

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 335/1989

Date of Decision : // -12-1991.

T.A.No.

M.Sudhakara Rao

Petitioner.

Advocate for the
petitioner (s)

Versus

Respondent.

Advocate for the
Respondent (s)

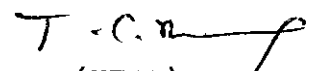
CORAM :

THE HON'BLE MR. R.Balasubramanian, Member (Admn.)

THE HON'BLE MR. T.Chandrasekhar Reddy, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)


(HRBS)


(HTR)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 335 of 1989

Date of decision: 11-12-1991.

Between

M.Sudhakara Rao

... APPLICANT

A N D

1. Head Record Officer,
RMS 'Y' Division, Vijayawada.
2. Senior Superintendent,
RMS 'Y' Division, Vijayawada
3. Post Master General,
Vijayawada.
4. The Director General (Posts),
representing Union of India),
Dak Tar Bhavan, New Delhi-1.

... RESPONDENTS

Appearance:

For the applicant : Shri C.Suryanarayana, Advocate

For the Respondents : Shri N.R.Devaraj, Addl.CGSC

CORAM

The Hon'ble Shri R.Balasubramanian, Member (Admn.)

The Hon'ble Shri T.Chandrasekhar Reddy, Member (Judicial)

JUDGMENT

(of the Bench delivered by the Hon'ble Shri R.Balasubramanian
Member (ADMN.)

This Application filed by Shri M.Sudhakara Rao,
against the Head Record Officer, RMS 'Y' Division, Vijayawada
and 3 others, under Section 19 of the Administrative
Tribunals Act, 1985, seeks a ^{declaration} ~~direction~~ to the Respondents

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that the order No.PF/MS Rao dated 25/27th March, 1989 passed by the 1st Respondent is abinitio illegal and void.

2. The applicant was initially recruited and employed as a casual labourer from 1-3-1979. It is claimed that he had been working in various capacities but that there are no formal orders appointing the applicant in such vacancies. By an order dated 22-1-1980 (A.2), the Superintendent, R.M.S. 'Y' Division (SRMS), appointed the applicant as a part-time water boy. During the period 9-12-1980 to 15-12-1985, it is stated that the applicant was appointed as a 'Mail Man' which is a full-time Group-D post. Thereafter, he^{is} stated to have been posted again as a part-time water boy. By an order dated 1-7-1986 (A.3) the 2nd Respondent approved the appointment of the applicant as a Group-D employee. Later, the appointment was formalised by another order dated 25-6-1987 (A.5). This appointment continued smoothly for about one and half years. But suddenly, without any cause, the Sub-Divisional Inspector, RMS 'Y-2' Sub-Division, issued a notice dated 25-1-1989 (A.6) under Rule 5(1) of CCS (Temporary Service) Rules, 1965 terminating the applicant's services with effect from the date of expiry of the period of one month from the date of service of the said notice on the applicant. The applicant represented against it to the Additional Post Master General at Vijayawada. While this was pending, the applicant filed O.A.No.96/1989 before this Bench, which was disposed of with a direction to the Addl.P.M.G. to take into consideration all the grounds raised by the applicant and dispose of the same. ^{Following the direction,} The Addl.P.M.G. had ~~accordingly disposed of~~ ^{rejected} the appeal by his order dated 23-3-1989 (A.10) ^{rejecting the same.} Aggrieved, the applicant has approached this Tribunal with this Application.

3. The Respondents have filed a counter affidavit and opposed the application. It is denied that he was appointed as a mail man from 9-12-1980 to 15-12-1985. It is their case that the applicant, though appointed against a regular vacancy, is only a purely temporary hand and during the period when he was only a temporary hand, they have the powers to terminate his services under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965. Accordingly they served a notice on the applicant and the applicant's representation against it was considered pursuant to a direction of this Tribunal and the Post Master General, Vijayawada who is competent to decide the issue, had rejected the appeal of the applicant.

