

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.289/90.

Date of Judgment / 7th Sept 1991.

M.Saraswathi Prasad

.. Applicant

Vs.

1. The Inspecting Asst.
Commissioner of
Incometax,
Vijaywada Range,
Vijaywada.

2. The Commissioner of
Incometax,
Visakhapatnam.

3. The Chairman,
Central Board of
Direct Taxes,
New Delhi.

.. Respondents

Counsel for the Applicant : Shri Duba Mohan Rao

Counsel for the Respondents : Shri N.V.Ramana,
Addl. CGSC

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

[Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

This application has been filed by Shri M.Saraswathi Prasad under section 19 of the Administrative Tribunals Act, 1985 against the Inspecting Asst. Commissioner of Incometax, Vijaywada Range, Vijaywada and 2 others.

2. The applicant entered service on 26.8.91. On 29.9.82 the applicant was detained in custody by the police, implicating him in a criminal case. On account of the detention he was placed under suspension by an order dated 4.10.82 of the respondents. The applicant was shown as Accused No.1 alongwith 4 others in Case No.233/82 for offence under section 411 of the I.P.C. and on conclusion of the trial the 4th Addl. Magistrate First Class, Vijaywada acquitted the accused by disbelieving the evidence of the

prosecution. This judgment was dated 2.9.85. Immediately after a copy of the judgment was received by the applicant, the applicant approached the 1st respondent and handing over a copy of the judgment requested him (1st respondent) to reinstate him (applicant) in service since he was given a clean acquittal. He was awaiting for a favourable order but to his dismay he received an order dated 17.3.86 of the 1st respondent terminating his services under the proviso to sub-rule(1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. He preferred an appeal to the 2nd respondent on 7.4.86. That was rejected. The applicant pursued the matter further with the 3rd respondent by his appeal dated 30.1.87. As no reply was received, he took up the matter with the Hon'ble Minister for Home Affairs, who replied on 14.10.88 that the 3rd respondent was requested to review the case and he could await a reply from the 3rd respondent. Not receiving a reply from the 3rd respondent the applicant made further enquiries and came to know in February, 1990 that his appeal had been rejected by the 3rd respondent on 22.6.89 itself. It is alleged by the applicant that he had received no such communication. His juniors are continuing in service and he had been given a clean acquittal by the trial court. For these reasons the applicant prays that he be reinstated in service by declaring the order dated 17.3.86 of the 1st respondent as illegal.

3. The respondents have filed a counter affidavit and oppose the prayer. It is contended that against the acquittal by the lower court the State Government had filed an appeal before the Andhra Pradesh High Court which is pending. It is contended that simply because the applicant was acquitted for want of sufficient evidence to prove the guilt beyond reasonable doubt by the prosecution, it cannot be said that the applicant was totally exonerated by the court. It is further contended that the conduct and

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behaviour of the official reveals a grave offence of criminal nature involving moral turpitude in the involvement and commission of property offence by a public servant. Such conduct and behaviour of the said official was subversive to discipline and harmful to public interest and his continuance in the Department ~~was considered to have~~ ^{would create} adverse effect on the discipline in the Department. Hence, the respondents justified the termination of the services of the applicant stating that he was only ^{on} temporary service and that his services are liable to be terminated any time under Rule 5.

4. The applicant has filed a rejoinder. It is denied that the appeal before the Andhra Pradesh High Court is still pending. It is stated that the Criminal Appeal No.83/86 filed by the State Government was dismissed by the High Court at the admission stage itself on 4.2.86 stating that the court below has rightly held on appreciation of the evidence that the case made out against the applicant was not sustainable. It is also contended that the Learned Magistrate did not acquit the applicant giving the benefit of doubt and that he was totally exonerated since the prosecution failed to prove the guilt. As against this, in the case of A6 he was acquitted by the Learned Magistrate giving him ^{only} the benefit of doubt.

5. We have examined the case and heard the learned counsel for the applicant and the respondents. The main question before us is whether the respondents are right in terminating the service of the applicant straightaway invoking rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The applicant was under suspension and while continuing to be under suspension his services were terminated. In Ground (iv), the applicant is questioning the legality of the action of the respondents in terminating his services

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while still under suspension. We do not accept this contention of the applicant since the Govt. of India's Decision No.6 provides for termination of services while under suspension or during departmental proceedings. But such a step would arise only when ^{during the} departmental proceedings or suspension the sanction for the temporary post itself expires. But in this case the post continued ^{and} since juniors are otherwise continued in service. It is, therefore, clear that the respondents have taken recourse to termination of services not on account of the post having lapsed but as a short-cut to disciplinary proceedings. In fact, the respondents have said this in so many words in the counter affidavit stating that the applicant is not considered fit to be retained in service. The applicant has been acquitted by the lower court and the appeal of the State Government in the High Court has been dismissed. Therefore, we hold that the applicant had been exonerated by the courts. Under these circumstances, without following any disciplinary procedure the respondents have just taken cover under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. This is highly irregular and we have therefore no hesitation in setting aside the order of termination. We also order that the applicant is entitled to all consequential benefits from the date 2.9.85 when he was given a clean acquittal. He is also entitled to all the arrears from 2.9.85 till the date of his reinstatement pursuant to this judgment. As for the treatment of the period 4.10.82 (when he was placed under suspension) to 1.9.85, the respondents shall pass suitable orders in accordance with the rules in the light of the exoneration of the applicant by the court.

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The respondents shall give effect to this judgment within a period of 3 months from the date of receipt of this order. There is no order as to costs.

MS

(J.Narasimha Murthy)
Member(Judl).

R. Balasubramanian

(R.Balasubramanian)
Member(Admn).

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Dated

17th September 91

23/9/91
Registrar.

To

1. The Inspecting Asst. Commissioner of Incometax, Vijayawada Range, Vijayawada.
2. The Commissioner of Incometax, visakhapatnam.
3. The Chairman, Central Board of Direct Taxes, New Delhi.
4. One copy to Mr.Duba Mohan Rao, Advocate, 69/3Rt, Vijayanagar colony, Hyd.
5. One copy to Mr.N.V.Ramana, Addl.CGSC. CAT.Hyd.
6. One copy to Hon'ble Mr.J.Narasimha Murty, Member(CAT.Hyd.
7. & Copy to All Benches and Reporters as per the standard lise of CAT.Hyd.Bench.
8. One spare copy

pvm

the last part of 23/9/91

RM
19/9/91

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To be typed

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR

V.C.

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY: M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 17-9-91
17-9-1991

ORDER/JUDGMENT

M.A./R.A./C.A. No.

in

S.A. No. 289/90

I.A. No.

(W.P. No.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

Central Administrative Tribunal
DESPATCH
3 OCT 1991
HYDERABAD BENCH.

17/9/91