

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 194/96

Date of Decision 14.1.97

Rajkamal Meena

Petitioner

Shri G.K.Masand.

Advocate for the Petitioner.

Versus

Union of India.

Respondent

Shri M.I.Sethna with Shri

Suresh Kumar.

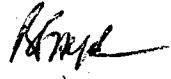
Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member(J),

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

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

Original Application No.194/1996.

14/2, this the Friday day of January 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

Rajkamal Meena,
Bldg. No.E-3, Flat No.11,
Vrindavan Society,
Chinchwad, Pune - 19.

... Applicant.

(By Advocate Shri G.K.Masand)

V/s.

The Commissioner of Central
Excise & Customs,
PMC's Commercial Bldg.,
Hirabaug Tilak Road,
Pune - 411 002.

... Respondent.

(By Advocate Shri M.I.Sethna
along with Shri Suresh Kumar).

O R D E R

(Per Shri B.S.Hegde, Member(J))

In this O.A. the applicant is challenging
the termination order issued by the Respondents vide
order dt. 6.2.1996 which reads as follows :

"In pursuance of sub-rule(1) of Rule 5 of the
Central Civil Services (Temporary Service)
Rules, 1965, I, D.S.Karanth, Additional
Commissioner (P&V), Central Excise & Customs,
Pune hereby give notice to Shri Raj Kamal
Meena, Inspector that his services shall
stand terminated with effect from the date
of expiry of a period of one month from
the date on which this notice is served on
or as the case may be tendered to him."

2. The only contention raised in this O.A. is
that the said termination order has not been signed by
the Competent Authority nor it has been despatched on
8.2.1996. On hearing the argument of the learned

counsel for the applicant, the Tribunal vide its order dt. 4.3.1996 granted interim order for a period of 14 days as the notice period would come to an end by 6.3.1996, which ~~had continued~~ from time to time. The Respondents have filed their detailed reply. Since the matter involved is a short one whether the termination order issued by the respondents is legally justified or not. Accordingly, the matter was kept for hearing on 7.1.1997.

3. Heard Shri G.K.Masand, counsel for the applicant and Shri M.I.Sethna, along with Shri Suresh Kumar, counsel for the Respondents.

4. The brief facts are that the applicant was appointed as Inspector in the pay scale of Rs.1640-2900 vide appointment letter dt. 29.3.1993 and directed to report for duty on or before 30.4.1993 at Ratnagiri. Since the applicant required more time to join, he sought for extension of time and he accordingly joined duties on 31.5.1993. The appointment of the applicant was with a condition that he will be on a probation for two years subject to other conditions. During his service at Ratnagiri the applicant availed Extraordinary Leave/Earned Leave/Medical Leave/Unauthorised Leave on various grounds. The said leave was not sanctioned by the A.C. Customs, Ratnagiri. The applicant has been given three Memos by the A.C. Customs, Ratnagiri on 1.2.1994, 28.7.1995

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and 16.8.1995 for his unauthorised absence from duty. Though the applicant replied for the same, he has been again asked to improve himself in attending the office promptly. Since he failed to fulfill the provisions of various service conditions, while on probation he was transferred to Pune vide order dt. 23.6.1995 and he joined at Pune Division on 16.8.1995. Again while serving at Pune Division he availed Earned Leave and Leave without pay unauthorisedly. The applicant during the period of his service from 31.5.1993 to 4.3.1995 has availed 604 days leave as against 1006 days of service. It is on record to show that the applicant has failed to appear for Paper V of Departmental Examination held in January, 94, July 94 and September, 95. Since he failed to comply with the directions of the Competent Authority and he remained absent without prior sanction of leave by the Competent Authority, the Respondents were left with no alternative but to terminate his services under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. Accordingly, the Competent Authority, Pune sent the termination Order to his permanent residential address by Registered Post with Acknowledgement Due and another copy in addition to the above was sent to his Divisional Office to be served upon him with an extra copy of the order to Division A.C. for information and his office record. The said order was served on the applicant and as a token of having received the same the applicant gave an acknowledgement receipt dt. 8.2.1996. Thereafter, he sent a

representation dt. 16.2.1996 to the Commissioner, Central Excise, Pune against his termination order/ notice dt. 6.2.1996. However, before taking suitable action in this matter he filed the present O.A. on 23.2.1996, the case was posted for hearing on 4.3.1996 and the Tribunal granted ad-interim relief as prayed for, for a period of 14 days, whereby the Respondents were handicapped in disposing of the pending ~~in view of pending O.A.~~ appeal. It is an admitted fact, that the applicant has taken the trouble of ascertaining ~~the~~ correctness and validity of the unsigned order/notice by bringing the fact to the notice of immediate superior viz. the Superintendent, who in turn has duly confirmed the correctness and validity of unsigned order/notice by duly attesting the same.

