



FORM No. 4

See Rule (12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

ORDER SHEET

Application No. O.A. 522 of 2005

Applicant(s) Abhaya Kumar Routray Respondent(s) Union of India & others

Advocate for Applicant (s) M/s. Ashok Mohanty Advocate for Respondent (s) M/s. B.K. Mohapatra
J. Sahu
S.P. Nayak

CR-1 to 4

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

NOTES OF THE REGISTRY

I.P.O. of Rs. 50/- tiled.
Copy served.
For favour of
Registration please.

17.06.05

S.O.(J)
17/6/05

17.06.05

17.06.05

S.O.(J)

For Admission & Stay -
Copy served.

Bench

ORDERS OF THE TRIBUNAL

REGISTER

17.06.05

Order dated 20.6.05

Heard Shri Ashok Mohanty, Id. 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 dtd.13.6.2005 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 was appointed purely on temporary basis by the Respondents

Notes of the Registry

Orders of the Tribunal

Received Rs. 100.00 only
towards cost of spl. messenger
to R-4.

RB-1 (B.B.G.)
21.6.05
Carried

1. Copies of order
Dt 20.6.2005 sent
to counsel for both
sides.

2. Notes with copies
of order Dt 20.6.05
issued to Resp. No. 1 & 3
by speed post & by
spl. messenger.

[Signature]
21/6/05

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 blues, vide order dated 13.6.2005 (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

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(C) dated 26.8.67. 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 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 Co-ordinating Bench of CAT Bangalore in the case of V.K. Mohan vs. Secretary to Govt. of India & others (O.A.No.889/01 disposed of 28.3.03). Having regard to the above case law 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 contention of the learned counsel for the applicant, 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,

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the impugned order dated 13.6.2005 vide Annexure-A/2 should be stayed as an interim measure.

Order 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. B.K. Mohapatra,
A.S.C. appeared
for all the respts.
but counter not
filed.

2) For further orders

Besoh

By
5/7/05