

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\* \* \* \* \*

Dated : 22 APR 1988

652

1/87(F)

Applicant

Respondent

V/S

The Manager, P&T Motor Service, Bangalore  
& another

To

1. Shri B. Jayachandra Kumar  
No. F-464, Binnypet  
Bangalore - 560 023
2. Smt Bharathi  
Advocate  
1/01, 6th Main, 4th Cross  
Wilson Gardens  
Bangalore - 560 027
3. The Manager  
P&T Motor Service  
No. 4, Millers Road  
Bangalore - 560 052
4. The Post Master General  
Karnataka Circle  
Bangalore - 560 001
5. Shri M.S. Padmarajaiah  
Central Govt. Stng Counsel  
High Court Building  
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/ ~~SECRET~~ / ~~INTERIM ORDER~~  
passed by this Tribunal in the above said application on 15-4-88

Encl : As above

DEPUTY REGISTRAR  
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE 15th DAY OF APRIL 1988

Present : Hon'ble Justice Sri K.S.Puttaswamy Vice-Chairman

Hon'ble Sri P.Srinivasan Member (A)

APPLICATION No.652/87

B.Jayachandra Kumar,  
No.F.464, Binnypet  
Bangalore - 23.

...

Applicant

( Smt. Bharati ... Advocate )

vs.

1. The Manager,  
P & T, Motor Service,  
No.4, Millers Road,  
Bangalore - 52.

2. Post-Master General,  
Karnataka Circle,  
Bangalore - 1.

...

Respondents

( Sri M.S.Padmarajaiah ... Advocate )

This application has come up before the court for hearing today. Hon'ble Sri P.Srinivasan, Member (A) made the following :

ORDER

The applicant who joined the Post and Telegraph Motor Service as Cleaner by virtue of an appointment order dated 16.9.1983, passed by the Manager, P&T Motor Service, Bangalore, complains in this application that his services had been wrongly terminated by impugned order dated 5.7.1986 and that the same action had been wrongly confirmed by order on appeal dated 12.9.1986 both of which he wants us to quash on this ground.

2. Smt.Bharati, learned counsel for the applicant, made the following submissions : Though the impugned order dated 5.7.1986 appears ex facie to be an order of termination of services

P. Srinivasan



simpliciter, it was really in the nature of an order visiting punishment on the applicant. The order dated 12.9.1986 passed by the Postmaster General(PMG) in appeal states that he had gone through the service record of the applicant which showed undesirable tendencies and it was on this ground that the applicant was dismissed. Smt.Bharati vigorously contends that this is sufficient indication to show that the termination of the service of the applicant was by way of punishment, visiting civil consequences on him and casting a stigma on him. That being so, the authorities should not have terminated the services of the applicant without giving him an opportunity of being heard to which <sup>he</sup> ~~an~~ was entitled under Article 311(2) of the Constitution.

3. The personal file of the applicant maintained by the applicant was also produced before us and we permitted Smt.Bharathi also to scrutinise it. After going through these records, Smt.Bharathi reiterated that various incidents that had happened like the applicant flinging words of abuse when he was not allowed to use the telephone had been the foundation of the order of termination and so it was indeed an order visiting punishment on the applicant. Smt.Bharathi, further, pointed out that the applicant had completed his probation by the time the order of terminating his services was passed and so his services could not be terminated summarily.

4. Sri Padmarajaiah strongly refuted the contentions of Smt.Bharathi. The impugned order terminating the services of the applicant was ex facie an order of termination simpliciter. After all the services of a temporary Government servant, as the applicant was, would not ordinarily be terminated unless there were some reasons to do so and naturally there were such reasons in this case also. The applicant had no doubt completed the period

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of probation, but he continued as a temporary Government servant governed by the CCS(Temporary Service) Rules, 1965. Under these rules, the services of a temporary Government servant could be terminated with one month's notice if he was found unsuitable to continue in the post. To judge the suitability of a person to continue in service, the authorities have to see whether he was amenable to discipline and fitted into the organisation as a harmonious partner. The personal file of the applicant shows that he often absented himself from duty, that he applied for leave late, and entered into altercations with other officials. His repeated absence from duty during his short service of three years was itself a clear indication that he was not suitable to be continued in employment. ~~Sr~~ Padmarajaiah therefore submitted that this <sup>my was</sup> ~~case~~ indeed a case of termination simpliciter and the applicant was not entitled to an opportunity of being heard under Article 311(2) of the Constitution which had no application to such cases.

5. We have considered the matter very carefully. In this connection we would like to refer to the judgement of N.L.Untwalia J. in STATE OF MAHARASHTRA VS. VEERAPPA R. SABOJI & ANR 1980 SUPREME COURT CASES (L&S) 61. We may usefully extract the following observations of the learned judge in the course of his judgement. (at page 69 of the report ):



"....If a government servant is compulsorily retired or one who is officiating in a higher post is reverted to his parent cadre or when the services of an officiating or temporary Government servant are dispensed with by an order of termination simpliciter, then problems arise in finding out whether it is by way of punishment.... Ordinarily and generally and there may be a few exceptions, any of the three cases indicated above is taken recourse to only if there are some valid reasons for taking the action against the Government servant... In a given case there may be valid reasons, may be

P. J.

of a serious kind, which led the authorities concerned to adopt one course or the other as the facts of a particular case demanded. If one were to say in all such cases that action has been taken by way of punishment, then the only corollary to this would be that such action could be taken if there was no such reason in the background for the action. Then the argument advanced is that the action was wholly arbitrary, malafide and capricious, and, therefore, it was violative of Article 16 of the Constitution. .. The Government is on the horns of a dilemma in such a situation. If the reasons are disclosed then it is said that the order of the Government was passed by way of punishment. If it does/disclose the reasons, then the argument is that it is arbitrary and violative of Article 16".... What does one do in such a situation? His Lordship provides the answer himself in an earlier part of the same judgement: "One should not forget a/practical and reasonable approach to the problem in such cases."

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Bearing these observations in mind, what do we find here? The respondents found as a fact that, the applicant absented himself from duty without leave often. On one occasion, he entered into an altercation<sup>M</sup> with his colleagues. There was an allegation that he had poured hot coffee on the face of a colleague. He submitted leave applications after remaining absent for some time. He was absent from duty too often<sup>and</sup> when granted leave of absence, he did not report for duty after expiry of leave. These incidents could also have been made the subject matter of departmental proceedings. But these very incidents marked out the applicant who was still a temporary Government servant as one unsuitable for continuation in service. The authorities could have either proceeded against him by way of disciplinary proceedings or on the same facts terminated his services because he was not suitable for being retained in service. Taking a practical view of the whole case, we are satisfied that the respondents in this case decided to simply terminate the services of the applicant because he was unsuitable for being continued in service. We cannot interpret every word occurring in these orders as if<sup>we</sup> were interpreting a statute. The total sense conveyed by them is that the applicant was found unsuitable for

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being continued in service. That being so, this application deserves to be dismissed. We, therefore, dismiss this application. But in the circumstances of the case, we direct the parties to bear their own costs.

Sd/-

VICE-CHAIRMAN

Sd/-

MEMBER (A)

TRUE COPY



*[Signature]*  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE