

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 285 OF 2001

Date of Decision: 26.7.2001

Shri Ramdas U. Gangurde.

Applicant(s)

Shri S.S. Karkera.

Advocate for Applicants

Versus

Union of India & 3 others

... Respondents

Shri R.K. Shetty.
Respondents

Advocate for

CORAM: HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

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

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

(3) Library *✓*

Shanta S
(SHANTA SHAstry)
MEMBER (A)

Gaja

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 285/2001

THIS 26th THE DAY OF JULY, 2001

CORAM: HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

Shri Ramdas U. Gangurde,
aged about 31 years,
Residing at Saptshruni Nagar,
Jail Road, Nasik Road,
Pin - 422 101. Applicant

By Advocate Shri S.S. Karkera.

Vs.

1. The Union of India
through the Station Commander,
Station Headquarters,
Deolali. Pin-422 401.
2. The Administrative Commander,
Station Headquarters,
Deolali. Pin-422 401.
3. The Sub Area Commander,
Army Headquarters,
Mumbai Sub Area, Colaba,
Mumbai-400 005. Respondents

By Advocate Shri R.K. Shetty.

O R D E R

The applicant is aggrieved on account of termination of his services vide order dated 13.6.96 of the respondents and also by the order dated 29.7.2000 whereby the applicant's appeal against termination order has been disposed off by rejecting the same.

2. The applicant, who belongs to Scheduled Caste was initially appointed as a conservancy Safaiwala with effect from 30.10.1995 vide order dated 22.10.95 (27.11.95) by the SSO. His services were terminated by the impugned order dated 13.6.96 on account of unsatisfactory performance. He, therefore, preferred an appeal on 22.2.2000 to the Administrative Commander, Station Headquarters, Devalal^{li}. He also filed OA No. 383/2000 with a limited prayer for a direction to the respondents to dispose of his appeal. Accordingly, the Tribunal directed the respondents to consider the appeal made and dispose off the same within a period of six weeks from the date of the order through a speaking order. Liberty was also granted to the applicant to move the Tribunal as per law, if aggrieved further. The order was passed on 19.6.2000. Thereafter, the respondents have passed the impugned order dated 29.7.2000 in compliance. Thus a speaking order was passed by the Appellate Authority to whom the appeal had been addressed.

3. The applicant is not happy and not being satisfied has once again knocked the doors of the Tribunal by the present OA. He has assailed the earlier termination order as well as the appellate order on two grounds namely, ^{that} the order of termination was not issued by the competent authority and that one months notice as prescribed under the rules was not given to him while terminating his service.

4. The applicant contends that his appointing authority is the Sub Area Commander, Army Headquarters, Mumbai Sub Area, Colaba. Whereas the termination order was issued by SSO (Civ). The power for termination is vested only with the Headquarters of Mumbai. further, the termination order is contrary to the provisions of Rule 5 of the CCS Temporary Service Rules, 1965 inasmuch as no notice of one month has been issued. Such notice ought to have been given to him so as to enable him to submit his defence. This is against the principles of natural justice.

5. The Appellate Authority has also not applied his mind while passing the impugned order dated 29.7.2000 on the appeal. The authority should have appreciated the fact that due to sickness the applicant had remained absent. The Appellate Authority misinterpreted the authority vested in the Commander, Mumbai Sub Area and held that such powers vested in the Commander can be delegated to his staff. Actually they cannot be delegated further.

6. He has therefore prayed to quash and set aside the impugned orders and to reinstate him in service with all consequential benefits such as back wages, continuation in service and seniority in Grade "D" post.

7. The applicant has relied on certain judgments of the Supreme Court. He has referred to the judgment in the case of R. Ramesh Chandra Tyagi Vs. Union of India & Others (1994 SCC (L & S) 562. It was held therein that though the secretary was the competent authority the order of transfer of the appellant was issued by the DG claiming to be delegated authority. Delegation must exist on the date of passing of transfer order. Office notes reveal that no power delegating the DG existing on the date of issuance of the transfer order. Instead of cancelling the order and issuing a fresh order, a second order issued in continuation of the earlier one directing the appellant to join at the transferred place of posting. the first transfer order issued by a subordinate officer having no delegated power was invalid and non est and consequently the second order founded on it also could not stand.

8. The learned counsel for the applicant has cited another judgment of the Supreme Court of India in the matter of V.P. Ahuja Vs. State of Punjab & Others (2000 (1) SC SLJ 272). In this case the original applicant was terminated from service during the probation period on the ground that he had failed in the performance of duties administratively and technically - Neither any enquiry held nor an opportunity of hearing was given to the appellant therein. The court held that the impugned order was not sustainable and quashed the same. While doing so the Hon'ble court relied upon the

recent decision in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Others (1999 (3) SCC 60, AIR 1999 SC 983). According to the court a probationer, like the temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

9. The learned counsel for the applicant has referred to another judgment of the Supreme Court decided on 20.3.96 in the case of Rakesh Kumar Singh Vs. The Committee of Management, Raibarali reported in 1996 (1) ATJ 609. This is regarding whether one month's salary in lieu of one month's notice is required to be paid simultaneously at the time of termination. The Hon'ble court held that where the rules provide even by implication that payment to the employee whatever due to him should be simultaneous with termination of his service then fulfilment of that requirement has to be regarded as a condition precedent to the valid termination. This was in the context of proviso to rule 5 (1) (b) of the CCS temporary service rules.

