IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 370/91
~~XXXXX~~. ~~199~~

DATE OF DECISION 20-7-92

Purushothaman Pillai T.N. Applicant (s)

Mr.V.Ramachandran Advocate for the Applicant (s)

Versus

Union of India represented by the Secretary, Ministry of Home Affairs, New Delhi & Anr. Respondent (s)

Mr.Mathews J.Nedumpara Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

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

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The grievance of the applicant is against two orders, Annexures-A5 & A12. They are extracted below:

> " In pursuance of the Proviso to sub-rule(1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, Kulbir Krishnan, Assistant Director, hereby terminate the services of Shri Purushothaman Pillai T.N., Assistant Central Intelligence Officer Grade II (General) w.e.f. 26.11.1986 and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of one month."
>
> (Annexure-A5)

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> Reference petion dated 15.10.90, of Shri Purushothman Pillai T.N. addressed to Hon'ble Union Home Minister with copies to DIB, Cabinet Secretary and Prime Minister's Secretariat, regarding his re-instatement as ACIO-II(G) in the Intelligence Bureau.

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2. Shri Pillai, is informed that his petition has been considered and as his termination was on valid grounds, there is no question of his re-instatement."

(Annexure-A12)

2. The termination of service was effected while the applicant was working as Assistant Central Intelligence Officer Grade-II(G) in the Intelligence Bureau, Ministry of Home Affairs, New Delhi, under Rule 5 of the Central Civil Services (Temporary Service) Rules 1965, hereinafter referred to as, TS Rules. The applicant served the Indian Army as a Soldier from 21.5.69 to 31.5.84. After retirement from military service he was selected and re-employed as an Upper Division Clerk in Central School, Kota (Rajasthan). He worked in that post from 14.8.1985 to 27.7.1986. While so, on the basis of a written test and interview he was selected and appointed as per Annexure-A2 memorandum as Asst. Central Intelligence Officer Grade-II (General), for short ACIO-II(G). He joined duty on 29.7.86 in temporary capacity along with others as seen from Annexure-A3. He had to undergo a training at Sivapuri. Applicant being the best cadet in the training was scheduled to command the passing out parade by the committee in the training centre and he was issued with the special outfits including the silver sword (for presenting sword of honour to the Chief Guest in the final parade) on 11th November, 1986. Passing out parade was on 13.11.86 at 9 AM. But at the last moment the Chief Drill Inspector conveyed to the applicant, an alteration in the programme effected by Shri Bharadwaj, the Senior Intelligence Officer, SIO for short, in charge of the Training Institute. According to the alteration the applicant should hand over the parade command to the next below person on merit wise, Shri K.K.Sarma. The sudden change was effected by SIO

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with a view to manipulating the merit list to the disadvantage of the applicant. This caused resentment among the cadets. After the conclusion of the parade the applicant represented his grievances to the Deputy Director, Shri John Mathew, IPS, after getting permission from the Course Officer. SIO did not like this. While the whole batch of cadets were in the Railway Station the SIO called the applicant and said "You have complained against me to the Dy. Director. I will see that you are not going to scrop any more". Hearing this a group of cadets hooted which infuriated the SIO. After this incident when the applicant reported for duty on 26.11.86 he received the impugned proceedings Annexure-A5. Annexure-A6 to Annexure-A11 are his representations against Annexure-A5. Ultimately by Annexure-A12, another impugned proceedings, his request for cancelling Annexure-A5 was rejected.

3. Based on this facts the applicant raises two points:-

i) Order is the result of the vindictive action initiated by the SIO who manipulated the merit list of cadets in which the applicant was placed number one having some privileges. So it is vitiated by malice.

ii) Order is not a termination simpliciter. If we lift the veil it can be seen that it is a punishment, for an alleged misconduct, imposed without any notice or enquiry and hence it is violative of Article 311 and null and void.

4. In the reply filed by the Assistant Director on behalf of the respondents there is a flat denial of all the averments about malice and the incidents referred to by the applicant leading to the impugned order. The relevant portion in the reply is extracted below:

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" The averments contained in para 4 of the above O.A. under the head "Facts of the case" are untrue and misleading. The same are emphatically denied save expressly admitted. The alleged favouritism shown by the Senior Intelligence Officer who was in charge of the Training institution in favour of one Shri K.K.Sharma, the denial of opportunity to the applicant to command the Passing out parade, the grant of award of Annexure-IV certificate as a compensation for his being deprived of the opportunity to command the parade, his representation to the grievances to the Deputy Director Shri John Mathew, IPS, the threatening gesture of Shri P.P. Bharadwaj, Senior Intelligence Officer towards the application at the railway station, Gwalior, the hooting of cadets who were in the train and the wireless message to the headquarters recommending termination of the applicant are all an imagination of the applicant unsupported by any material or evidence. Such allegations baseless as they are, are only to be ignored by this Hon'ble Tribunal. The allegations against the Senior Intelligence Officer, Shri Bharadwaj are totally unfounded without bonafides, if not total fabrication with the intention to mislead this Hon'ble Tribunal. Theapplicant has made serious allegations against responsible government officials with scant regard for truth and deserves to be reprimanded by this Hon'ble Tribunal, for doing so ."

5. The applicant filed rejoinder denying the statements in the reply and moved for a direction to produce the files leading to the impugned orders. The respondents were reluctant to produce the files inspite of sufficient time was given to them. Ultimately on 27.4.1992 we passed a peremptory order on the following manner:

" In this case, the services of the applicant who has been employed on temporary basis by the Annexure-A3 order alongwith several others has been terminated by the impugned Annexure-A5 order. Respondents have filed a reply which does not indicate the reason why the applicant alone, out of the other temporary employees, has been terminated. We had given the respondents sufficient time to produce the relevant records to enable us to verify the reasons why the services of the applicant was terminated, but the learned counsel for the respondents could produce them so far. In the interest of justice,

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we give a last opportunity to produce the concerned records from which we can find the reason, if any, on the basis of which the impugned Annexure-A5 order terminating the services of the applicant was issued. We also make it clear that in case the respondents are not able to produce the same on the next date of hearing, an adverse inference may be drawn against them."

6. When the case was taken up for final hearing the learned counsel for the respondents was good enough to produce the files for our verification.

7. Verification of the files disclose the following details:

(i) S.I.O. Shri Bhardwaj has written a detailed letter to the Dy. Director (Trg.) Shri Mathew John, about applicant's misbehaviour at the Railway Station admitting last minute alteration of the merit list prepared for the parade command from applicant to one Shri Sharma, as alleged by the applicant in the application. He has suggested in that letter that the administration should review the continuance of the applicant in the Bureau and the department should reverify his character and antecedence, in view of "his indiscipline and irresponsible behaviour".

(ii) Based on the above letter one Dr.S.D.Trivedi, JD (TRG) submitted a report presumably after a secret enquiry stating that the behaviour of the applicant "and other concerned officers" appears to be a matter of gross indiscipline particularly at a time when they are being trained for getting into a secret and sensitive organisation like the Intelligence Bureau.

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He further suggested in his report that the administration may consider whether action could be taken suo-moto or a senior officer should conduct a second enquiry into the entire incident. He also stated that there is a probability of the person concerned going to the High Court with allegations of malafide against the SIO.

(iii) The matter was discussed in the JD's meeting and a decision was taken to refer the matter to JDE but at the instance of directions, Dr. S.D.Trivedi, who took statement from Sasi, Driver of SIO, gave a further report dated 21.11.86 stating that it is difficult to arrive at a firm conclusion on the number and names of persons who were involved in the incident.

(iv) On the basis of these reports, JDE proposed action on 24.11.86 for the termination of the applicant forthwith under Rule 5 of the CCS (Temporary Services) Rules, without giving any reason. This was approved on 25.11.86 and consequential order was issued terminating his service.

8. From the verification of the files the case put forward by the applicant, that the SIO, Bhardwaj, was involved in the incident and action had been initiated at his instance, was found to be correct. Admittedly, the termination is not a simple innocent order passed in the exigency of service or in public interest, as alleged in the reply statement. It was based on the alleged "indiscipline and irresponsible behaviour" of the applicant and was intended to penalise him. Hence it squarely comes in the realm of penalty.

