

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 594 OF 2008

Wednesday, this the 29th day of April, 2009.

CORAM:

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.K. Sajimone,
Iceman, Integrated Fisheries Project,
(Now) National Institute of Fisheries,
Post Harvest Technology & Training,
Cochin – 16.

... Applicant

(By Advocate Mr. C.S. Manu)

versus

1. Union of India represented by its
Secretary to Government of India,
Ministry of Agriculture,
Krishi Bhavan, New Delhi.

2. The Director,
National Institute of Fisheries,
Post Harvest Technology & Training,
Cochin – 16.

3. The Director in Charge,
National Institute of Fisheries,
Post Harvest Technology & Training,
Cochin – 16.

... Respondents

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

The application having been heard on 29.04.2009 the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant was appointed as Iceman with the respondents with effect from 16.04.1998 on provisional basis in the Integrated Fisheries Project. Thereafter, he was appointed on temporary capacity on 04.04.1998 and his services was regularised with effect from 03.10.1998,

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with probation for two years from that date. On completion of two years from 03.10.2000, his case was taken up before the Departmental Promotion Committee for their consideration. The DPC did not agree to declare that he had successfully completed his probation period as he was found to be on unauthorized absence from duty for the period from 27.03.2001 to 26.04.2001, there were complaints from superior officers against him and several warning were issued to him directing him to be regular in attendance in future. His probation period was also extended for another year. On 11.10.2001, the DPC again took up his case for review and found that there was no improvements in his habit of unauthorized absence and extended his probation period for a further period of six months from 03.10.2001. Again his case was taken up for review after six months on 09.04.2002. Finding that there was no improvement in his conduct, his probation was again extended for another six months with effect from 03.04.2002. Respondents have also initiated disciplinary proceedings against him for the unauthorized absence for the period from 27.03.2001 to 26.04.2001 under Rule 14 of CCS (CCA) Rules, 1965. However, since the applicant was a temporary government servant, the Respondents, without pursuing with the disciplinary proceedings, restored to the procedure under Rule 5 of the Temporary service Rules, 1965 and terminated him from service with effect from 25.12.2002.

2. Challenging the aforesaid termination the applicant had earlier filed OA 857/02 before this Tribunal and, vide Annexure A-2 order dated 07.04.2003, the same was allowed. The operative portion of the order is as under :-

" Considering the above facts and legal position, this Court is of the view that Annexure A-8 has been passed without

properly following the procedure and such order is not in good taste of law and procedure. Therefore, I have no hesitation in setting aside Annexure A-8 order. However, this Court makes it clear that the respondents will be at liberty to continue the procedure initiated under Rule 14 of the CCS(CCA) Rules. If it is not dropped yet, as per Annexure A-5, if they so desire. In the result, the order Annexure A-8 is set aside and quashed with a direction to the respondents to give all consequential benefits deriving out of this Original Application to the applicant.

The Original Application is allowed as above, but without any order as to costs."

3. The respondents challenged the aforesaid orders of this Tribunal before the Hon'ble High Court of Kerala in W.P(C) No. 3826 of 2004 (S).

While dismissing the said Writ Petition, vide judgment dated 29.01.2008, the Hon'ble High Court took note of the statement to the effect that the applicant was reinstated in service and he was continuing on regular basis whereas the factual position was that after the applicant's service was terminated with effect from 25.12.2002, he was never been re-instated in service. The Hon'ble High Court's observations were as under :-

" On facts, the Tribunal also found that the respondents was terminated due to absence from duty. It is reported in Court that after the Tribunal's order, the respondent was reinstated in service and even now he is working on a regular basis. In these circumstances, we do not find any need to decide the merits of this case because under the present position, the service of the respondent may be acceptable to the organisation. We therefore, uphold the order of the Tribunal cancelling the termination but leaving freedom to the Management to take appropriate action including dismissal if the respondent is absent from duty without availing leave in accordance with the leave conditions of service. "

4. Both the counsel for the parties have agreed that the aforesaid submissions before the Hon'ble High Court that the Applicant was reinstated in service and he is working on regular basis are factually incorrect and the Applicant has not been attending the office from the date of his termination from service with effect from 25.12.2002. However, the

learned counsel for Applicant has argued that the aforesaid statement was made by the Respondents as they never wanted the Hon'ble High Court to go into the merits of the case. On the other hand, the Respondents counsel argued that the aforesaid statement was made by the learned counsel for the Applicant to mislead the Court. In any case, after the aforesaid judgment, neither the Applicant nor the Respondents took any steps to get the aforesaid factually incorrect statement in judgment reviewed to set the facts right. However, the respondents again issued the Annexure A-4 memo dated 15.07.2008 seeking the explanation from the Applicant as to why his services should not be terminated without any further notice. The applicant submitted the Annexure A-5 explanation dated 29.07.2008 but the same was not found acceptable to the respondents and they have issued impugned Annexure A-6 order dated 10.09.2008 terminating his service with immediate effect.

5. We have considered the submissions made by Mr.C.S.Manu, learned counsel for the applicant and Ms.Jisha on behalf of Mr.TPM Ibrahim Khan, learned Senior Central Government Standing Counsel. The question is regarding the legality of Annexure A-6 impugned order dated 10.09.2008. The factual position is that the applicant has already been terminated from service on 25.12.2002. Thereafter, he has never been reinstated in service. The submissions made before the Hon'ble High Court that he was reinstated in service and he was continuing his work with the respondents were absolutely untrue. It was on the basis of the aforesaid statement that the Hon'ble High Court disposed of the aforesaid Writ Petition upholding the orders of this Tribunal. In the earlier Annexure A-3 judgment of the Hon'ble High Court dated 27.04.2008. It was

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specifically stated in the said judgment that the Hon'ble High Court did not consider the merits of the case because of the aforesaid submissions. It is seen the parties concerned have not taken any action to appraise the Hon'ble Tribunal that the aforesaid statement was factually incorrect. We do not intend to blame any particular party for this lapse. However, the fact of the matter is that the applicant has never been in service from the date of his initial termination with effect from 25.12.2002. Therefore, the Annexure A-6 order passed afresh terminating the services of the applicant would not survive. In view of the above facts and circumstances of the case, it is not appropriate for us to interfere in this matter at this stage. We therefore, dismiss this OA. There shall be no order as to costs.

Dated, the 29th April, 2009.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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