

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

0.A.No. 220 of 1987

Date of Order: 23.3.90.

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BETWEEN

P.Vijaya Kumar .. Applicant

And

1. The General Manager, Ordnance Factory Project, Yeddu-mailaram, Medak-502205.
2. The Deputy General Manager(Admn.), Government of India, Ministry of Defence, Ordnance Factory Project, Hyderabad-500001.
3. The Labour Officer, Ordnance Factory, Yeddu-mailaram, Medak-205.

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Respondents

APPEARANCE

For the Applicant : Shri Sreeram Krishna Moorthy,
Advocate, not present.

For the Respondents : Shri Naram Bhaskar Rao, Addl.
Central Govt. Standing Counsel

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HON'BLE SHRI J.NARASIMHA MURTHY, MEMBER (JUDICIAL).

HON'BLE SHRI R.BALASUBRAMANIAN, MEMBER (ADMN.).

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI J.NARASIMHA MURTHY, MEMBER (JUDICIAL))

1. This application is filed against the respondents to issue appropriate direction declaring the impugned order of the 1st respondent dated 3-7-1986 as null and void and consequently to treat the applicant in service all along with all consequential benefits there to.
2. The applicant states that he was recruited to the post of Civil Motor Driver (Gr.II) after selecting him by an

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interview through the Employment Exchange. He was appointed to the said post in the Ordnance Factory through orders No. 447, dated 13-12-1985. He was on probation for a period of two years from the date of his appointment extendable further if necessary and at the discretion of the appointing authority. The appointment is governed by the rules applicable to temporary Central Government employees. He was medically examined by a competent Medical Authority and a medical certificate in the prescribed proforma has been furnished by him. He has been posted to MT Section for duty. On 25-6-1986 at 7-20 a.m. the applicant was deputed for duty on School Bus. He has collected the children who are studying at Sangareddy at BHEL School as well as at Sangareddy. While the applicant was crossing the Kandi Road (Narrow and acute angle turning) towards BHEL side on the High Way, a lorry struck to the vehicle that was being driven by the applicant causing damage to the vehicle. The incident became the subject matter of Crime No. 119/86 of Police Station, Sanga Reddy, on the file of Judicial First Class Magistrate, Sangareddy. The case is booked against the Driver of the said Lorry No. AAT 8454 in which the applicant is sighted as witness. In the case a Charge Sheet also has been filed. While so, the services of the applicant were terminated by the proceedings of the ~~1st~~ 1st respondent dated 3-7-1986. The applicant contends that the impugned order is mala fide, issued on extraneous considerations. The applicant preferred an appeal to the 1st respondent through registered post ack. due, enclosing a copy of the applicant's statement regarding the accident. This was acknowledged on 7-7-1986, but no action has been taken up till now. Again on 9-1-1987, the applicant

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preferred an appeal to the 1st respondent addressing a copy to the 3rd respondent, which were acknowledged by them on 15-1-1987. With the said appeal, the applicant had enclosed the F.I.R., Charge Sheet and various other statements in the Registered Crime referred to above. But, none of the authorities seem to come to the rescue of the applicant. Therefore, the applicant has filed the present application for the above said reasons.

3. The respondents have filed a Counter stating that the applicant was sponsored by the local Employment Exchange and was selected for appointment to the post of Civilian Motor Driver (Gr.II) in the scale of pay of Rs.260--350. He joined duty at O.F. Project, Yeddu-mailaram, on 18-11-1985. On 25-6-1986 at 7-30 a.m., when the project's school bus driven by the applicant was proceeding to BHEL School at Ramachandrapuram with School-going children, it met with a serious accident near Kandi Junction on the Hyderabad-Bombay National Highway resulting in injuries to some of the occupants of the vehicle. The bus also suffered extensive damages. In view of the damage to the vehicle and the consequent loss suffered by the State, a Board of Enquiry was constituted to investigate the circumstances that lead to the accident, to ascertain the extent of damage caused to the vehicle, to pin-point the extent of responsibility for the accident and to suggest remedial measures to prevent such accidents in future. The Board has come to the conclusion that the Driver of the vehicle did not exercise adequate care and alertness while driving the vehicle at the time when the accident occurred and had he taken care, the accident could ~~not~~ have been averted. A Departmental Board of Enquiry was ordered for purposes of ascertaining

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the facts. According to the terms and conditions as set out in the offer of appointment to the applicant, he was on probation for two years, which period can be extended at the discretion of the appointing authority, i.e. respondent No.1 herein. During the probationary period, the services of the applicant are liable for termination from either side without notice. In terms of sub-para (b) of para (2) of the appointment order dated 13-11-1985, the C.C.S.(Temporary Service) Rules were applicable to the applicant only on his satisfactory completion of the probationary period. The very purpose of placing a directly recruited employee on probation is to assess his suitability of retention or otherwise based on his performance during the initial period of his appointment. As per the Government orders now obtained, all the directly recruited employees will be placed on probation for a period of two years and accordingly the applicant was also placed on probation for two years from the date of his appointment. He accepted the terms and conditions before joining the duty. The overall performance of the applicant during the short period of seven months he served the Project was far from satisfactory. After an objective assessment of his work, the management came to the conclusion that his continuance in service was not desirable. So his services were terminated in terms of his appointment order. The contention of the applicant that he was entitled for notice of one month in terms of Central Civil Service (Temporary Service) Rules, 1965 and the pleading during the course of admission that the authorities should have suo moto reopened the issue