10. The respondents submit that as directed by this Tribunal in OA 383/2000 the appeal of the applicant was disposed off with a speaking order on 29.7.2000. The primary reason on account of which the services of the applicant were terminated under the CCS Temporary

Service Rules, 1965 is the fact that the applicant's services were hardly satisfactory, not upto the mark. It was, therefore, very much within the powers of the respondents to terminate the services of the temporary servant/probationer. Further, payment of a month's wages in lieu of notice period at the time of termination is not required to be done along with the termination, it can be paid later. In this connection, the learned counsel for the respondents has relied on two latest judgments of the Hon'ble Supreme Court in the case of H.F. Sangati Vs. Registrar General, High Court of Karnataka & Others, (2001 (1) SC SLJ 437 as well as Krishnadevaraya Education Trust & another Vs. S.A. Balakrishna reported in 2001 (2) AISLJ 185. In the first case, it was held that the service of an appointee to a temporary post on probation can be terminated/ dispensed with during or at the end of the period of probation because an appointee does not acquire any right to hold or to continue to hold such a post during the period of probation. In this ~~first~~ case, the applicant, who was appointed as Munsif on Probation in the Karnataka Judicial Service was discharged from service along with another person with immediate effect as they were unsuitable to hold the post of Munsif. This was based on recommendation of the Administrative Committee of the High Court. The Hon'ble court considered the various decisions of the Hon'ble Supreme Court including the Constitution Bench decision in Purushothamlal Dhingra Vs. Union of India (1958 SCR

828) and seven Bench decision in Shamsher Singh Vs. State of Punjab (AIR 1974 (SC) 2192 as also the judgment of Dipti Prakash Banerjee (supra). The case of V.P. Ahuja cited by the applicant was also considered and the Hon'ble Supreme Court held that the impugned order discharging the appellants therein did not cause any stigma on the appellants. The appellants were unsuitable to hold the post of Munsiffs and the order was passed in strict compliance with the requirements of Rule 6 of the Karnataka Civil Services Probation Rule 1977. There was no requirement to comply with the principles of natural justice much less to be proceeded with formal enquiry before making the order. In the second case the Hon'ble Supreme Court again held that the probationer has to prove the suitability for the job and so, termination without assigning any reason is no penalty and is valid even if reason as unsuitable is given, it cannot tantamount to a penalty. The termination during probation without assigning any reason is valid.

11. Coming to the point regarding the termination order being illegal inasmuch as that one month's notice was not given and simultaneous payment in lieu of one month's salary was not paid, the learned counsel for the respondents has produced a copy of the judgment in Management of MCD Vs. Prem Chand Gupta & another (1999 (10) Supreme 457) delivered on 16.12.1999. The court observed in this case that earlier according to Rule 5

of 1949 Rules if the services of the temporary government servant had to be terminated forthwith without waiting for one month, then the Government servant had to be given simultaneous payment of the sum laid down therein. But the CCS Temporary Service Rules were amended in 1965. As per the amended proviso to Rule 5 the words "by payment to him" were deleted. Instead after the word "forthwith" the words "and on such termination the Government servant shall be entitled to claim" were added. Thus what was not a condition precedent on the unamended proviso to Rule 5 became a condition subsequent and therefore there remains no necessity for the employer while terminating the services forthwith of a temporary government servant to offer him compensation simultaneously with the termination order. Such services can be terminated forthwith and termination would immediately come into force. Payment of proper compensation as per the proviso to Rule 5 can be effective even later within a reasonable time thereafter. In view of this, the learned counsel for the respondents submits that it is not binding on the Government to pay one month's salary in lieu of notice simultaneously at the time of termination. The applicant has to claim the sum as per the present rules. The learned counsel also states that mere fact that the order of termination did not mention about one month's notice being given, it would not vitiate the termination due to technical lacunae.

12. In this case, the applicant's services were terminated in 1996 and the applicant has approached this court only in 2000 without any application for condonation of delay and therefore, limitation applies and the OA deserves to be dismissed on that ground itself.

13. I have heard learned counsel for both the parties and have also perused the relevant rules and judgments. As far as the ground of limitation is concerned, certainly the applicant has approached this Tribunal belatedly. However, it is seen that he had appealed to the concerned authorities and the appellate order was passed only on 29th July, 2000. Thus, the applicant had approached the Tribunal by OA 380/2000 and the respondents had been directed by the Tribunal to dispose of the appeal and to approach the Tribunal in case he was aggrieved further. The Tribunal having given a direction, the delay needs to be condoned and accordingly, the delay is condoned.

14. Coming to the issue regarding the order not having been issued by the competent authority I find that the order of appointment was issued by the SSO (Civ) from station Headquarters Deolali. Therefore, if the same authority has terminated the services of the applicant, it cannot be said to be illegal. Further, this point was examined by the appellate authority, who is higher than the SSO, Deolali Headquarters and it was

maintained that SSO (Civ) had the authority to terminate the services of the applicant. The respondents know better as to who is the right authority. Further according to the rules also it was not necessary to give the applicant a notice and pay him one month salary in lieu of notice simultaneously as has already been done by the learned counsel for the respondents in the judgment of Management of MCD Vs. Prem Chand Gupta & another (supra). I am also in agreement with the respondents that it is not a punitive order, but it is termination simpliciter. I therefore, uphold the impugned termination order and the order of the appellate authority.

15. In the result, the OA fails. No costs.

Shanta Shastray
(SHANTA SHAstry)
MEMBER (A)

Gaja