

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

TR.NO. 341/86

Shri Ramakant Lazmanrao Tilekar,
170, Old Bazar, Kirkee,
Pune 411 003.

Applicant

v/s.

Union of India,
Through the Secretary,
Government of India,
Central Water & Power Research
Station, P.O. Khadakwasla,
Research Station,
Pune 411 024.

2. The Director,
Central Water & Power Research
Station, P.O.,
Khadakwasla Research Station,
Pune 411 024.

RESPONDENTS

CORAM : Hon'ble Vice-Chairman B C Gadgil
Hon'ble Member (A) J G Rajadhyaksha

APPEARANCE :

Mr. Rairkar
Advocate
for the Applicant

Mr. S.R.Atre
Advocate
for Respondents

JUDGEMENT

Dated: 29.1.1988

(PER: Hon'ble Vice Chairman Mr.B.C.Gadgil)

The Regular Civil Suit No. 980 of 1985 on the
file of the Civil Judge, Senior Division, Pune is transferred
to this Tribunal for decision.

2. The applicant (Original Plaintiff) was working
as a Fitter in the Central Water & Power Research Station,

Khadakwasla. His services were terminated by Communication dated the 30th September, 1982 in exercise of the powers under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. It is this termination that is being challenged before us.

3. As mentioned above the applicant was originally appointed on 23.7.1979 as a Fitter on probation for two years. On 16.11.1981 the department passed an order that the applicant has successfully completed the probation period and that he would be continuing on officiating basis w.e.f. 15.7.1981. On 8.6.1982 the Executive Engineer received a report that the applicant was playing with a Gulal and Pebbles, on 8.6.1982 in the office premises and that a glass pane of a window was damaged due to his act. On the next date, i.e. on 9.6.1982 memoes were issued by the Executive Engineer as also the Administrative Officer asking the applicant to explain as to why disciplinary action should not be taken against him for the above incident. The applicant gave his explanation. Thereafter, on 18.6.1982 the Administrative Officer issued a further memo stating therein that the explanation given by the applicant was far from satisfactory. The applicant was called upon to explain within 7 days from the date of the memo as to why his services should not be terminated. It is thereafter that the impugned order dated the 30th September, 1982 was issued.

4. The main grievance of the applicant is that the termination of service ostensibly issued under Rule 5(1) is infact a penalty imposed upon the applicant for the above mentioned alleged misconduct. The applicant

contends that imposing such penalty of removal from service without holding a proper departmental enquiry is not permissible and that, therefore, the ~~Impugned~~ Order dated the 30th September, 1982 is liable to be quashed.


5. The respondents have filed their reply before the Tribunal after the matter was transferred to this Tribunal. It was contended that the services of the applicant were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules 1965 without assigning any reason and that a full fledged enquiry was not at all necessary as the question of holding such enquiry did not arise. In substance, the contention of the respondents is that a penalty has not been imposed in the garb of simple termination of service.

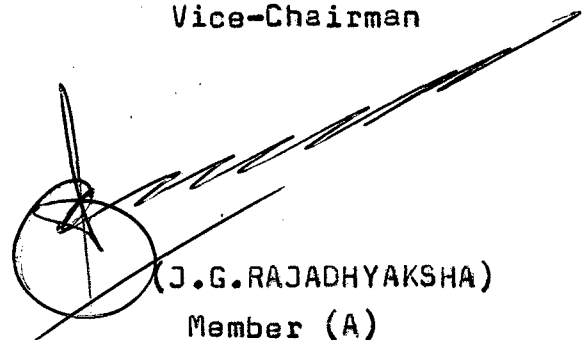
6. We have heard Mr. Rairkar for the applicant and Mr. S. R. Atre for the respondents. As stated earlier the order of termination of service was a simple termination in exercise of the powers under Rule 5 (1) of Central Civil Services (Temporary Service) Rule, 1965. It is true that ordinarily the frame of the order would be relevant for the purpose of determining as to whether it is a simple termination or whether it was a penalty in the garb of a simple termination. However, it is now an accepted position of law that the wording of the termination order would not always be decisive particularly when a grievance is made that the termination is based upon alleged misconduct. Similarly, it cannot be disputed that the termination would be good if the conduct of the applicant constituted a motive for termination. Similarly, if the termination is

based or founded upon any misconduct, the said termination would be bad. This has been so held in a number of cases, for example, in case of Jarnail Singh & Ors. V/s. State of Punjab & Ors. reported in A.T.R. 1986 (2) Supreme Court, 193. The Supreme Court had held that termination of service would be by way of penalty if certain allegations against the employees were the basis and foundation for such termination. Similar view has been taken by the Supreme Court in the case of Smt. Rajinder Kaur V/s. Punjab State reported in A.I.R. 1986 S.C. 1790 and in Anoop Jaiswal V/s. Government of India & another in 1984 Supreme Court Cases (L&S) 256. The Supreme Court has held that where certain report about the conduct of the applicant is the foundation for the termination order, the said report or allegation should be read along with the order for the purpose of determining its true character. Thus what is relevant is whether the alleged misconduct is the foundation of the order or whether it constituted motive for terminating the services. In the earlier case, the order would be a penalty while in the latter case it would be a simple termination which cannot be challenged if that termination is permissible under those rules. Of course, there cannot be any straitjacket tests to distinguish as to whether the misconduct was a motive or foundation for the order. Everything will depend upon the facts of each case.

7. In the present case it is material to note that on 18.6.1982 a memo was issued to the applicant informing him that the explanation given by him was far from satisfactory. The memo further stated that the act of

the applicant was a dangerous one. Not only that, but by the same memo, the applicant was called upon to explain within 7 days as to why his services should not be terminated. The simple termination dated the 30th September, 1982 has to be considered in the background of this memo whereunder the applicant was called upon to show cause as to why his services should not be terminated. In our opinion, the circumstances of the case are such that the allegations against the applicant mentioned in the above mentioned memo constituted foundation for terminating his services. This is not permissible under the law as it would be tantamount to imposing a penalty in the garb of a simple termination. Hence the termination of service is liable to be quashed. The application succeeds. The termination of service of the applicant on the basis of communication dated the 18th June 1982 is quashed. The respondents are directed to reinstate the applicant in service. The respondents are further directed to pay to the applicant the due salary and other monetary benefits from the date of termination till his reinstatement; and regularly thereafter as he will be in their service now. This order should be complied with expeditiously, say within a period of 4 months from today. Parties to bear their own costs of the application.


(B.C.GADGIL)
Vice-Chairman


(J.G.RAJADHYAKSHA)
Member (A)