5. The learned counsel for the Respondents Shri Sethna pointed out that the applicant has suppressed certain material facts which has not been brought out in the O.A. Shri Sethna draws our attention to the fact that though the applicant had preferred an appeal against the termination order without ^{the} waiting for ~~for~~ reply, he filed this O.A. and obtained ad-interim relief against the said order of termination and thereby the respondents were handicapped in passing any order on the appeal. The ad-interim relief passed by the Tribunal was later modified to the effect that "status quo to be maintained as on to day".

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In the light of the above, the question to be seen here is whether the termination order issued by the Respondents is just and proper and merely because the unsigned copy of the termination order was furnished on the applicant would vitiate the termination order itself. As stated earlier, even assuming that the termination order is unsigned (which in fact is not) even in that case the order will not be vitiated. Since the applicant has not made out any case that his rights have been prejudiced by the unsigned copy which has been received by him admittedly on 8.2.1996 and the signed copy had already been sent to his permanent residential address which has been received by his relative (brother) and he has not challenged the same. As stated earlier, in view of his indifferent attitude in attending the office and taking leave without any sanction, the Respondents sent the termination order by Registered Post to his given residential address on 7.2.1996 itself which is on record and as a token of having received the same the applicant gave an acknowledgement vide receipt dt. 8.2.1996 and the termination order dt. 6.2.1996 has been attested by the Range Superintendent certifying it as a true copy. In any event, since the unsigned copy of the termination order was duly certified by the Superintendent to be a true copy the contention of the applicant that the copy of the termination order was unsigned is not tenable and

is far from satisfactory and the said contention cannot be accepted. ~~However~~ The applicant has raised a point of that before termination/his services he should have been given due opportunity to explain his conduct or hearing which has not been given in this case. As the services of the applicant was Badly required by the Administration he was warned many times, but he did not ~~improve~~ himself and he remained absent without obtaining prior sanction of the leave. His reply to the ~~Memos issued~~ by the department is also not satisfactory. Since the applicant was absent from his duties unauthorisedly and without observing any procedure, the Competent Authority was left with no other alternative, but to terminate his services under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965. In this O.A. the applicant is not challenging the propriety of issuing of termination order by the respondents, but he has only emphasised that the copy which was given to him was an unsigned by the authority concerned, which is bad in law. In support of his contention, the learned counsel for the Respondents Shri Sethna draws our attention to the decision of the Supreme Court in State of Uttar Pradesh V/s. Kaushal Kishore Shukla (JT 1991(1) S.C.108) wherein the Apex Court has held that "Under service jurisprudence a temporary employee has no right to hold the post and his services are liable to be

terminated in accordance with the relevant service rules and in terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination. A temporary Govt. servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Govt. servants. A temporary Govt. servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant."

6. It is further contended by the applicant that after a period of two years of service he should have been confirmed in the grade. This contention is not tenable in view of the Departmental Examination

(Central Excise) Rules, 1986. Para 3 envisages that if a temporary employee is required to pass the prescribed examination unless they are exempted from passing under Rule 7. Rule 5 also states the period within which the departmental examination should be passed. As stated earlier the applicant has not passed the part-V examination and he has been given three memos during his probationary period and availed of unauthorised leave without prior sanction without submitting medical certificates. Therefore, even the alleged confirmation comes after completion of three years of service and passing of the prescribed departmental examination, on that count also the plea of the applicant cannot be sustained. In the instant case the services of the applicant was terminated under the C.C.S. (Temporary Service) Rules, 1965 Rule 5(1) and was also given one months notice on account of his unsuitability and unauthorised absence while on probation and such termination would not attract the operation of Article 311 of the Constitution. If the order vitiates the public servant with any evil consequences, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or temporary servant. However, the order of termination by simplicitor cannot be deemed to be treated as violation of Article 311 of the Constitution. In our view, the termination order issued by the respondents is in accordance with rules and no motives can be attributed

against the termination order. Therefore, the resignation letter given by the applicant vide his letter dt. 24.6.1996 has no effect in the eye of law. In view of our findings since the termination order was despatched to his residential address is deemed to be a service and a copy which was given to him, though it was not signed has been attested by the concerned officer stating it to be a true copy, it is to be treated as a service to the applicant and the said notice cannot be faulted with.

7. In the result, we see no merit in the contention as well as the pleadings of the applicant and the termination order issued by the respondents is just and proper. In the circumstances, we are of the opinion, that the O.A. is devoid of merits and the same is dismissed at the admission stage itself. No order as to costs.


(P.P.SRIVASTAVA)
MEMBER(A)


(B.S. HEGDE)
MEMBER(J).

B.