits that quite apart

*NSV*

from the fact that on satisfactory completion of period of probation, the applicant should be deemed to have been confirmed, in view of the clear order he has been actually confirmed. He is a substantive holder of the post <sup>and</sup> as the action of the department terminating his services in pursuance of Rule 5 of C.C.S. (Temporary Service) <sup>rule</sup> without any inquiry is illegal and wholly untenable.

4. Mrs. P. Safaya for the respondents draws our attention to the fact that the applicant has been marked absent on many occasions. According to her he has been marked absent as many as 52 times as is evident from the statement enclosed with the reply statement. A number of these occasions related to the period prior to 29.12.85 that is before the completion of the probation period (Mr. Pathak submits that some of these periods has been regularised by grant of leave except the last. This, however, is denied by the respondents).

Mrs. Safaya also says that the order dated 29th April 1987 cannot be taken as a formal order ~~order~~ of confirmation as it does not specifically state that the applicant has been confirmed.

5. ~~MyxxR~~ We have considered the submissions of both sides. We find force in the submission of Mr. Pathak that the order dated 29th April 1987 has

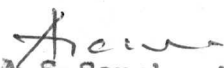



the effect of making the employee a permanent employee. This order no doubt does not specifically mention that the applicant is confirmed but it says that the probation period has been satisfactorily completed <sup>and</sup> the same has been closed <sup>and</sup> as the applicant has been allowed to continue in the respective post on a long term basis. This obviously is in the nature of confirmation and the applicant by this order has acquired the status of a permanent employee. In the circumstances, it is not open to the department to have taken action to remove him from service under Rule 5(1) of the Temporary Service Rules without any enquiry which are not applicable to permanent employees. As a permanent employee <sup>of</sup> the department <sup>should</sup> ~~should~~ have proceeded against him by conducting formal disciplinary proceedings where he should have been given an adequate opportunity and the department could have taken appropriate action. We do not express any view on the question of the alleged unauthorised absence of the applicant and whether the same was covered by grant of leave or otherwise. On the ~~short~~ ground that the department had removed the services of a permanent employee without holding a regular inquiry and without following the relevant provisions as laid down in CCS (CCA) Rules, we hold that the action of the department is illegal and cannot be sustained. We accordingly,

quash the order dated 21/25.5.93 terminating the services of the applicant under Rule 5(1) of the C.C.S. (T.S.) Rules. Mrs. Safaya says that the liberty may be granted to the department to take action under CCS (C.C.A.) Rules for the unauthorised absence. It is open to the department to take <sup>whatever</sup> ~~action~~ <sup>as</sup> admissible under law.

6. The O.A. is disposed of as above with no orders as to costs. The period from the date of the earlier disposal of the O.A. <sup>now 30.8.99</sup> till the date of his being taken back on duty shall also be taken as duty in the facts and circumstances of the case.

7. In view of the final disposal of the O.A. the M.A./705/99 also stands disposed of.

  
(A.S. Sanghavi)  
Member (J)

  
(V. Ramakrishnan)  
Vice Chairman

pmr



CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

001/359/93

of 19

Transfer Application No.

Old Writ. Pet. No. ....

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated: 24-01-2000

Countersigned.

Section Officer/Court Officer.

*Madan*  
*24-1-2000*

Signature of the Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

CAUSE TITLE O.A./ 359 /93

NAME OF THE PARTIES M. Y. Chuhin  
VERSUS

U.O.I. & ORS.

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*Ans*  
50/3/00