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either for confirmation or otherwise, is untenable as the CCS (Temporary Service) Rules were not applicable to him. It is a temporary appointment and he is on probation and therefore the question of issuing notice does not arise and it will also not attract Article 311(2) of the Constitution in cases of probationers. The termination of the services of the applicant is strictly in terms of the application appointment. So the ~~petitioner~~ is liable to be dismissed. (Wb)

4. We have heard the learned counsel for the applicant ~~Shri Sreekanth Krishna Moorthy~~, and the learned Standing Counsel for the Department, ~~Shri V. Bhaskar Rao~~

5. In this case the applicant was appointed as a Driver of a lorry. He was on probation for two years. The accident took place on ~~25~~ 26-6-1986 at 7.45 a.m. One D. Satyanarayana gave the First Information Report to the Police Station. While the applicant was driving the bus in which the school-going children were travelling, met with an accident with a lorry. A case is filed in the Criminal Court on the file of the Judicial First Class Magistrate, Sangareddy. All these facts are admitted facts. In the Panchanama written at the ~~seen~~ ^{Scene} of the ~~affairs~~ ^{offence}, it is stated that the School Bus No. APB-7209 got up the road and then one lorry coming from Hyderabad bearing No. AAT-8454, came speedily and dashed against the School Bus. An immediate look at the scene of offence disclose that the lorry dashed against the bus on account of the accident and some damage is caused to the bus. The evidence on record did not disclose that the petitioner is going rashly or negligently. It is stated that the lorry that was coming from Hyderabad side came with a high speed and dashed the school bus. It is stated that the lorry driver is coming in a high speed and dashed against the school bus. So it is clear that the

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lorry driver came in a rash and negligent way. When the vehicle was taken on the road, even if the Driver of the bus was very careful, for the mistake committed by the lorry driver this accident took place and it is also not established that the driver of the school bus is going in a rash and negligent way. Moreover, the bus was stopped there on account of engine failure and the driver is attending upon it. It is disclosed that the school bus driver was not at fault for this accident. But simply by this accident, the respondents removed him from service. The respondents say that a departmental enquiry was conducted by some departmental people, and what is that enquiry they have conducted, what is the evidence they have taken, that record was not supplied to the applicant. The respondents wanted to take shelter under the fact that the petitioner was a probationer and there is no need to supply any record or giving any notice. But in this case it is a case of removal for no fault of the applicant. No driver will try to made an accident because the risk of his life is also involved in it. But in the instant case, the vehicle was stopped on account of engine repairs and there is evidence that the lorry came rashly and dashed against the school bus and caused damage to the bus. For that the applicant was not at all responsible. That is not a good ground

to remove him from service. No doubt the applicant is (48) on probation. If he commits any mistake wilfully, then there is rather meaning for the respondents to remove him from service because his conduct was not satisfactory. But here, no such incidents have cropped up and there is no other allegation that he committed any disobedience or any other mistake. Therefore, the act of the respondents is arbitrary.

6. In this case when the accident took place, respondents have called the applicant for explanation. regular No charges were framed and no/enquiry was conducted and the applicant was also not given any chance to defend himself. He was removed from service simple because he is a probationer. In this connection I would like to point out the decision rendered by the Supreme Court of India reported in 1984 SCC(L&S) 268. In the said judgment it is laid down as follows :-

✓ 15. A narration of the facts of the case leaves no doubt that the alleged act of misconduct on June 22, 1981 was the real foundation for the action taken against the appellant and that the other instances stated in the course of the counter-affidavit are mere allegations which are put forward only for purposes of strengthening the defence which is otherwise very weak. The case is one which attracted Article 311(2) of the Constitution as the impugned order amounts to a termination of service by way of punishment and an enquiry should have been held in accordance with the said constitutional provision. That admittedly having not been done, the impugned order is liable to be struck down. We accordingly set aside the judgment of the High Court and the impugned order dated November 9, 1981 discharging the appellant from service. The appellant should now be reinstated in service with the same rank and seniority he was entitled to before the impugned order was passed as if it had not been passed at all. He is also entitled to all consequential benefits including the appropriate year of allotment and the arrears of salary and allowances upto the date of his reinstatement. The appeal is accordingly allowed.

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7. Accordingly, the applicant should be reinstated in service with the same rank and service with the same rank and seniority he was entitled to before the impugned order was passed as if it had not been passed at all. He is also entitled to all consequential benefits including the appropriate year of allotment and the arrears of salary and allowances upto the date of his reinstatement. In the circumstances of the case there would be no order as to costs.

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Asasubramanian

(J.NARASIMHA MURTHY)
MEMBER (J)

(R.BAL ASUBRAMANIAN)
MEMBER (A)

For any emergency call
for DEPUTY REGISTRAR (J)

Dt. 23 March, 1990.

AVL.

TO:

- 1. The General Manager, Ordnance Factory project, Yeddu mailaram, Medak-502 205.
- 2. The Deputy General Manager (Admn.) Government of India, Ministry of Defence, Ordnance Factory project, Hyderabad.
- 3. The Labour officer, Ordnance Factory, Yeddu mailaram, Medak-205.
- 4. One copy to Mr. Sreeram Krishna Murthy, Advocate, 3-4-780/C, Adjacent to Tuljah bhavan, Barkatpura, Hyd-27.
- 5. One copy to Mr. N. Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.
- 6. One spare copy.

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