

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 190/94

8.7.98  
Date of Decision:

Smt. Valsalakumari K.V. Applicant.

Shri I.J. Naik. Advocate for  
Applicant.

Versus

The Development Commissioner Respondent(s)  
Moti Daman. and others.

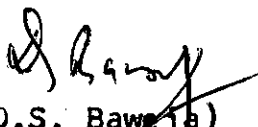
Shri V.S. Masurkar. Advocate for  
Respondent(s)

CORAM:

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

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

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

  
(D.S. Baweja)  
Member (A)

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

Original Application No. 190/94

Prorounced the 8th day of <sup>July</sup> ~~June~~ 1998

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

Smt. Valsalakumari K.V.  
House No.7-146, Fort Area,  
P.O. Moti Daman.

... Applicant.

By Advocate Shri I.J. Naik.

V/s.

The Development Commissioner,  
Administration of Union  
Territory of Daman & Diu  
Fort Area, Moti Daman.

The Administrator,  
Administration of Union  
Territory of Daman & Diu  
Fort Area, Moti Daman.

The Collector  
Daman District, Fort Area,  
P.O. Moti Daman.

Union of India, through  
The Secretary, Ministry of  
Home Affairs,  
Central Secretariat,  
North Block,  
New Delhi.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER

¶ Per Shri D.S. Baweja, Member (A) ¶

The applicant through this O.A. has sought  
following reliefs.

- a. To quash the impugned termination order  
dated 10.6.93.
- b. To reinstate the applicant in service to  
the post of Lower Division Clerk.

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- c. To pay to the applicant salary for the period from the date of termination to the date of reinstatement.
- d. To treat the intervening period as spent on duty for all purposes.
- e. To pay interest of 12% per annum on the amount of arrears due.

2. The applicant was appointed as a Lower Division Clerk as per appointment order dated 25.2.93 under the Administration of Daman and Diu and Dadra and Nagar Haveli. The applicant joined on 26.2.1993. The applicant was asked to furnish the original certificate of passing the typing test from State Examination Board and School leaving certificate as proof of her age. The applicant could not produce the certificate from the State Examination Board as she did not pass any such examination. Further as per the recruitment rules, there was no such mandatory requirement for passing such an examination. As regards the date of birth, the applicant had already furnished the affidavit. In spite of this, without giving any reasonable opportunity, the respondents terminated the services of the applicant as per the impugned order dated 10.6.93., under sub rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965.

3. The applicant made an appeal against the termination order, but did not get any reply. Feeling aggrieved, the present application has been filed on 11.2.94.

4. The applicant has challenged the termination order on the following grounds:

- a. Termination order is in violation of Article 311 of Constitution of India.

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- The failure of the applicant to furnish the certificates as asked for has been construed as misconduct and punishment has been imposed by way of termination of service without giving any reasonable opportunity.
- b. Order has been passed with malafide intention as there is no application of mind as the termination order has been passed ignoring the facts that the applicant had not passed the typing examination at the State level and for date of birth an affidavit had already been filed.
- c. There is violation of Articles 14 and 16 of Constitution of India as the applicant has been discriminated as applicant's juniors have been retained in service.
- d. The termination order is not germane to the purpose as the performance of the applicant had been satisfactory and no adverse remark was conveyed to her at any time.
- e. The termination order indicates colourable exercise of power as the respondents have not indicated any reason for the purported termination.
- f. The termination order is not in the prescribed form as per the CCS(Temporary) Service Rules.

5. The respondents have opposed the application through the written statement. The respondents have submitted that as per the offer of appointment, the applicant was required to furnish the original documents with regard to educational qualification and proof of date of birth etc. The applicant was therefore asked to furnish the school leaving certificate and also the typing certificate issued by the State Examination Board as required as per the recruitment rules. The applicant submitted a certificate of typing from a private institute. However, on verification, of the same with the institute, it was found that the certificate submitted was not authentic. No papers were submitted with regard to date of birth. In spite of repeated reminders, the applicant did not comply with the requirements for appointment as per recruitment rules. Keeping this in view, the Competent Authority decided to terminate the services of the applicant as per the impugned order. The order of termination is simplicitor and does not attach any stigma. Keeping these averments in view, the respondents maintain that none of the grounds advanced by the applicant can be sustained and application deserves to be dismissed.

6. The applicant has controverted the submissions of the respondents made in the written statement in the rejoinder. The applicant has reiterated that the order of termination is not a simplicitor order but an order of dismissal. The applicant has also contended that enquiry with regard to the genuiness of the certificate produced from the Institute for typing was carried out at the back of the applicant and such an enquiry cannot form a foundation for termination of services without giving opportunity to the applicant to defend.

7. W have heard the arguments of Shri I.J. Naik learned counsel for the applicant and Shri V.S. Masurkar learned counsel for the respondents.

8. At the arguments stage, the applicant has sought support of following judgements for the various contentions made by him : -

1. Ishverlal J. Naik V/s. S.C. Arya  
Principal Government Arts and Science  
College Daman and others - 1984(1)  
SLJ 1 (Mumbai High Court).
2. Order dated 24.7.91 of this Bench in  
O.A. 644/89 - Ramesh Hari Dhiwar V/s.  
Union of india and others.
3. Order dated 18.2.94 of this Bench in  
O.A. 41/92 - Sunil Kumar J. Vyas V/s.  
Union of India and others.

The applicant has also relied upon two articles, published in the Journal sections of All India Service Law Journal 1981 Vol. I and 1983 Vol. I.

9. The applicant has challenged the impugned order of termination stating it as illegal on several ground which have been detailed in para 4 above. Before examining these grounds on merits to identify if any of these grounds would vitiate the termination order and make it illegal, we will review the judgements cited by the applicant to consider their application to the case of the applicant.

10. In the judgement in the case of Ishverlal J. Naik of Bombay High Court, the issue dealt with is <sup>of</sup> termination of service under sub-rule (1) of Rule 5 of Central Civil Services (Temporary) Rules.

On carefully going through the judgement, it is noted that though the termination order was simplicitor of a probationer but the order was passed after making some enquiry for the mis-conduct. The enquiry was conducted at the back of the petition. Since the alleged mis-conduct was foundation for the termination of service, it was held that the termination order was in violation of provisions of Article 311 of the Constitution of India. On the facts, the present case is distinguishable as the services have not terminated on the foundation of mis-conduct or on conducting of any enquiry at the back of the applicant. The termination of services has been done for non furnishing of the required documents as per the appointment order. Therefore the ratio of this judgement is not applicable to the case of the applicant. However the judgement covers other issues also and reference to what is held in this judgement shall be made at the appropriate place while deliberating on the grounds of challenge subsequently.

11. The applicant has cited two orders of this Bench. In the case of Ramesh Hari Dhiwar, the issue involved is that of the applicant who was working as casual Khalasi with temporary status and his services were terminated for mis-conduct without following the Railway Servants(Discipline and Appeal Rules). The Bench has held that since the applicant had attained temporary status, the services could not be terminated for mis-conduct without disciplinary proceedings, as per the extant rules. In view of this, the termination order was quashed. The decision in this O.A. however is not applicable to the present O.A. as the services of the applicant in this O.A. have been terminated under the provisions of sub rule (1) of Rule 5 of CCS(Temporary) services Rules, which does not call for any disciplinary proceedings. There is also no case of mis-conduct as deliberated subsequently.

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In the case of Sunil Kumar J. Vyas, the services of the applicant were terminated under sub-rule (1) of Rule 5 of CCS (Temporary) Service Rules, indicating in the termination order that the antecedents of the applicant were adverse. It is held that the termination order attached stigma to the applicant and therefore the said order could not be passed without issue of show cause notice to the applicant. In the present O.A. the circumstances are different. No reasons have been indicated in the termination order and no stigma is attached to the applicant. This order therefore does not come to the help of the applicant.

12. The applicant has placed reliance on the two articles published in the Journal Section of All India Service Law Journal. On going through these articles it is noted that the various judgements of the Hon'ble Supreme Court and other Courts concerning the question of law dealing with violation of Article 311 and Article 14 and 16 have been reviewed in a tabular form giving brief details of the cases and the decisions thereof. The details furnished are too brief to consider whether any of these judgements on the facts apply to the case of the applicant. Further the applicant has also not furnished the copies of all the judgements referred to, in these articles. The review of all the judgements will also make the order voluminous. Keeping this position in view, the judgements referred to in these articles have not gone into and the merits of the case have been examined based on the judgements cited and detailed earlier.

13. Now coming to the grounds of challenge, the first ground is that the applicant has been discriminated whereby her services have been terminated and juniors have been retained in service. This arguments of the applicant is not tenable as the applicant has not come out with any case that her juniors who were similarly placed and were also asked to produce the documents and they did not furnish the same but still continued in service while the applicant's services for the same non-compliance have been terminated. In the absence of any such plea, we are unable to subscribe to the contention of the applicant that she has been discriminated.

14. The second contention of the applicant is that the failure to furnish the required documents has been construed as mis-conduct and the applicant has been punished by way of termination of services without giving any opportunity and thereby the provisions of Article 311 have been violated. After considering the facts of the case, we are unable to find any merit in this contention. The applicant as per the appointment order was asked to furnish <sup>some</sup> the documents. The applicant did not furnish the required documents inspite of repeated reminders. Thereafter the services have been terminated in terms of provisions of sub-rule (1) of Rule 5 of CCS(Temporary) Service Rules. The learned counsel for the respondents emphatically argued that the certificates asked for were required as per the appointment letter and only on furnishing of these documents, the appointment would have been valid as per the recruitment rules. Therefore, in his opinion till the appointment becomes valid

after furnishing of the required documents, no right is vested <sup>k</sup>with the applicant to continue on the post. We find force in the submission of the respondents. It is our considered opinion that the termination order is not by way of punishment but due to non-compliance of furnishing the required documents as per the appointment order which would make it valid. In this view of the matter, this contention of the applicant lacks merits. As indicated earlier the ratio of what is held in the judgement in the case of Ishverlal J. Naik of the Bombay High Court does not apply to the present case, as in this case the termination was on the foundation of alleged mis-conduct, while in the present case there is no alleged mis-conduct and the termination is for non-compliance of furnishing the required documents for making the appointment valid.

15. The third contention of the applicant is that the termination order has been passed with malafide intention as the competent authority has not applied his mind and taken into consideration the facts that the applicant had not passed the typing examination of the State Examination Board and also the date of birth and affidavit has been submitted. This argument of the applicant is without substance as it is not borne by the facts brought on records <sup>m</sup>from the letter dated 9.3.93. It is noted that the applicant was asked to furnish original birth certificate or school leaving certificate instead of the affidavit and also the certificate from the State Examination Board for typing instead of bonafide certificate from a private institute. The contents of this letter clearly indicate that the documents submitted by the applicant had not been accepted by the Competent Authority

and the applicant was asked to furnish the proper documents. In view of these facts, the applicant cannot take a stand that the termination order has been passed without application of mind.

16. The fourth contention of the applicant is that the impugned order is not germane to the purpose as no adverse remarks have been conveyed to the applicant. This argument is not convincing as the termination order has been passed not on the basis of the adverse remarks but on the ground of non-furnishing of the required documents as per the appointment order.

17. The next contention of the applicant is that the termination order has been passed without disclosing the reasons. As deliberated earlier, the reasons for termination need not be mentioned in the order as sub-rule (1) of Rule 5 does not require reasons to be disclosed. If such a termination order is challenged, then the respondents are required to furnish the reasons to the Court or Tribunal to satisfy that the termination order has been passed on legal sustainable grounds. In fact, in the present case the applicant was aware of the reasons if the contents of the letter dated 18.3.93 are considered. Thus there is no merit in this ground also.

