

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: **1385/95.**

~~XXXXXXXXXXXXXX~~

DATE OF DECISION: 27.2.96

Srinivas Dashrath Mokal, Petitioner

Shri P.A. Prabhakaran, Advocate for the Petitioner\*

Versus

Chief Commissioner of Income Tax,  
3rd Floor, Aayakar Bhavan,  
M.K. Road, Bombay - 400 020. Respondent

Shri M.I. Sethna alongwith Advocate for the Respondent(s)  
Shri Suresh Kumar,

CORAM :

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

The Hon'ble Shri **P. P. Srivastava, 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  
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR  
PRESCOT ROAD, FORT, BOMBAY-400 001.

ORIGINAL APPLICATION NO.: 1385/95.

Dated, this Tuesday the 27<sup>th</sup> day of February 1996.

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

Hon'ble Shri P. P. Srivastava, Member (A).

Srinivas Dashrath Mokal ... Applicant

Versus

Chief Commissioner of Income Tax,  
3rd. Floor, Aayakar Bhavan,  
M.K. Road,  
Bombay - 400 020.

... Respondent.

APPEARANCE :

1. Shri P.A. Prabhakaran,  
Counsel for the applicant.
2. Shri M. I. Sethna alongwith Shri Suresh Kumar,  
Counsel for the respondents.

: O R D E R :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. Heard the argument of Shri Prabhakaran, Counsel for the applicant and Shri M.I. Sethna, Counsel for the respondents. In this O.A. the applicant has challenged the termination order passed by the respondents vide dated 01.11.1995 which reads as follows :

*BS*

"In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, L.R. Singh, Deputy Commissioner of Income-tax (H.Q), Admn., Bombay, hereby give notice to Shri S. D. Mokal, Staff Car Driver, that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on him."

The applicant was initially appointed as a Staff Car Driver in the year 1994 and during his tenure in the respondent's department, his service was not satisfactory. Despite reminders that he should improve himself, he did not come up-to the expectations of the respondents. It is an admitted fact that the applicant is governed by the Central Civil Services (Temporary Service) Rules, 1965 and he was on probation period. Though the termination order was passed on 01.11.1995, before the expiry of the notice period he filed an O.A. on 23.11.1995 and obtained an ex-parte order on 30.11.1995 not to terminate his service in terms of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965, which has been continued from time to time till today. As against the termination order, the Learned Counsel for the applicant states that the applicant made representation but he has not received any reply from the respondents. However, on perusal of the records, we find that the respondents vide their letter dated 27.11.1995 sent a reply to the applicant rejecting his contentions made in the representation. He has been given warning from time to

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time vide dated 26.10.1995 regarding his rash and negligent driving against which he has not raised any objection except admitting the charges levelled against him and seeks mercy from the respondents vide his reply dated 31.10.1995. The respondents in their reply have clearly stated the irresponsible discharge of his driving duties received from various officers from time to time and he had met with an accident on 13.10.1995, thereby, the respondents had to incur expenditure of more than Rs. 26,000/- and it is further stated that when the car was taken to Sterling Garage for repairs, the applicant was drunk, threatened the workers at the garage and demanded illegal commission from the proprietor of the garage, for which the proprietor of the garage has given a letter to the department vide dated 17.10.1995.

2. In the light of the above, the question to be seen here is whether the removal order passed by the respondents under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, is justified and is in accordance with the service conditions. The Learned Counsel for the applicant, Shri Prabhakaran, urged that without proper enquiry of the allegations, it is not open to the respondents to terminate his service under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965, which is contrary to the provisions of the Constitution of Article 311 and the allegations have not been substantiated. The overall

impact of all the allegations is that the removal of the applicant is by way of punishment and not a removal simplicitor for unsatisfactory performance during the probation period. In support of his contention, he cited the decision of the Tribunal in O.A. No. 404/93 - Laxman Sadashive Deshmane V/s. Union Of India & Others [1996(1) ATJ 121]. With due respect to the Learned Counsel for the applicant, that decision of the Tribunal is on a different point not relevant to the facts of this case, hence the ratio laid down in that case cannot be applied to this case. Against this, the Learned Counsel for the respondents, Shri Sethna, draws our attention to the decision of the Supreme Court in State of U.P. & Anr. V/s. Kaushal Kishore Shukla [1991 (1) SC 108] wherein the Apex Court has clearly laid down the ratio insofar as the termination under temporary service rules. In that case it was held that under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