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9. Another very important aspect is that the production of the files leading to the impugned termination order completely belied the statement of the Assistant Director in his reply filed in this case on behalf of the respondents. We are very much disturbed the way in which the case is defended by the administrative authorities in an unfair manner suppressing the contents in the files and the true position. In para 3 of the reply there is a categorical denial by the Assistant Director of all the statements given by the applicant about the involvement of SIO and the incident referred to therein. According to him the applicant made irresponsible statements and wild allegations against responsible senior officers of the Government without an iota of respect for the truth. But when the files are produced the dice turned against the respondents. In fact we should reprimand the officer instead of the applicant accepting the suggestions in the reply. But we restrain ourselves and leave it at that. Recently we noticed the same position in another case, C.Babu vs. Union of India & Ors., O.A. 885/1991, and we observed as follows:-

> "5. Contrary to the stand taken in the impugned order, the respondents have filed reply contending that the applicant while continuing as casual labour under the first respondent absented from work thereby it is not possible for them to consider the applicant's claim for re-engagement and regularisation.
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> 6. The respondents are expected to take a stand which should be consistant with the proceedings which they have issued and are supporting before us.
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> .. . .. The earlier direction was not fully complied with, presumably in the light of some letter of CGMP, Trivandrum. When there is specific direction from this Tribunal the Divisional Engineershould have obeyed the same whatever be the

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directions or instructions in the letter from the superior authority. If the direction of the Tribunal is not acceptable to the department, they are free to take up the matter to the higher legal forum for correcting the mistake or error, if any, in the judgment. So long as the judgment of the Tribunal stands, the authorities to whom directions are issued by the same, are bound to carry out the same in the spirit in which such directions are issued. The impugned orders suffer from the vice pointed out above and hence it cannot be sustained."

10. The Departmental authority may in future avoid making such indiscriminate and irresponsible statements contrary to the contents of the orders or the files while filing reply in pending cases in answer to the averments in the original petitions. It is very often noticed that they give statements contrary to the true position rather inconsistent with the statements in the orders and the contents and original notings in the files. If this is not avoided it will, in due course, affect the very credibility and the veracity of the versions invariably given by the Government authorities in answer to averments in cases before the Tribunal when they are defending their official action. The efficacy of the time honoured principle that official actions are presumed to be correctly and properly done should not be forgotten by the departmental authorities who are authorised to file reply to the cases before the Tribunal or Courts.

11. The post to which the applicant is appointed is admittedly a sensitive post coming within the purview of the description given by the Supreme Court in Ajit Singh vs. Chief Election Commissioner of India & ors., (1989) 4 SCC 704. There is wide discretion for the appointing authority to deal with the affairs connected with appointment, termination, etc. But the question is whether such discretion is so wide enough to terminate the service

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of a Government servant under Rule 5 without any notice or hearing or even an opportunity to explain his stand when there is an allegation of "indiscipline and irresponsible behaviour" xx xxxxx against him. In this case there is an additional factor of importance that a group of officers are involved in the action but the applicant alone was penalised. There is no reason to pick out the applicant alone from among them and terminate his service without any enquiry. The files produced established from the report of Dr. Trivedi that a group of officers involved in the hooting and misbehaviour and that it is difficult to give a firm conclusion on the number and names of persons involved in the incident. It is curious to note that none of them was either questioned or proceeded against. The applicant was singled out and terminated from service. SIO, Mr. Bhardwaj, denied him the chance to command the passing out parade at the last moment without assigning any reason and derive the benefit out of it. This action appears to be vindictive intended to victimise him. The further action of termination of applicant also under the circumstances stated above is wrong and cannot be supported. It is really unfair and illegal.

12. Now let us examine the law on the subject. The Temporary Services Rules of 1965 have been framed by the President to regulate the conditions of service of the Government servants who have not been confirmed in the service. Rule 5(1) gives authority to the Government to deal with such unconfirmed temporary servants. It declares that the services of such temporary hands shall be liable to be terminated at any time by a notice in

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writing for a month or by paying one month's pay in lieu of notice. The Supreme Court, Tribunals and High Courts have examined the scope of the provision of the Rule in a number of cases. It is settled by now that no reason or even notice need be given in appropriate cases when the power under the Rule is invoked by the Government for normal administrative purposes. But the moment when action appears to be penal and not really a routine administrative one the provisions of Article 311 get attracted. In the celebrated judgment in Purushotam Lal Dhingra vs. Union of India (AIR 1958 SC 36) the Supreme Court held that Court or the Tribunal should find out whether the order attaches any stigma on the employees concerned or does it entail any penal consequence on him or a loss or seniority, pay, etc. relating to some permanent appointment.

