

(4)

CAT/J/12

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 854/89  
 XXXXX Box 198

DATE OF DECISION 13.9.1990

Shri S.S.Pednekar Petitioner

Shri Walwaikar Advocate for the Petitioner(s)

Versus

The River Navigation Deptt. &amp; Ors. Respondent

Shri H.R.Bharne Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER(A),

The Hon'ble Mr. N.DHARMADAN, MEMBER(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
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

*h*  
 (N.DHARMADAN)  
 MEMBER(J).

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY,  
CAMP AT PANAJI.

Original Application No.854/89.

Shri S.S.Pednekar.

... Applicant

V/s.

The River Navigation Department,  
Government of Goa, through  
Administrative-cum-Accounts Officer,  
officiating at River Navigation  
Department, Panaji, Goa. & Others     ... Respondents.

Coram: HON'BLE MEMBER(A), SHRI M.Y.PRIOLKAR,  
HHON'BLE MEMBER(J), SHRI N.DHARMADAN.

Appearances:-

Applicant by Shri Walwaikar.  
Respondents by Shri H.R.Bharne.

Oral Judgment:-

(Shri N.Dharmadan, Member(J))     Dated: 13.9.1990

The applicant has filed this application under section 19 of the Administrative Tribunals Act challenging Annexure-IV, termination order dt. 1.9.1988 invoking Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 and also Annexure - V relieving order dt. 10.10.1988.

2. The short facts for deciding the case are as follows: The applicant was appointed after a selection by the Departmental Promotion Committee under the second respondent as a "Sailor" group 'C' on the scale of Rs.260-6-326-EB-8-350 plus usual allowance admissible from time to time. Annexure-A-I is the appointment order. Subsequently, number of other persons were also appointed as 'Sailors'. While he was continuing in the service, he was given Annexure-A-2, show cause notice dt. 16.6.1988 to explain about his absence from duty on 6.6.1988 at about 19.55 hrs. He submitted a detailed explanation dt.20.6.1988.

...2.

That explanation was found to be not acceptable by the Administrative-cum-Accounts Officer and he has issued Annexure-3 letter dt. 29.6.1988 directing the applicant to apply for leave. Thereafter, on 1.9.1988 without any further inquiry his services were terminated and he was relieved from the service w.e.f. 10.10.1988.

3. The applicant approached this Tribunal challenging the termination on the ground that it is arbitrary and that it was issued without giving him an opportunity to establish his innocence.

4. The respondents have filed a counter affidavit in which it has been admitted that a show cause notice was issued to the applicant when the applicant was found to be absent from duty on 6.6.1988. <sup>Sub. b)</sup> It was contended that this is a simple termination of the services of the applicant under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965.

5. We have heard the arguments of Counsel of both side. The learned Counsel for the applicant brought to our notice the statements in paragraph 'E' of the affidavit, wherein he has stated that the absence from duty on 6.6.1988 was resulted only because of some extraneous circumstances, which is not attributable to him. <sup>Sub. b)</sup> The absence was <sup>some</sup> not deliberate and intentional. In fact he has given <sup>some</sup> explanation to satisfy the respondents that he has not remained willfully absent from duty, and if he is given opportunity to establish the same, he would have produced evidence and satisfied the respondents that he has not committed any fault. But such an opportunity was not given and the termination order was effected.

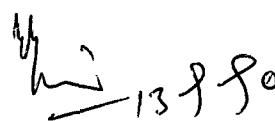
6. Of course, the respondents can invoke Rule 5(1) of the CCS rules in appropriate cases where there is <sup>proved</sup> <sup>when</sup> true inefficiency or incompetence or even an officer who is found

to be unfit to hold office after satisfying them on the basis of the materials available. Here in the instant case there is no material to establish any of the circumstances mentioned above. On the other hand, when the respondents found that the applicant has committed a default in the discharge of the duty they have decided to inquire into the matter by issuing a show cause notice. Subsequently they have changed their stand and terminated the services of the applicant without any further inquiry or at least giving an opportunity to the applicant to establish his innocence. This action on the part of the respondents is unsupported and we are unable to sustain the order of termination issued in this case. Accordingly, we have no other alternative, but to quash the impugned orders of terminating the applicant and relieving him from service and direct the respondents to reinstate him in service forthwith, with all service benefits except salary and allowances which we think on the facts and circumstances of the case the applicant is not eligible. In the result, we allow the application. There will be no order as to costs.

  
(N.DHARMADAN)

MEMBER (J)

13.9.90

  
(M.Y.PRIOLKDAR)

MEMBER (A).