

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 404/93

Transfer Application No.

Date of Decision 29.9.95

Kaxman Sadashiv Dashmane

Petitioner/s

Shri S.R. Atre

Advocate for
the Petitioners

Versus

Union of India and others

Respondent/s

Shri Sureshkumar for

Shri M.I. Sethna,

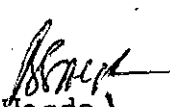
Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. M.R. Kolhatkar, Member (A)

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


(B.S. Hegde)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 404/93

Laxman Sadashiv Deshmane

...Applicant.

V/s.

Union of India through
the Principal Collector of
Customs, New Custom House,
Bombay.

The Additional Collector of
Customs, Personnel & Vigilance
Department, New Custom House,
Ballard Estate, Bombay.

...Respondents.

CORAM : Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri S.R. Atre, counsel
for the applicant.

Shri Sureshkumar, for
Shri M.I. Sethna,
counsel for the
respondents.

JUDGEMENT

Dated: 29.9.95

¶ Per Shri B.S. Hegde, Member (J) ¶

This O.A. has been filed under Section 19 of Administrative Tribunals Act 1985 against the order passed by the respondents on 30.3.93, Annexure A-1, whereby the applicant's service as Sepoy (CR) Adhoc has sought to be terminated under Rule 5 of the CCS (Temporary Service) Rules 1965 with effect from the date of expiry of a period of one month from the date of which this notice is served on, or, as the case may be, tendered to him.

2. The brief facts of the case are: The applicant has joined the service of the respondents department i.e. Customs Department as Loader/Hamal with effect from 13.3.87. The applicant has been appointed as Hamal on the recommendations of the sub-Regional Employment Exchange. He served the

Department for more than 6 years i.e. from 1987 to 1993 as Loader/Hamal. Later the applicant was appointed as Sepoy (Cost Recovery) Adhoc with effect from 1.1.93 by an order dated 15.12.92 and 24.2.93 respectively alongwith others. In the appointment order it is stated that he will be on probation for 2 years and the appointment is purely on temporary basis and for termination one months notice from either side. The main contention of the applicant is that the post of Sepoy is a promotional post from that of post of a Hamal and his services could not have been terminated for having been worked for 240 days of continuous appointment in the post of Hamal and he should have been regularised in the said post, but it was not done.

3. The respondents in their reply stated that the applicant was working as Casual worker in the Customs House with effect from 13.8.87. In the year 1989 Selection Committee Meeting was held for the cadre of Sepoy. At that time the Casual workers who were qualified in the Physical Standard Test were interviewed alongwith the candidates sponsored by the Employment Exchange. The applicant was one of the casual workers who passed the Physical Standard Test as well as interview and appointed as Sepoy(CR)Adhoc with effect from 1.1.93. They further contended that earlier the applicant was working as casual worker and as such his earlier service could not be linked with fresh appointment and could not be counted for any purpose. In accordance with the Ministry's O.M. dated 2.7.82, the procedure of verification of the character and antecedents of the candidates is the pre-requisite for appointments to Civil posts.

The respondents have received a report from District Magistrate, Satara wherein it is stated that the applicant was arrested on 24.4.91 and he has been charge-sheeted in the Court of Law, which is still pending in the Court. In that connection he draw our attention to the O.M. dated 2.7.82 stating that a person convicted of an offence involving moral turpitude should be regarded as ineligible for Government Service provided in cases where the appointing authorities feel that there are redeeming features that such a person has cured himself of the weakness. Accordingly the respondents submitted that in view of Rule 5 of the Central Civil Service (Temporary Service) Rules 1965. The applicant has not been treated as quasi permanent and in terms of the appointment letter his services have been terminated.

4. We have heard argument of counsel for the parties and perused the records. The question for consideration is whether the termination order passed by the respondents dated 30.3.93 is in accordance with the Rules. The respondents in their reply stated that the applicant was working as casual worker and not Hamal, which is contrary to their letter dated 12.8.87, wherein it is stated that the applicant has been appointed to the post of 'Hamal' through the Sub-Regional Employment Exchange and not as Casual worker. Therefore, the said contention is not tenable. Secondly whether the termination order passed by the respondents is in accordance with Rule 5 of the Central Civil Services (Temporary Service) Rules 1965. It is obvious from the facts that the termination was effected not merely under Rule 5 of the CCS(TS) Rules but a punishment on the

