

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 254/96

Date of Decision: 28.7.1999

D.V.Vedante

Applicant.

Shri A.I.Bhatkar

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar


Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri. S.L.JAIN, MEMBER (J)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓


(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 254/96

Wednesday this the 28th day of July, 1999

CORAM: Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

D.V.Vedante,
Ex-Driver,
R/o Room No. 4,
Clerks Quarter,
Block No.1, S.M.Road,
Antop Hill, Bombay.

... Applicant

By Advocate Shri A.I.Bhatkar

V/S.

1. Union of India through
Secretary, Ministry of Industry,
Department of Industrial
Development, New Delhi.
2. The Salt Commissioner,
Lavan Bhavan 2-A,
Lavan Marg, Zalana Dungri
Jaipur, Rajasthan.
3. Deputy Salt Commissioner,
Exchange Building, 4th floor,
Sprot Road, Ballard Estates,
Bombay.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R (ORAL)

(Per: Shri D.S.Baweja, Member (A))

This application has been filed by the
applicant challenging the punishment of removal
from service as imposed by order dated 2.8.1995
and the appellate order dated 28.6.1996 through
which his appeal was rejected.

2. The applicant was initially engaged on daily wages as a Driver under Respondent No. 2, i.e. Deputy Salt Commissioner. The applicant was appointed on adhoc basis on the recommendations of the selection committee as a Driver in the scale of Rs.950-1500 as per order dated 30.1.1987. Thereafter, the applicant was appointed on a regular basis as per order dated 28.6.1987 on a probation of two years of service. The applicant successfully completed his period of probation and the same was notified as per the order dated 30.6.1989. A show cause notice dated 30.6.1995 was issued to the applicant stating that the School Leaving Certificate which was given by the applicant at the time of appointment was fictitious and why action should not be taken against him for
 / furnishing false information. The applicant submitted a reply to the show cause notice on 27.7.1995. Thereafter, the competent authority passed an order dated 2.8.1995 imposing the punishment of removal from service. The applicant then filed an appeal for the same which was also rejected by the appellate authority as per order dated 28.6.1996.

3. The main ground of attack of the applicant is that since the applicant was a permanent employee, the punishment of removal from service could not be imposed on the applicant without following the procedure as laid down under Rule 14 of CCS(CCA) Rules, 1965. The respondents have adopted a short-cut method of issuing

a show cause notice and thereafter imposing the punishment of removal from service. The applicant has ^{also} brought out that respondents have relied upon the O.M. dated 30.4.1965 of Ministry of Home which has been subsequently superseded by O.M. dated 19.5.1993. As per O.M. dated 19.5.1993, it has been provided that in case the action is to be taken against an employee who is found ineligible or unsuccessful subsequent to appointment, then if he is a permanent employee, any action to terminate the services should be ^{taken after} following the procedure under Rule 14 of CCS(CCA) Rules, 1965. In ^{19.5.93} terms of OM dtd. the respondents have not followed the laid down rules and therefore their action is illegal.

4. The respondents have filed the written statement opposing the application. The basic facts with regard to regular appointment of the applicant and satisfactory completion of the probation period are not denied. The respondents have contested that since the applicant had not admitted the charges levelled against him in the show cause notice, it was no need to conduct a detailed enquiry.

5. We have heard the arguments of Shri A.I. Bhatkar, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents.

6. From the rival pleadings brought on to be considered record, the question/is whether the penalty of removal from service could be imposed on the applicant who was a permanent Government servant. On going through the show cause notice, it is noted that the action has been taken for removal from service in terms of the provisions of the O.M. dated 30.4.1965 which lays down that in the Attestation Form a warning has been given wherein it is provided that in case of false information or suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated. As indicated earlier, the counsel for the applicant has brought to our notice that O.M. dated 30.4.1965 ^{since} has been/superseded by the O.M. dated 19.5.1993 below Rule 11 of the CCS(CCA) Rules, 1965 which provides that in case of a permanent Government servant an enquiry prescribed under Rule 14 is required to be held in the event any action/^{is}being taken against an employee who has given any false information and is considered unqualified for appointment at the time of recruitment. Keeping the provisions of Article 311 of the Constitution of India and the Rule 14 of CCS(CCA) Rules, we are of the considered opinion that the respondents could not adopt the process of issuing a show cause notice for imposing punishment. For imposing ~~of~~ punishment

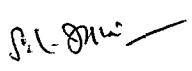
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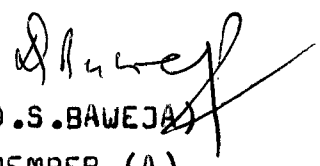
under 1965 Rules of removal from service, the respondents were required to follow the laid down procedure. The learned counsel for the respondents ^{however} ^{during arguments} sought to plead that the principles of natural justice have been followed by issuing a show cause notice and penalty of removal has been imposed on the fact that the applicant had admitted the charge. The learned counsel for the applicant, however, argued that the applicant had not admitted the charge and he had qualified the admission giving an explanation detailing the circumstances under which he had to give the certificate which had been ^{alleged} to be fictitious by the respondents.

7. The learned counsel for the applicant has also cited a judgement of the Hon'ble Supreme Court in the case of Jagdish Parsad vs. Sachiv Zila Ganna Committee, Muzaffarnagar and another, AIR 1986 SC 1108. In this case, the services were terminated after issuing a show cause notice without following the detailed procedure of enquiry as laid down by the regulations of the committee. The ^{Hon'ble} Supreme Court did not approve the action taken by the respondents and held that detailed enquiry as per the laid down rules had to be held before the punishment could be imposed. In the present case also the situation is the same. The punishment has been imposed based

on the show cause notice without following the procedure of conducting enquiry as per the rules laid down. Therefore, the ratio of this judgement squarely applies to the present case. We, therefore, hold that the impugned order dated 2.9.1995 imposing the punishment of removal from service and the order of the appellate authority dated 28.6.1996 are not legally sustainable and the same deserve to be ^{quashed} dismissed. (Q)

8. In the result of the above, the DA. is allowed. The impugned orders dated 2.8.1995 and 28.6.1996 are set aside with the direction that the applicant will be reinstated in service as if no punishment of removal from service had been imposed. The applicant will be entitled for all the benefits of pay and allowances and other consequential benefits. Liberty is, however, granted to the respondents to proceed against the applicant if so desired as per the extant rules laid down. Compliance of the order be done within two months from the receipt of the order. No order as to costs.


(S.L.JAIN)
MEMBER (J)


(D.S.BAWEJA)
MEMBER (A)

mrj.