



FORM No. 4

See Rule (12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

ORDER SHEET

Application No. O.A. 521 of 2005-

Applicant(s) Hemanshu Bhushan Sahoo Respondent(s) Union of India & Others

Advocate  
for Applicant(s) M/S. Ashok Mohanty Advocate  
for Respondent(s) Mr. U. B. Mohapatra  
J. Sahu  
S. P. Nayak CR-1 (By)

M/s D.P. Dash  
B.K. Mishra  
(for intervenor)

NOTES OF THE REGISTRY

I.P.O of Re. scrl. filed.  
Copy served.  
For favour of  
Registration please.

17-06-05 S.O(J)  
17-06-05  
Dy. Reg.  
17-06-05  
S.O(J)

for Admision & stay -  
copy served.

17-06-05

ORDERS OF THE TRIBUNAL

REGISTER

Dy. Registr. 17-06-05

Order dated: 20.6.05

Heard Shri Ashok Mohanty, Ld. Senior  
Counsel for the applicant. A copy of the O.A.  
has been served on the Opposite Parties/Respondents.  
Issue notice to the Respondents returnable  
in four weeks.

The learned counsel for the applicant moved  
his prayer for interim relief to stay the  
operation of the order dated 13.6.05 under  
Annexure-A/2 and to direct the Respondents  
to allow the applicant to continue as Fire  
Operator, A.R.C., Charbatia, Cuttack.

The case of the applicant is that he

Received Rs. 100/- only towards cost of special messenger to R-4.

BSN (B.Bay)  
21.6.05 Cashier

1. Copies of order of 20.6.2005 issued to counsel for both sides.

2. Notices with copies of order of 20.6.05 issued to Res. 1403 by speed post R-4 by S.P.L. Messenger.

21.6.05

was appointed purely on temporary basis by the Respondents vide Memorandum dated 18.8.1999 under Annexure-A/1 under certain terms and conditions, which inter alia states as under :

"4. The appointee shall be on probation for a period of two years which may be extended or curtailed at the discretion of the competent authority but such extension or curtailment shall not exceed one year."

The contention of the learned counsel is that although the applicant had undergone post-appointment training and had acquitted himself credibly and he has been in employment since August, 1999, his service has not been confirmed by the Respondents. On the contrary, as a bolt from the blue, vide order dated 13.6.05 (Annexure-A/2) Respondent No.3 has terminated his service in pursuance of the proviso to sub-rule-1 of Rule-5 of Central Civil Services (Temporary Service) Rules, 1965, "forthwith" and that he was entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice.

The grievance of the applicant is that he has not been told as to why his service has been terminated nor was he given any opportunity to have his say against such termination. The learned counsel for the applicant submitted that the applicant having served about six years, his service could not have been terminated under Rule-5 of (TS) Rules, without a show cause. Further, he vehemently argued that Rule-5 was not applicable for termination of service in case of persons like him, who has been in service for a long time though has not been formally confirmed. In this

connection, the learned counsel for the applicant relied on the Govt. of India, Ministry of Home Affairs O.M. No.4/10/66-ESTS(C) dated 26.8.1967. His further submission was that in the letter of appointment stipulation has been made that his appointment is liable to be terminated on one month's notice on either side. As he had continued in service beyond the extended period of probation and his service has never been declared unsatisfactory, no action could be taken under Rule-5(1) of CCS(TS)Rules, 1965. Relying on the law laid down by the Apex Court in the Dharam Singh case (AIR 1968 SC 1210), he argued that the provision for a maximum of probation period is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. In other words, the Respondents were precluded under law to terminate his service under Rule-5(1) of CCS(TS) Rules, 1965.

We have carefully considered the submissions made by the learned counsel for the applicant. We have also perused the decision of the Coordinating Bench of C.A.T., Bangalore, In the case of V.K.Mohan vs. Secretary to Govt. of India Ors. (O.A.No.889/01 disposed of 28.3.2003) Having regard to the above case laws and the fact of the case that the applicant has faced termination under Rule-5(1) of CCS(TS)Rules, 1965, after having completed a maximum period of probation and after about six years of service, there appears to be lot of force in the

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contention of the learned counsel for the applicant that there has been gross violation of the principles of natural justice. As the basic principle of justice is that no one ~~is~~ to be condemned before being heard, prima facie, there is a case for consideration of the prayer for interim relief.

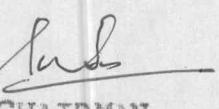
In the aforesaid facts and law of the case, we are of the view that in the interest of justice and fair play, the impugned order dated 13.6.2005 vide Annexure-A/2 should be stayed as an interim measure.

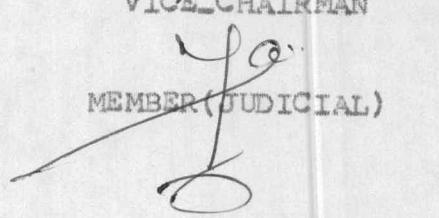
Ordered accordingly.

Respondents are directed to allow the applicant to continue as Fire Operator, A.R.C., Charbatia, Cuttack. Liberty however, is granted to the Respondents to file an application seeking modification/variation of the interim order passed in this regard.

Let this matter be called on 6.7.2005 for further orders.

Send copies of this order along with notices to Res. 1 to 3 by Speed Post and to Res. No.4 through the Special Messenger at the cost of the applicant, to be deposited in course of the day.

  
VICE-CHAIRMAN

  
MEMBER (JUDICIAL)

Mr. U.B. Mohapatra  
S.n.s.c. appeared for  
all the respondents. but

Complaint not filed.

for further order.

Bench

BY  
5/7/05