basis of the report from District Magistrate, Satara stating that he has been arrested and has been chargesheeted. Further it is not on the basis of the conviction that his services have been terminated. The respondents also stated that he has suppressed the fact of his arrest and the same has not been intimated to the respondents. It is incorrect to state that the applicant has suppressed the fact. When the applicant's wife committed suicide, at that relevant time, he was on duty at Bombay. The respondents have issued the termination order under Rule 5 without following the due procedure of law as is established under Article 311(2) of the Constitution of India. It is obvious that applicant's services have been terminated on the basis of his criminal charge levelled against him alongwith others and not for any conviction. As per 1982 O.M. the services of a Government Servant can be terminated on the ground of conviction by a Court of law. The criminal case pending against him has ultimately been disposed of by the Court on 10.9.93, acquitting the accused/applicant for offence under Section 306, 498-A, 201, 202 read with 176, 107, 34 of Indian Penal Code. The prosecution has miserably failed to establish that the accused persons have committed any offence, as they were charged for. Therefore, the accused deserve to be acquitted. In the instant case it is clear and evident from the averments of the respondents and the impugned order in substance and the said order made by way of punishment merely on the basis of the report of the District Magistrate, Satara stating that the applicant has been arrested and charge-sheeted for an offence under Indian Penal Code and not convicted. There is no doubt that the impugned order casts a stigma on the applicant and the

order being made by way of punishment, therefore the applicant is entitled to the protection offered by the proviso to Article 311(2) of the Constitution.

5. The learned counsel for the respondents relied on the following decisions of the Jabalpur Bench in Ghagirath Prasad Alias Dindayal V/s. Union of India and others (1989) 9 ATC 437. Wherein it was held that suppression of facts was the motive but not foundation for discharge simpliciter. There was no right to the post. Hence termination held valid under CCS Rules 1965, Rule 5. The Supreme Court has also held that a probationer has no right as such to the post which he holds during the probationary period until the competent authority comes to a conclusion that the probationer has completed his probation satisfactorily and he does not occupy such a post until then in any substantive capacity and his services can be terminated without notice to Government servant at any time. Such cases do not attract Article 311 (2) of the Constitution. He has also cited another decision of the Calcutta Bench in Jagga Dutta Chatterjee V/s. Union of India and others 1990(1) AISLJ 52. Wherein it was held that on account of suppression of facts the services may be terminated.

6. The learned counsel for the applicant had contended that the termination order by itself is a punishment order. In support of his contention he has relied upon the decision of the Supreme Court in Babulal V/s. State of Haryana and others (1991) 16 ATC 481 wherein it was held that:

" From the sequences of facts of this case the inference is irresistible that the impugned order of termination of the service

of the appellant is of penal nature having civil consequences.' Though the order is innocuous on the face of it still then the court if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched in accordance with the terms and conditions of the order of appointment, the order will be set aside."

He has also relied on other decisions of the Tribunal in support of his contention which we feel has considerable force.'

7. In the light of the above, we do not think that in this case merely because a complaint has been lodged for certain offences under the Indian Penal Code against the applicant alongwith others, the applicant should be considered unfit to continue in service as Sepoy.' It would have been a different thing if the applicant would have been convicted by a Court of Law.' In the instant case the applicant has been acquitted on a criminal charge as back as 10.9.93, and the O.A. was filed prior to the decision of the Criminal Court. It is not known, whether the applicant pursuant to the decision of the criminal Court had made any representation to the respondents for reinstatement into service. The applicant is out of job for no fault of his since 30.3.93. He would therefore, be entitled to reinstatement without break in service. The order of termination has been made illegally during the pendency of the Criminal proceeding which ultimately ended with the acquittal of the applicant.' Therefore, the impugned order of termination of service made by the respondents is illegal and arbitrary and so it is liable to be quashed and set aside.'

8. In the result the following order is passed.

- i) The O.A. is allowed and the impugned order dated 30.3.93 passed by the respondents terminating the services of the applicant is hereby quashed and set aside.
- ii) The respondents are directed to reinstate the applicant in service immediately and make payment of his pay and allowances from the date of the order of the Criminal Court dated 10.9.93. ~~(However the pay and allowances are restricted to one year from the date of filing of this O.A.)~~ *MRB*
- iii) Respondents are directed to reinstate the applicant as Sepoy with all benefits of pay and allowances from the date he actually joins.
- iv) The applicant shall report to the respondents within one month from the date of receipt of this order. The Respondents are directed to appoint him within one month thereafter, in accordance with the Rules.
- v) Needless to state that the respondents are directed to appoint the applicant to the post he was holding at the time of termination. Insofar as the continuity of service, the respondents are directed to pass an order immediately after reinstatement, that there will be no break in service. In so far as other benefits are concerned except payment of pay and allowances, *MR* other benefits are permissible.

9. The O.A. is disposed of with the above directions. No order as to costs.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

B.S. Hegde
(B.S. Hegde)
Member (J)