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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

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T.A. No. 18/88

DATE OF DECISION 25.9.1989

Shri R.P. More Petitioner

Shri T.T. Amesur Advocate for the Petitioner(s)

Versus

Union of India Respondent


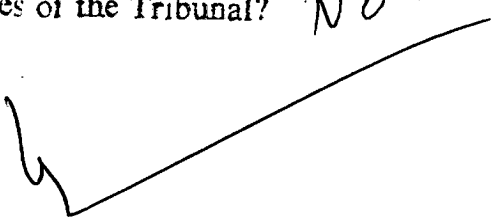
Shri R.K. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

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? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

Tr.A.No. 18/88

Shri R.P.More  
resident of Loshingve,  
Post Shenit, Tal and Dist. Nashik. ... Applicant

v/s.

Union of India through  
Commandant, School of Artillery,  
Deolali Camp, Tal and Dist. Nashik. ... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar  
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances :

Mr.T.T.Amesur  
Advocate  
for the Applicant

Mr.R.K.Shetty  
Advocate  
for the Respondents

ORAL JUDGMENT

Dated: 25.9.1989

(PER: M.B.Mujumdar, Member (J))

The applicant, Shri R.P.More, had filed Regular Civil Suit No. 608/85 in the court of the Civil Judge, Senior Division, Nashik and it is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. By order dated 6.11.1984 the applicant was appointed as Cook w.e.f. 2.11.1984 provisionally and in a temporary capacity. It is mentioned in the order that his services were liable to be terminated with one month's notice or pay of one month in lieu of notice. The first entry in his service book shows that he was also appointed on probation for a period of two years.

3. By order dated 15.7.1985 passed in pursuance of sub-rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 his services were terminated with effect from the expiry of one month from the date on which the notice was served on him. The notice was served on the applicant on 18.7.1985.

4. On 13.8.1985 the applicant filed the suit in the court of the Civil Judge, Senior Division, at Nashik. It is alleged by him in the plaint that some time in the last week of April 1985 he fell ill for a few days. After recovering from this illness, he reported for duty explaining his illness to his officer Capt. Advani. He also produced a medical certificate in support of his illness. But Capt. Advani refused to allow him to resume duty. However, after repeated requests to higher officers, he was permitted to join his duty. But Capt. Advani took this incident seriously and did not allow him to join duty on 8.5.1985. According to the applicant it was because of Capt. Advani's attitude and action that his services are terminated by the notice dated 15.7.1985. The applicant has prayed in the suit for a declaration that the notice of termination dated 15.7.1985 is illegal, improper and bad in law and that he still continues or is entitled to continue in service.

5. Along with the suit, the applicant had filed an application for temporary injunction. But no ex-parte injunction was granted. Ultimately, after hearing advocates for both the sides that application was rejected by the learned Civil Judge, Senior Division, Nashik by his order dated 9.10.1985.

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6. Respondent No. 1 had filed the written statement on 21.9.1985 when the suit was pending in the Civil Court at Nashik. It is pointed out in the written statement that the services of the applicant were not found satisfactorily and hence the same were terminated by the notice dated 15.7.1985.

7. We have just now heard Mr.T.T.Amesur, learned advocate for the applicant and Mr.R.K.Shetty, learned advocate for the respondents.

8. The impugned notice dated 15.7.1985 merely states that the applicant's services would stand terminated with effect from the date of expiry of one month from the date on which notice would be served. Notice was served on the applicant on 18.7.1985. It gives no reasons why the services were terminated. In other words, no stigma was cast on the applicant while terminating his service. In State of U.P. v. Ramchandra Trivedi, 1976 SLJ 583 the Supreme Court has held in para 23 as under :-

"Keeping in view the principles extracted above, the respondent's suit could not be decreed in his favour. He was a temporary hand and had no right to the post. It is also not denied that both under the contract of service and the service rules governing the respondent, the State had a right to terminate his services by giving him one month's notice. The order to which exception is taken is ex facie an order of termination of service simpliciter. It does not cast any stigma on the respondent nor does it visit him with evil consequences, nor is it founded on misconduct. In the circumstances, the respondent could not invite the Court to go into the motive behind the order and claim the protection of Article 311 (2) of the Constitution."

9. Still, for satisfying ourselves about the reasons given by the respondents in the written statement for terminating the service of the applicant, we have seen the service record of the applicant. The report of Major Shri Om, officiating Commanding Officer dated 30.5.1985 shows that the applicant was frequently absenting from duty which

was causing inconvenience and burden to other cooks.

From other record also we have found this position to be correct. Hence, in our view Respondent No. 2 was justified in taking recourse to Rule 5 (1) of the Central Civil Service (Temporary Service) Rules 1965. We are unable to find any illegality in the order.

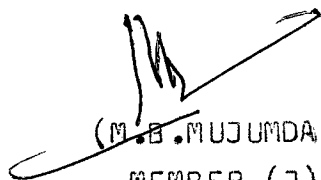
10. Mr. Amesur made a grievance that the applicant is not paid his salary. We may point out that the impugned notice dated 15.7.1985 was served on the applicant on 18.7.1985. The applicant filed the suit on 30.8.1985. Mr. Shetty stated that the applicant was on duty till 17.8.1985.

11. If the respondents have not paid his salary upto that date i.e. for the period during which he worked, then they should pay the same to him within two months from the date of receipt of a copy of this order. With this direction we dismiss the application, i.e. Tr.A.No. 18/88, with no orders as to costs.



(P.S. CHAUDHURI)

MEMBER (A)



(M.B. MUJUMDAR)

MEMBER (J)