

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.656/1996.

Tuesday, this the 17th day of October, 2000.

Hon'ble Shri Justice Ashok Agarwal, Chairman  
Hon'ble Shri B.N.Bahadur, Member (A)

Ganesh Argogam Naidu,  
10/114 CPWD, Colony Sahar Village,  
Mumbai - 400 090.  
(By Advocate Shri C.M.Jha)

...Applicant

Vs.

1. Union of India through its  
Secretary Ministry of Rural Development  
National Drinking of Water Mission,  
9th Floor, Paryavaran Bhavan - B - II Block,  
C.G.O. Complex, Lodhi Road,  
New Delhi - 110 003.

2. Superintending Engineer  
Central Management Cell  
for UNICEF Stores  
Commerce House 1st Floor,  
Ballard Estate,  
Mumbai - 400 038.  
(By Advocate Shri C.N.Anand)

...Respondents.

: O R D E R (ORAL) :

Justice Ashok Agarwal :

By the present OA, applicant seeks to impugn an order dated 9.3.1993 ~~removing him~~ <sup>terminating</sup> from service. He seeks a direction to the respondents to reinstate him back in service.

2. Few facts leading to the filing of the present OA are as follows.

Applicant by an order of appointment issued on 14.3.1989 was appointed as a Driver. The order is annexed at Exhibit - 'B' to the OA. The order recites that his appointment is against a purely temporary vacancy. The same is on a purely temporary

...2.



basis. By a notice of 9.3.1993 at Exhibit - 'A' his services were terminated by issue of the said one month's notice. By a further order passed on 3.9.1993, his services were declared to have stood terminated w.e.f. 26.4.1993 i.e. on the expiry of one month of service of the notice of 9.3.1993.

3. Prior to the aforesaid notice of termination, an incident of theft had taken place in July, 1992. An F.I.R. had accordingly been lodged by and at the instance of the respondents on 20.7.1992. Applicant had absented himself from duty during the period 27.7.1992 to 1.9.1992. Enquiries conducted by the respondents with the concerned Police Station revealed that the applicant had been detained in custody during the period 27.7.1992 to 10.8.1992. This was followed by the impugned order of termination of his services. Applicant has, thereafter been acquitted by the Criminal Court by a Judgment and Order passed on 11.12.1995. Based on the order of acquittal, applicant submitted his representation on 22.2.1996 seeking reinstatement. Since there was no response from the respondents, applicant has proceeded to institute the present OA on 6.6.1996.

4. We will take up <sup>first</sup> for consideration the preliminary plea raised by Shri C.N.Anand, learned counsel appearing on behalf of respondents, namely the bar of limitation. According to Shri Anand, applicant is seeking to impugn an order of termination which was issued way back in 1993. Present OA which has been filed in 1996 is, in the circumstances, hopelessly barred by the law of limitation. Present OA, in the circumstances, deserves to be dismissed on this short ground alone.

5. In our judgment, there is no merit in the aforesaid

...3.



contention. Aforesaid OA, we find is seeking reinstatement based on the order of acquittal passed by the criminal court. As far as the order of termination is concerned, the same was prompted by the prosecution which had been launched against him. Hence, so long as the same was pending, applicant did not have a cause of action to claim reinstatement. The said cause of action arose on his being acquitted of the charges framed against him. This was on 11.12.1995. Applicant, in the circumstances, submitted his representation on 22.2.1996. He did not receive any response to the same. In the circumstances, he has instituted the present OA on 6.6.1996 which is well within the period of limitation. Aforesaid contention of Shri Anand is in the circumstances, rejected.

6. The order of appointment of the applicant indeed is an order of temporary appointment. It is purported to be against a purely temporary vacancy. No material has been placed on record to show against which vacancy applicant was appointed and whether the incumbent of the said ~~vacant~~ post has returned back to join his duties. Applicant, it cannot be disputed has continued in employment for a continuous period of four years. The notice of termination also appears to be a simple notice terminating his services. However, if one lifts the veil, it is apparent that the same has been promoted by the prosecution which has been launched against the applicant. In their reply, respondents have given two more reasons, which according to them have weighed with the authorities to issue the orders of termination. According to them Respondents, the office of the Superintending Engineer in

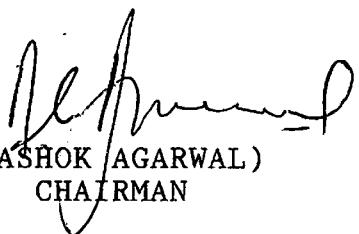


UNICEF Stores has since been transferred to New Delhi. This, according to the respondents, is with effect from 1.4.1989. Hence, according to the respondents, there no longer exists a necessity to have a Driver for a post which no longer exists in Bombay. The second ground which is set up by the Respondent is that applicant had been responsible for causing damage to the office Jeep. This was in September, 1989. The said Jeep was later on required to be condemned. Based on the aforesaid facts, it is inter alia contended that there is no master and there is no Jeep and hence there should be no Driver. In our judgment, there is no merit in the aforesaid contention also. The transfer of the office of the Superintending Engineer was way back on 1.4.1989. The damage was also way back on 22.9.1989 Yet, the services of the applicant were continued till March, 1993. Aforesaid reasons therefore, in our view, have been dug up merely in order to support the order of termination. It is not seriously disputed by and on behalf of the respondents that the immediate cause for issuing the order of termination is the prosecution of the applicant. Once the prosecution has ended in acquittal in favour of the applicant, the order of termination cannot be sustained and the same deserves to be quashed and set aside or in any event deserves to be withdrawn. We order accordingly.

7. Present OA, in the circumstances, is allowed. Respondents are directed to reinstate the applicant back in service though without backwages. Present order be implemented within a period of three months from the date of service of this order. No costs.

B.N.Bahadur

(B.N.BAHADUR)  
MEMBER(A)  
SNS

  
(ASHOK AGARWAL)  
CHAIRMAN