

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXX X~~

573/ 1988

DATE OF DECISION 18.6.1990

C.D Sukumaran Applicant (s)

Shri M.R Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India, represented by Respondent (s)
Secretary to Government, Ministry of
Commerce, Secretariat, New Delhi & another

Shri V.V.Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *(e)*
2. To be referred to the Reporter or not? *W*
3. Whether their Lordships wish to see the fair copy of the Judgement? *W*
4. To be circulated to all Benches of the Tribunal? *h*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant is challenging Annexure-I order of termination dated 29.9.82 which reads as follows:-

"Shri C.D Sukumaran is appointed to the post of Head Security Guard in the scale of pay of Rs.1200-30-1560-EB-40-2040 in the office of the Development Commissioner, Cochin Export Processing Zone on a purely temporary and adhoc basis with effect from 19.9.1989 upto 30.9.1989.

He is hereby informed that his services stands terminated with effect from 30.9.1989(AN)."

2. The applicant is an ex-serviceman who served in the Indian Army for 23 years. After retirement as Subedar on 5.10.1985, he was offered an appointment as Head Security Guard under the second respondent in the scale of pay of Rs.1200-30-1500-EB-40-2040 on a purely temporary and ad hoc basis. He accepted it and joined the service w.e.f 5.1.87. Subsequently by separate orders he was allowed to continue with artificial breaks in service in that post till the impugned order by which his

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services were terminated without any legal and valid reason or notice. The respondents also did not follow any procedural formalities before terminating his services. Hence he is challenging the order of termination as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India.

3. The following two grounds are urged by the learned counsel for the applicant at the time of arguments:-

i) The applicant is a temporary servant occupying a permanent post and hence he has the status of a temporary Govt. servant and his services cannot be terminated except in accordance with law, presumably under Rule 5 of the Central Civil Services(Temporary Services) Rules, 1965 after a notice and stating the reasons thereof.

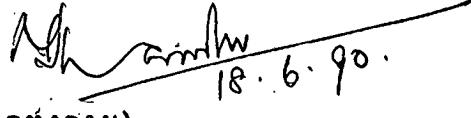
ii) Assuming that the Temporary Service Rules are not applicable to his services, he cannot be terminated without following the provisions of Chapter V-A of I.D Act 1947, for according to him he is a workman and the Cochin Export Processing Zone is an industry coming within the purview of Section 2(j) of the I.D Act.

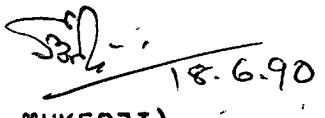
4. In the counter affidavit filed by the respondents though there is a denial that the Cochin Export Processing Zone is not an industry coming within the purview of the I.D Act, there is no denial of the contentions of the applicant that the provisions of the CCS(Temporary Service) Rules, 1965 apply to him. Regarding the compliance of the procedural formalities for termination of the service, the counter is silent. It is virtually admitted that there was no notice or intimation of reasons for the termination to the applicant at any time prior to the impugned order. The case set up by the respondents is that the applicant was appointed on 5.1.87 on a temporary

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basis not exceeding for a period of 89 days at a stretch, but it was continued and he was appointed against a reserved post of SC candidate giving him the facility to continue in services, but with breaks in service after completion of 89 days. Since an SC candidate became available for the post the applicant's service had become surplus and hence to fill up the post with that SC candidate it became necessary to terminate the service of the applicant.

5. The fact that the applicant was allowed to continue in the service from 5.1.87 till the impugned order cannot be denied even in spite of artificial breaks in service. Such an official who was allowed to continue for more than a year cannot be sent out of service without issuing notice to him nor stating any reason for such termination and communicating the same to him. Hence the impugned order is violative of the principles of natural justice and it is illegal. It cannot be sustained. It is only to be quashed, but this will not stand in the way of the respondents for taking appropriate legal action. However the applicant has to be reinstated at present in service, with all back wages and other benefits provided he was not gainfully engaged otherwise while he was out of service from the date of impugned order. The application is thus allowed, but without any order as to costs.


18.6.90
(N. DHARMADAN)
JUDICIAL MEMBER


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(S.P. MUKERJI)
VICE CHAIRMAN

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