13. The order may be silent about the injury and appear to be innocous. But the Court or Tribunal can go behind the order and look into all the circumstances and connected facts for ascertaining the true position. So when we lift the veil and examine the matter in detail as held by the Supreme Court in Anoop Jaiswal's case, AIR 1984 SC 636, it will be established that it is not so innocent, but is deceptive and is not the result of the normal procedure or that the power was not exercised for routine administrative purpose viz. for the termination on expiry of temporary post or for any other reasons similar to the same. Under these circumstances when the Court or Tribunal is fully satisfied that the power under the Rule was exercised as a short cut for sending out an employee instead of resorting to disciplinary action, there is nothing wrong in presuming that it is a fraud on power and the action is liable to be quashed.

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14. The learned counsel for the applicant cited a number of decisions of the Supreme Court, Tribunals and High Courts to satisfy us that the order in this case attracts the provisions of Article 311. He has also submitted a detailed argument notes. The Supreme Court laid down the test for deciding as to whether Article 311 attracts or not in the following manner in The State of Bihar and others vs. S.B. Mishra (AIR 1971 SC 1011):

> ". . . . . A large measure of support is sought to be derived from this decision because of the previous opinion of the Commissioner of Income Tax which was highly prejudicial to Dhaba and the argument raised there was that the reversion of Dhaba was the direct result of the note of Mr. Pillai. This is what was observed by this court in that case:
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> "The test for attracting Art. 311 (2) of the Constitution in such a case is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee (see the decision of this court in Champaklal Chimanlal Shah v. The Union of India (1964) 5 SCR 190 = (AIR 1964 SC 1854). In the present case, however, the order of reversion does not contain any express words of stigma attributed to the conduct of the respondent and, therefore, it cannot be held that the order of reversion was made by way of punishment and the provisions of Art. 311 of the Constitution are consequently attracted".
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> 4. We are unable to accede to the contention of the appellant that the ratio of the above decision is that so long as there are no express words of stigma attributed to the conduct of a Government Officer in the impugned order it cannot be held to have been made by way of punishment. The test as previously laid and which was relied on was whether the misconduct or negligence was a mere motive for the order of reversion or whether it was the very foundation of that order. In Dhaba's case Civil Appeal No.882 of 1966, D/- 7-4-1969 = (AIR 1969 NSC 21), it was not found that the order of reversion was based on misconduct or negligence of the officer. So far as we are aware no such rigid principle has ever been laid down by this Court that one has only to look to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. The form of the order is not conclusive of its true nature and it might merely be a cloak

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> or camouflage for an order founded on misconduct (see S.R. Tewari v. District Board Agra 1964-3 SCR 55 = (AIR 1964 SC 1680). It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceeding or attendant on the impugned order must be examined and the over-riding test will always be whether the misconduct is a mere motive or is the very foundation of the order."

15. The Supreme Court in unequivocal terms proclaimed time and again that the power of termination of a Government servant under Rule 5:

> "is extremely precarious being depended upon the pleasure and discretion of the employer - State. . . . The protection of Art. 14 & 16(1) will be available even to such a temporary Government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors, similarly situated. It is true that the competent authority had the discretion under the conditions of services governing the employee concerned to terminate the latter's employment without notice. But, such discretion has to be exercised in accordance with reason and fair play and not capriciously."
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> (Govt. Branch Press vs. D.B.Belliappa, AIR 1979 SC 429)

16. It goes without saying that when a Government servant approaches the judicial forum with the allegation that his service has been terminated in an unfair manner and it violates Art. 14 and 16 the authority who passed the order is bound to discharge the burden and establish that the order was passed honestly in good faith on legal and valid considerations invoking the power under Rule 5 of the Temporary Service Rules. The Supreme Court in Nepal Singh vs. State of U.P. (AIR 1985 SC 84) held as follows:-

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> "7. It seems to us that the High Court has failed to consider the true content of the case set up by the applicant. The entire thrust of the appellant's case is that in terminating the appellant's service the competent authority treated him unfairly and arbitrarily. It is well settled that in dealing with a Government servant the State must conform to the constitutional requirements of Arts. 14 and 16 of the Constitution. An arbitrary exercise of power by the State violates those constitutional guarantees, for a fundamental implication in the guarantee of equality and of protection against discrimination is that fair and just treatment will be accorded to all, whether individually or jointly as a class. When a Government servant satisfies the Court prima facie that an order terminating his services violates Arts. 14 and 16, the competent authority must discharge the burden of showing that the power to terminate the services was exercised honestly and in good faith, on valid considerations, fairly and without discrimination."

