

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 158/94

Date of Decision: 31.3.1999

Shri Mangesh Ramdas Gurav Petitioner/s

Shri V.M. Bendre Advocate for the  
Petitioner/s.

v/s.

Union of India and others. Respondent/s

Shri S.S.Karkera for Advocate for the  
Shri P.M.Pradhan. Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Bawej, Member (A)

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

*Reported*  
(R.G. Vaidyanatha)  
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH 'GULESTAN' BUILDING NO:6  
PRESOT ROAD, MUMBAI:1

Original Application No.: 158/94.

Wednesday the 31st day of March 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S. Baweja, Member (A)

Mangesh Ramdas Gurav  
residing at 12,  
Shradha Building,  
Pathare Park,  
Near B-Cabin,  
Ambernath,  
Dist. Thane.

... Applicant:

By Advocate Shri V.M. Bendre.

V/s.

1. Union of India through  
the Chief Post Master  
General, Maharashtra  
Circle, Bombay.

2. Senior Superintendent of  
Post, R.M.S.  
Bombay Sorting Division,  
Development co-operative  
Bank Bldg., 2nd floor,  
Phaltan Road.  
Bombay.

... Respondents:

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R (ORAL)

(Per Shri Justice R.G. Vaidyanatha, Vice Chairman)

This is an application filed under  
Section 19 of the Administrative Tribunals Act  
1985. The respondents have filed reply. We have  
heard Shri V.M. Bendre counsel for the applicant and  
Shri S.S.Karkera for Shri P.M.Pradhan counsel for  
the respondents.

2. The applicant's father was working  
as Jamadar in the office of Senior Superintendent,  
R.M.S. , Bombay Sorting Division, Bombay. Applicant's  
father was retired on medical ground sometime in  
November 1987. Subsequently the applicant applied  
for appointment on compassionate grounds. The  
applicant came to be selected provisionally and

then he was issued appointment order. The applicant joined the service and under-vent training. Subsequently by the impugned order dated 18.1.1994, the applicant's services came to be terminated under Rule 5(1) of CCS (Temporary Services)Rules 1965. Being aggrieved by the order of termination the applicant has approached this Tribunal, challenging the same on many grounds. According to him his appointment was not temporary appointment and therefore, 1965 Rules could not have been invoked to terminate his services. It is also alleged that order of termination is malafide, illegal and contrary to the provisions of Article 311 of the Constitution of India. The applicant has therefore approached this Tribunal for quashing the impugned order dated 18.1.1994 with consequential benefit of re-instatement and backwages etc.

3. The respondents in their reply have admitted that the applicant came to be appointed on compassionate ground. They have pleaded that the applicant was obliged to pass the confirmation examination but the applicant appeared in the examination and failed in 1991 and again in 1992. The Department has terminated the services of the applicant, since he did not pass the confirmation examination. Then they have also pleaded that one Shri V.N. Samant lodged a complaint with the department alleging that the applicant had taken Rs. 1700/- by promising him to give a job of Postman. Even he had issued an appointment order dated 17.4.1993. Preliminary enquiry was held in which the applicant has admitted his guilt. Then it is stated that they have terminated the services of the applicant under 1965 Rules and

accordingly issued the impugned order. It is clearly stated that the services of the applicant is temporary in nature and services can be terminated at any time under 1965 Rules.

4. The learned counsel for the applicant contended that the applicant's appointment was regular and therefore 1865 Rules could not have been invoked to terminate his services. Further he has submitted that the respondents have alleged some mis-conduct against the applicant and therefore the services could not be terminated without holding enquiry and being in violation of Article 311 of the Constitution of India. The learned counsel for the respondents refuted both the submissions.

5. The question that is to be decided is whether the applicant's appointment was regular or it was temporary in nature? The applicant did not produce the appointment order or any other documents to throw light on his appointment. He has produced the selection papers which no doubt shows that the applicant has been selected for the post but the nature and terms and conditions were not produced by the applicant.

