CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.209/2001

Dated this, the 17th Day of July, 2001.

Shri Sanjay Harischandra Hariyan . . ... Applicant
(Applicant by Shri Jayant Satghar, Advocate)

Versus

UOI & Ors. ... Respondents

(Respondents by Shri M.I.Sethna, with Shri D.B.Mishra, Advocates)

CORAM:

HON'BLE SHRI B.N. BAHADUR, MEMBER (A)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? X

(3) Library. Yes

(B.N.Bahadur)
Member (A)

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

O.A.No.209/2001

Date of decision: 12.7.2001

CORAM: HON'BLE SHRI B.N. BAHADUR, MEMBER (A)

Shri Sanjay Harischandra Hariyan
Peon, in the office of
Deputy Director (West).
3rd floor, Commerce House,
Currimbhoy Road,
Ballard Estate,
Mumbai 400 001. ..... Applicant

(Applicant by Shri Jayant Satghar, Adv.)

vs.

Union of India, through
1. Deputy Diorector (West)
Hindi Teaching Scheme,
3rd floor, Commerce House,
Currimbhoy Road,
Ballard Estate,
Mumbai 400 001.

2. Director,
Kendreeya Hindi Prashishan
Sanstha, Ministry of
Home Affairs,
Department of Official Language
Pariyavaran Bhavan,
7th floor,
C.G.O. Complex, Lodhi Road,
New Delhi 110 003. ..... Respondents

(Respondents by Shri M.I. Sethna, Adv. with Shri D.B.Mishra, Adv.)

O R D E R (ORAL)

[Per: B.N.Bahadur, Member (A)]

This is an Application made by Shri Sanjay Harishchandra Hariyan who comes up to the Tribunal challenging the order discontinuing him from temporary service w.e.f. 11.12.2000 (Annexure I). It is contended that this order is illegal and in contravention of Rule 5 of the Central Civil Services (Temporary

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Services) Rules 1965 which the Applicant contends are applicable to him. While giving a synopsis of the correspondence that is relevant to his case, it is importantly stated by the Applicant and by his learned Counsel Shri Jayant Satghar who argued the case before me today, that the Applicant was employed on a temporary basis vide order dated 15.11.1999 (page 24 of the Paper book) in the Group D service. The order states that the appointment is "until further orders" and gives details of the Pay etc. On 11.12.2000 the impugned order referred to above was made. The learned Counsel for the Applicant who argued the case also stated emphatically that the communication dated 22.2.2001 (Page 28) which belatedly indicates the Rules under which the termination of Applicant was made and also be taken as adequate and telling evidence of the arbitrariness of the Order.

2. The Respondents in the case have filed a Written Reply, in which all claims and allegations are denied, and it is contended that the order dated 11.12.2000 is legal and not in contravention of Rule 5 of the CCS (Temporary Services) Ruloes. It is further stated that a payment of salary and one month's pay in lieu of one month's notice was also made to the Applicant on 26.2.2001 which was returned by Applicant vide letter dated 28.2.2001. Further the respondents state that the applicant's service can be terminated at any time, by giving him one month's notice or one month's salary in lieu of Notice, as per Rules, and hence there should be no surprise or shock on the part of the Applicant.. It

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is further contended that in the terms and conditions of the Appointment this had been clearly laid down. Details of the efforts to make payment through Demand Draft are also given. The further portion of the reply Statement gives parawise reply to the O.A.

3. I have considered all papers in the case and have heard learned Counsel for the parties in the case. I have also considered the case law cited on both sides. Learned Counsel for the Applicant, reiterating the facts and contentions reproduced above, attacked the order on the ground of illegality, and, more so, described it as one being totally arbitrary. He stated that in the first place, the principles of natural justice were not followed. Even assuming that instead of one month's notice a salary of one month was to be provided he argued that as per Rule V, the provision of such salary should be made "forthwith" in accordance with the word used in the Rules. Hence nonpayment of salary and non mention of this in the termination order made it illegal. He contended that one month's salary amount was paid to Applicant *after* the termination. Learned Counsels cited the judgement of Hon'ble Supreme Court in the matter of *Rakesh Kumar Singh vs. Committee of Management, Raibarali [1996 (1) ATJ 610]* as also the judgement of Supreme Court in the matter of *Prabhudayal Birari vs. M.P. Rajya Nagarik Aapurti Nigam Ltd. [AIR 2000 SCC 3058].* Both the Counsels, in fact, sought to depend on the more recent judgement of the Hon'ble Supreme Court

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in the matter of *Municipal Corporation of Delhi vs Premchand Gupta 2000 SCC (L&S) 4 Civil Appeal (SC)*.