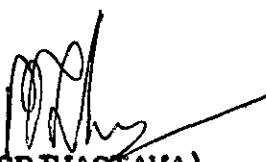
*AK*

3. There are two options open to the department i.e. either to terminate his service while on probation under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or to initiate proceedings under the relevant rules and to arrive at its own conclusion and thereafter impose penalty. On perusal of the termination order, we do not think that the termination order is covered with any malafide intention or arbitrary in nature. It is within the powers of the competent authority to consider him. Whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. In the instant case, the competent authority has decided to terminate his service in terms of Rule 5 of the Central Civil Services (Temporary Rules), 1965 which is to be treated as a termination simplicitor, because the applicant has admitted the charges levelled against him in his reply dated 31.10.1995 as against the allegations vide respondents letter dated 26.10.1995 stating that he demands commission from garages, irregular and unauthorised absence, rash and negligent driving, etc. That being the position,

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We do not think any further proof is required to prove his misconduct. The Learned Counsel for the respondents has also cited another decision of the Tribunal in Subhash Chander V/s. Lt. Governor of Delhi through Chief Secretary, Delhi [1995 (2) ATJ 1461] wherein after considering the various decisions of the Supreme Court as well as the Tribunals, the Tribunal had come to the conclusion that there ~~was~~ no merit in the application and the same was dismissed. The mere fact that the applicant has got ex-parte interim order does not give him any right to continue in service and if he has not been paid the notice period salary, the respondent is directed to make the payment within a period of one month from the date of receipt of a copy of this order.

4. In the result, we do not see any justifiable ground in extending the ex-parte interim order as the O.A. is devoid of merits. Accordingly, the O.A. is dismissed and the ex-parte interim order passed on 30.11.1995 stands vacated. No order as to costs.

  
(P.P. SRIVASTAVA)  
MEMBER (A).

  
(B. S. HEGDE)  
MEMBER (J).

R.P.N.W. 39/97 with m.p.n.o. 257/47  
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD, 4TH FLR,

MUMBAI - 400 001.

REVIEW PETITION NO. 39/97 in

O.A. No. 1385/95.

DATED THIS 15<sup>th</sup> DAY OF July 1997.

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

Hon'ble Shri P.P. Srivastava, Member (A).

Srinivas Dasrath Mokal,  
Room No. 6, Patil Galli,  
Ganesh Sadan, Sion Chunabhati,  
Mumbai - 400 002.

... Applicant.

V/s.

Chief Commissioner of Income Tax,  
3rd Floor, Aayakar Bhavan,  
M. K. Road,  
Mumbai - 400 020.

... Respondents

I ORDER BY CIRCULATION I

I Per Shri B. S. Hegde, Member (J) I

Applicant has filed this review application seeking review of judgement dated 27/2/96 whereby the services of the applicant was terminated in terms of Rule 5 of the Central Civil Services (Temporary Rules), 1965

" that his services shall stand terminated with effect from the date of expiry of a period of one month from the date notice is served on him."

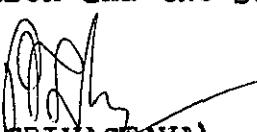
Though the applicant was posted as Staff Car Driver in 1994, his services have been terminated from 1/11/95. Though he made representation against the termination, the same was considered and rejected by respondents vide their letter dated 27/11/95. The termination order was issued by respondents terminating the services of the applicant and the Tribunal upheld the order passed by respondents in view of the ratio laid down in State of U.P. v/s. Kaushal Kishore Shukla I JT 1991 (1) SC I 108 I.

On perusal of the review petition, we do not find

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that the applicant has made out any fresh case for reconsideration he has only stated that he has come across a document published by the respondent under the caption "Eligibility List for Confirmation in the grade of Watchman/Sweepers, Staff Car Drivers, etc dated 5/7/96 in which the applicant is shown at Sr.No.5. Therefore, dismissal of the OA by the Tribunal was not justified and that the OA needs to be reviewed in the light of the fresh materials emanated from respondent himself. No such order has been filed by the applicant in support of his contention. Even if his name appeared in the eligibility list, since his conduct was found to be unsatisfactory, it is open to the respondents to terminate his services under CCS (Temporary) Rules, 1965. The case made out in the review petition is fit for preferring an appeal rather than filing a review petition.

The parties are aware that the scope of review petition is very limited unless discovery of new and important matter, after exercise of due diligence, which was not known to the applicant at the time of the filing of OA, it can be exercised where some mistake or error apparent on the face of the record is found. It may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. In the light of the above, we do not find any merit in the review petition and the same is dismissed by circulation.

  
(P. P. SRIVASTAVA)  
MEMBER (A)

  
(B. S. HEGDE)  
MEMBER (J)

abp.

15-7-97  
order/Judgement despatched  
to Applicant/Respondent(s)  
on 28-7-97

29(168)