The learned counsel for the respondents has placed before us the order of the Senior Superintendent, RMS dated 18.7.1991 which pertains to the appointment order of two persons including the applicant which reads as follows:

" The following approved and trained candidates(outsiders) for recruitment to the sorting Assistants cadre for the 1st half of 1990 and under compensation

(ground) respectively are hereby appointed as temporary Time Scale Sorting Assistants in the scale of Rs. 975 -25 -1150 -EB-30 - 1660 at the offices shown against their names with immediate effect.

Sl. No.	Name of the Candidate	Office to which attached
1.	Miss Bhatado Rajani Ramchandra	CPSO Bombay.
2.	Shri Gurav Mangesh Ramdas	Bombay RMS.

They will please note that their appointment as Time Scale Stg. Assistant is purely on temporary and provisional basis and if necessary their service will be terminated under provision of Rule 5 of CCS(Time Scale) Rules 1965 as amended from time to time.

They will also note that they will have to pass the confirmation examination in departmental rules and regulations within 3 years from the date of their appointment in maximum six chances.\*

Other portions of the order are not relevant for our present purpose.

From what is mentioned above, we can clearly notice that appointment order clearly mentions that the appointment is purely temporary and provisional and could be terminated under Temporary Service Rules 1965. On the face of the appointment order, which has remained un-challenged from 1991 till today, the applicant cannot now say that appointment is regular one and not temporary one. The appointment is like contract of service.

6. Once we reach the conclusion that the order of appointment was temporary and the service can be terminated at any time as mentioned in the order itself, under Rule 5 of the Temporary Rules 1965, the applicant's challenge to the order of termination cannot be accepted.

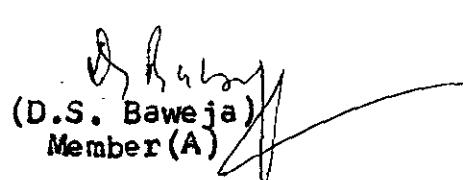
7. No doubt the learned counsel for the applicant contended alternatively that even if it is temporary service, it cannot be terminated without holding any enquiry as provided under Article 311 of the Constitution of India. It is true that if the services are terminated on the ground of mis-conduct, then naturally an enquiry will have to be held as per Rules. But if the order of termination is simpliciter termination without casting any stigma on the applicant, then there is no necessity to hold the enquiry, though alleged misconduct is the motive for the termination.

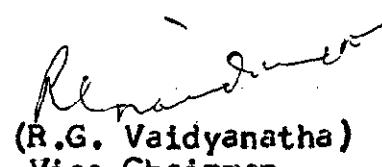
We had considered similar question in an identical case where after referring number of decisions of the Supreme Court, we have taken a view that if the order is simpliciter order of termination without casting any stigma on the official, then the order is perfectly valid under Rule 5 of Temporary Services though the motive of termination may be alleged misconduct against the official, which we have indicated in our order dated 10.3.1999 in O.A. 430/98 in the case of Smt. Chaliamma R.Konar and others V/s. Ministry of Agriculture and others. We have referred to some decisions of the Supreme Court. Though there may be allegation of misconduct of official, but without resorting to any disciplinary enquiry, the services can be terminated simpliciter under Rule 5. In the present case also the respondents

have indicated some allegation of mis-conduct against the applicant, but they have issued a simpliciter order of termination without casting any stigma on the applicant. The respondents need not hold a regular disciplinary enquiry before taking any action. Therefore, even on this ground we hold that the applicant cannot challenge the order of termination which is a simpliciter order of termination.

Since the two grounds pressed before us do not have any merit and since there is no other ground to challenge the order of termination, the applicant is not entitled to any relief.

8. In the result the application fails. Accordingly the O.A. is dismissed. No order as to costs.

  
(D.S. Baweja)  
Member (A)

  
(R.G. Vaidyanatha)  
Vice Chairman

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