4. Arguing the case on behalf of the Respondents, their learned Counsel Shri Sethna stated that there was no requirement of simultaneous payments of one month's notice amount along with the order of termination. He took us over the Rule No.5 (supra) in the matter and stated that the construction of Rules implied that the word "forthwith" related to the alternative that was available in lieu of one month's notice and did not relate to the fact of necessity of payment of such amount simultaneously or forthwith. It was argued by Shri Sethna that the judgement in the matter of Premchand Gupta squarely concluded the matter. in favour of Respondents. Another judgement in the matter of *UOI vs. Ram Parmeshwar 2000 (2) SLJ 317* was also cited.

5. On an assessment of the facts and rules of the case, it is seen firstly that the word "forthwith" in the Rules does not indeed stipulate or lead one to the conclusion that the Rule requires simultaneous payment of the amount (equivalent to one months's salary) along with the termination order. It is indeed correctly contended by learned Counsel for Respondents that the word "forthwith" refers to the altenrative of terminating an employee's service (when he is appointed) on temporary basis, in contrast to the other alternative of actually giving one month's notice. It is, therefore, difficult to sustain the argument of the learned Counsel for the Applicant that the payment of salary after the termination constituted an illegality or arbitrariness

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or that the word "forthwith" should be construed as argued by him.

6. Learned Counsel for the Applicant has cited the case of Prabhudayal Birani referred to above. In that case the employee was neither given one month's notice nor one month's salary. Hence the ratio of this case, or the relief provided thereon cannot apply to the case before me.

7. Counsel for the Applicant also cited the case of Rakeshkumar in which, it must be noted, that a Committee of Management was the employer/Respondent. In the first place different set of Rules apply there and indeed it was those Rules which were interpreted by the Hon'ble Court. Even on principles this judgement cannot help the case of the Applicant.

8. I now turn to the most important case law cited viz, the judgement of the Hon'ble Supreme Court in the matter of *Municipal Corpn. of Delhi (MCD) vs. Prechand Gupta and Anr.* [200 SCC L&S 404] This issue has been raised in fact in para 8 and disucssed at length in the judgement in this case. Para 14 of the judgement reads as follows:

> *"14. As a result of the aforesaid discussion, it must be held that the termination of the respondent workman from service on 29.4.1966 was not violative of the amended Rule 5 of the latter Rules of 1965 which only applied in his case. Therefore, there was no obligation, on the part of the appellant Corporation to simultaneously offer requisite compensation to the respondent*

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workman as a condition precedent to such termination and such compensation could be offered to him within reasonable time later on. The termination had to be treated to have come into force forthwith when the order of termination was passed and served on the respondent workman. Nonpayment of requisite compensation as per the said rule eve later on did not attract any invalidating consequences. The first point of determination, therefore, is held in the negative in favour of the appellant and against the respondent workman."

The case law squarely applies to the case before me, and it can be therefore, concluded that non payment of the salary along with the termination order cannot constitute an illegality or even arbitrariness. It is also noted in this case that an order of termination dated 11.12.2000 and the first attempt of payment of the salary was made on 26.2.2001. Under the circumstances it cannot be stated that this is an undue delay, it being a period of only about 2 and 2 1/2 months.

9. While therefore, concluding that there is no need for interference in the matter make certain observations before parting with this case:"

It would be advisable for the organisation or the Respondents whenever such orders are necessary, to clearly state in the

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termination order as to which option was being exercised.. In the case of notice the matter is become obvious. When the option of payment equivalent to one month's salary is exercised this should ormally be mentioned in the order. These observations are made to be considered by the Respondents in future.

10. In the consequence of the above observation, the O.A. is hereby dismissed with no orders as to costs.

B.Bahadur

(B.N.Bahadur)
Member (A)

sj*