17. In all cases of orders passed by authorities affecting the Government servant's right particularly termination of service, the courts and Tribunals invariably apply the torch stowe of 'fair-play' and decide whether the order is valid or not. The Constitution Bench of the Supreme Court appears tohave applied this test in Delhi Transport Corporation's D.T.C. Mazdoor Congress, AIR 1991, SC 101 and held Regulation 9(6) Delhi Transport Authority (Condition of Appointment and Service) Regulation 1952 invalid, a provision similar to the Temporary Service Rules, and held as follows:-

> "199. Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9(b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Art. 14 of the Constitution. It has also been held consistently by this Court that the Government carries on various trades and business activity through the instrumentality of the State such as Government Company or Public Corporations. Such Government Company or Public Corporation being State instrumentalities are State within the meaning of Art. 12 of the Constitution and as such they are subject to the observance of fundamental rights

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embodied in Part III as well as to conform to the directive principles in Part IV of the Constitution. In other words the Service Regulations or Rules framed by them are to be tested by the touchstone of Art. 14 of Constitution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), therefore, confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised. It is now well settled that the 'audi alteram partem' rule which in essence, enforces the equality clause in Art. 14 of the Constitution is applicable not only to quasi judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurely. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regulation 9(b) does not expressly exclude the application of the 'audi alteram partem' rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month's notice under Regulation 9(b) or pay in lieu thereof without recording any reason in the order and without giving any hearing to the employee to controvert the allegation on the basis of which the purported order is made."

18. Having considered the case of the applicant in the light of the settled legal principles we are of the view that Annexure-A5 does not disclose that the respondents have exercised their power under Rule 5 of T.S. Rules to terminate the services of the applicant in public interest honestly and in good faith on valid consideration in fair manner without discrimination.

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The termination order is not bonafide and valid. It is liable to be quashed.

19. The respondents have also raised the plea of limitation on the ground that the applicant did not approach the Tribunal within time. Annexure-A5 was passed on 25.11.1986 and hence the application is belated and it should be dismissed. It is true that Annexure-A5 was passed in 1986. The applicant challenged the order immediately in his representation Annexure-A6 dated 27.11.86 and further representations Annexure A7 to A11. None of them was considered and disposed of in time. Ultimately the Government passed Annexure-A12 on 23.11.1990. The applicant gets a cause of action from that date. Reckoning the period of limitation from the date of Annexure-A12 the application is within time. Moreover this application was admitted on 15.3.1991 after hearing the learned counsel for the respondents, who received a copy of the application. He did not raise any objection based on limitation and latches. So we did not reserve their right based on limitation to be raised at the time of final hearing. Invariably, we do not entertain a plea of limitation at the final stage under the above circumstances. However, having regard to the facts and circumstances of the case a dismissal of the application would be rejection of the grievances of the applicant, who had been victimised and discriminated against in the matter of termination and this will lead to gross injustice. Hence we reject the plea of limitation raised by the respondents in this case.

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20. In the light of the foregoing discussions we are of the view that the termination of the services of the applicant is illegal and we find it extremely difficult to uphold the decision of the Government in Annexure-A5 and A12. Accordingly we quash the same.

21. As a consequence the applicant is entitled to be reinstated in service and treated as continuing in service from the date of termination without any interruption. It will be open to the authorities to take fresh proceedings against the applicant, if so decided; but it should be in accordance with law. Regarding the financial consequential benefit flowing from the order quashing the impugned orders, we make it clear that it will be open to the respondents to determine the same after ascertaining whether the applicant was gainfully engaged otherwise during the period of his absence from 1986 onwards.

22. In the circumstances, we allow this application, there is no order as to costs.

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(N.DHARMADAN)
JUDICIAL MEMBER

20.7.92

(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

v/-