18. The last contention of the applicant is that the termination order is not in the prescribed form as per sub-rule (1) of Rule 5. Further no payment in lieu of one month's notice period was paid alongwith the termination order. We have gone through the form of the termination order as provided under the Rule 5 and concede that the termination order is not in the format laid down. However we do not think that this infirmity in the termination order is fatal. The

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termination order has been passed under the provisions of sub-rule (1) of Rule 5 and this leaves no doubt that the provisions of this Rule will apply to the termination order, even though the contents of the Rule have not been reproduced in the termination order. What is material is the substance of the order and not the form. Once the reference has been made to sub-rule (1) of Rule 5 under which the termination order has been passed, the substance of the order is without any doubt. Non-mentioning of the rule in totality in the order as laid down in the form under the Rule 5 will not make the termination order invalid. We are therefore of the view that the termination order is not vitiated due to not being in the format laid down. The applicant during the argument, referred to the judgement in the case of Ishverlal J. Naik and drawn our attention to para 31 and 33 of the judgement. <sup>where</sup> It is observed that the sub-rule (1) of Rule 5 had been modified with regard to payment for the notice period. But it is held that this amendment will not apply to the case of the applicant as the termination shall be by the provisions of the appointment order. The appointment order provides payment of one month pay in lieu of notice period alongwith the termination order. This was not done and therefore the termination order was vitiated. In the present O.A. the position is different. On going through the appointment order, it is noticed that the order provides termination of service under sub-rule (1) of Rule 5, according to which the applicant is entitled for one month's pay in lieu of notice period. The Rule does not envisage the payment of one month's pay in lieu of notice period alongwith the termination order. In view of this, what

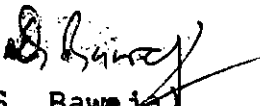
is held in the judgement of Bombay High Court does not apply to the case of the applicant.

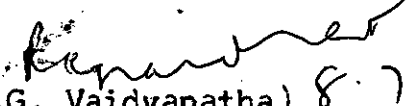
19. The learned counsel for the applicant was at pains to reiterate that adequate time was not allowed to the applicant to furnish the documents before passing the termination order. The applicant contended that the documents were available at her native place in Kerala and she could not go there to get the required certificate. This contention of the applicant is not supported by the facts. It is noticed from the letter dated 18.3.93 which was in continuation of earlier letter, the applicant was allowed further time for furnishing the documents. The applicant has not made any averment that she demanded further time and same was not allowed. Further it is noted that the termination order was issued in June 93 after a period of almost three months. The applicant during this period could have taken necessary steps to go to her native place and submit the required certificates. If the applicant had submitted the required documents during the period till June 1993 and the same were not accepted by the respondents on account of late submission, then the applicant had a case. However the applicant has not come out with any details to show that she had made effort to submit the documents before the termination order was passed. In fact the applicant has not brought on record even with the O.A. the copies of the relevant documents to establish that the same were available with her. In view of these facts, this ground is not tenable.

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20. The applicant has also alleged that the respondents have conducted inquiry with regard to the authenticity of the certificate for typing speed from the private Institute furnished by the applicant and therefore cannot form the foundation for the termination of the order. On the facts of the case, we are unable to persuade ourselves to accept this. As brought out earlier, the respondents have not accepted the certificate submitted meeting with the requirement. Therefore the issue of authenticity of the certificate is immaterial.

21. In view of the deliberations above, we are unable to find any illegality in the impugned termination order. The O.A. is therefore devoid of merits and the same is dismissed accordingly. No order as to costs.

  
(D.S. Baweja)  
Member (A)

  
(R.G. Vaidyanatha) 8.7.98  
Vice Chairman

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