4. We have examined the case and heard the rival sides. We find ~~that~~ from A.3, dated 1-7-1986 that the applicant was approved for appointment as a Group-D official. Subsequently, on 25-6-1987 (A.5), the Respondents have issued a formal order of appointment to the applicant. In that order, it is stated that he has been appointed in the Scale of Rs.750-940 with effect from 2-7-1986 in the existing vacancy. The applicant contends (para 4.12 of the application) that once a person is appointed regularly, according to the Government of India's orders, it is not open to the Respondents to cancel the same without proper procedure. Against this, the contention of the Respondents is that when they choose to terminate the services under C.C.S.(T.S.) Rules, it is not necessary to follow any procedure and also ^{to} give reasons so long as such a step is not a punitive measure.

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contd...4.

In other words, if their case is that only when the termination is ^{brought} ~~required~~ to be done as a punitive measure, all opportunities should be given to the official as required under Article 311(2) of the Constitution of India.

5. The applicant has also questioned the competence of the Post Master General, Vijayawada to settle his appeal. After considering this question, we find that the Post Master General, Vijayawada is ~~the~~ competent to pass orders ⁱⁿ ~~under~~ this appeal because: (a) the appeal itself is addressed by the applicant to him; and (b) that this Tribunal in its order dated 9-2-1989 in O.A.No.96/89 had directed the Additional Post Master General, A.P.Circle, ^{Vijayawada} ~~as~~ he was then, to consider the appeal and ^(c) ~~see that~~ the Addl.PMG is several steps above the official who gave the termination notice, *thereby being in a position to deal with the appeal.*

6. The question to be decided now is whether the Respondents have done the right thing in invoking Rule 5(1) of the C.C.S.(Temporary Service) Rules in terminating the services of the applicant. Rule 5(1) of the C.C.S.(Temporary Service) Rules, 1965 ^{T.S.} ~~(Temporary Service)~~ rules for short) reads as follows:

- (a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the Government servant;
 - (b) The period of such notice shall be one month;
- Provided that the services of any such Government Servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

1. The Head Record Officer, RMS 'Y' Division, vijayawada.

2. The Senior Superintendent, RMS 'Y' Division, vijayawada.

3. -The Post Master General, vijayawada.

4. The Director General (Posts) Union of India,
Daktar Bhavan New Delhi-1.

5. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.

6. One copy to Mr.N.R.Devraj, Addl. CGSC. CAT.Hyd.

7. One spare copy.

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There is no indication from the rule as to the circumstances under which this can be invoked. There are many decisions of various courts disapproving this rule being used as a short-cut to disciplinary procedure. The Respondents contend that the termination was not resorted to avoid any disciplinary procedure and there is no stigma in the order passed. Therefore, we have to see which are the circumstances when this rule 5(1) can be resorted to. There are decisions of the Hon'ble Supreme Court to indicate that these rules can be invoked: (a) where the services of a temporary servant can be terminated on the ground of unsuitability and no stigma attached to him by reason of the termination (Commodore, Commanding Southern Naval Area Vs. Rajan, AIR 1981 SC 965) and (b) when posts are not available (State of Haryana Vs. Des Raj Sangar, AIR 1976 SC 1199).

7. The Respondents have not made out any case that the applicant's services were terminated for want of post or for want of suitability on his part. Under but these circumstances we have to hold that the order of termination is bad in law and we accordingly set aside the impugned order No. PF/MS Rao dated 25/27-3-1989 of the 1st Respondent and subsequent rejection of the appeal, dated 23-3-1989 by the Post Master General, Vijayawada, by holding them as illegal, null and void. The applicant is entitled to all the consequential benefits arising from the order in this case including backwages.

No costs.

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (A)

T. Chandrasekhara Reddy
(T. CHANDRASEKHARA REDDY)
Member (J)

Dated: 11 th day of December, 1991.

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By: Registrar (D.A.)