

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 472/1990

Date of Decision : -4-1991.

T.A.No.

Smt. B. Hemalatha

Petitioner.

Shri T. Jayant

Advocate for the
petitioner (s)

Versus

Dy. Comptroller & Auditor Genl. of India Respondent.
& another

Sri G. Parameswara Rao, SC for IA&AD

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. B.N. Jayasimha, Vice-Chairman

THE HON'BLE MR. J. Narasimha Murthy, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *no*
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*
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).

HVC

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IN THE CENTRAL ADMINISTRATIVE OFFICE : HYDERABAD BENCH
AT HYDERABAD

O.A.NO.472/90

Date of the order: 31-5-1991.

Between

Smt.B.Hemalatha

. . . Applicant

A n d

1. Deputy Comptroller & Auditor General of India,
New Delhi-110 002.

2. Accountant General, Andhra Pradesh-I,
Hyderabad-500463.

. . . Respondents

Appearance:

For the applicant : Shri T.Jayant, Advocate

For the Respondents : Shri G.Parameswara Rao, SC for IA&AD

CORAM

The Hon'ble Shri B.N.Jayasimha, Vice-Chairman

The Hon'ble Shri J.Narasimha Murthy, Member (Judicial)

J U D G M E N T

(of the Bench delivered by Shri B.N.Jayasimha, Vice-Chairman)

The applicant who was a Group-D employee in the Office of the Accountant General, Andhra Pradesh-I, Hyderabad has filed this application aggrieved by the order No.AG(AU) I/Admn.I/Rectt/89-90/39 dated 9-6-89/12-6-89 passed by the Accountant General (Audit-I), A.P., Hyderabad terminating the services of the applicant. The applicant states that she was initially appointed as a casual labourer in Group-D service on daily wage in 1985 in the office of the Respondent No.2. By memo. dated 19-9-88 the applicant was informed that she would be considered for apointment as Group-D and was directed to furnish required certificates so as to reach the office on or before

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26-9-1988. The applicant accordingly submitted the required information. The Respondent No.2, thereafter, vide memo. dated 26-9-88 offered her the post of Group-D (Watchman) in the pay-scale of Rs.750-940 and directed her to submit her acceptance on the terms and conditions for the said post. The applicant accordingly intimated her acceptance and she was appointed by Order No.106 dated 30-9-88 as a Group-D employee with effect from the same date.

2. By memo. dated 1-6-89 the Respondent No.2 asked the applicant to explain the alleged manipulation of her date of birth as 1-3-1961 instead of 1-3-1951 in the duplicate Transfer Certificate issued by the Zilla Parishad High School, Kothakot, produced by her at the time of regularisation of her services in Group-D cadre. She was given one week's time to submit her reply. As the applicant is only a group-D employee, she was taking steps to get prepare her explanation. However, the Respondent No.2 issued an order of termination dated 9-6-89 terminating her services invoking sub-rule (i) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965.

3. The applicant submitted a representation dated 22-6-89 requesting the Respondent No.2 to appoint her as a contingent staff. She did not receive any orders inspite of repeated reminders. The applicant thereafter submitted a representation dated 11-12-89 against the order of termination to the Deputy Comptroller & Auditor General of India (Respondent No.1 herein). Thereafter the applicant received an order No.nil dated 20-4-90 from the Respondent No.1 stating that her representation against the termination order had been rejected as time barred. Aggrieved by these orders, the applicant has filed this Application.

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4. The Respondent, in their counter, say that on 19-9-88 the applicant was informed that she was likely to be considered for appointment to Group-D service and accordingly directed to submit information in the proforma supplied to her alongwith necessary documents in support of her age and educational qualifications. In the Attestation Form which formed part of the proforma supplied, the applicant was specifically warned that furnishing of false information or suppression of any factual information therein would entail disqualification and the candidate is likely to render herself unfit for employment under the Government. After her appointment, on verification, it was found that the date of birth of the applicant was 1-3-57 and not 1-3-61 as stated by her in her application dated 21-9-88. By memo. dated 1-6-89 she was informed that she had produced a duplicate Transfer Certificate issued by the Zilla Parishad High School, Kothakota, Chittoor district in support of her age and that on a verification of the same, with the school records, it was found that the date of birth given by her was at variance (1-3-61) as against her correct date of birth is 1-3-57. It was, therefore, found that she was over-aged and not eligible for regular appointment as Group-D employee. Her explanation was called for on the variance on the duplicate Transfer Certificate so as to reach the authorities within one week from the date of receipt of the memo. failing which, it was made clear that action would be taken to terminate her services. The applicant did not submit any explanation nor did she seek any extension of time. Even then, an examination was made to find out whether the applicant was eligible for appointment after setting off her service rendered as casual worker but even then she was over-aged. Hence the impugned order was issued. The applicant refused to receive the impugned order and, therefore, a copy of the order was sent to her house by registered post Ack.due and the same was received by her on 9-6-89. The representation dated 22-6-1989

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stated to have been submitted by the applicant was not on record. However, the contents of her letter dated nil received in the office on 18-7-89 read as under:

"I am in receipt of the orders terminating my services as Group-D with effect from 9-6-89 due to production of false certificate in support of my age. I regret very much for producing false certificate for which I may kindly be excused."

Another representation dated 19-9-89 was received requesting that she be appointed as 'contingent staff' on daily wage basis. No reply was given to her. The applicant submitted yet another representation dated 11-12-89 addressed to the Additional Deputy Comptroller and Auditor General of India requesting that the delay may be condoned and the termination order be set aside. After considering the case, the Deputy Comptroller & Auditor General of India by his order dated 20-4-90 passed a speaking order rejecting the representation. For these reasons, the Respondents oppose the Application.

5. We have heard the learned counsel for the applicant Shri T. Jayant and Shri G. Parameswara Rao, the learned Standing Counsel for the Respondents.

6. The main contention of Shri Jayant is that as the allegation against the applicant is that she had manipulated her date of birth she is entitled to an enquiry as per Article 311(2) of the Constitution of India. The Respondents could not have invoked Rule 5(1) of the CCS (Temporary Service) Rules and if an enquiry had been held she would have defended herself against the allegation effectively. Shri Parameswara Rao, on the other hand, contends that the applicant herself has admitted by her letter dated 18-7-89 about the production of a false certificate. It is not the case of the applicant that she had not produced a false certificate. The applicant has also failed to give an explanation to the notice issued to her. Therefore, there is nothing irregular in the respondents invoking the Rule 5(1) of the CCS (Temporary Service) Rules in terminating her services.

7. We have considered these submissions carefully. From the fact it is evident that the applicant had submitted a false certificate in regard to her date of birth. The Respondents have also considered the possibility of retaining her in service if she had not been over-aged. According to the correct date of birth, the applicant is ineligible for appointment. In the circumstances, we do not find any merit in the contention of Shri Jayant that an enquiry ought to have been held.

8. The next contention of Shri Jayant is that the CCS (Temporary Service) Rules, 1965 are not applicable to the employees of the Comptroller and Auditor General of India and he relies, for the same, on the judgment of the Supreme Court in Accountant General & another Vs. Doraiswamy & others (1983 SLR 538). We do not see how this decision helps the Applicant. In that judgment, it was observed by the Supreme Court that in their opinion the reference to the proviso under Art.309 in the recital of the Notification publishing the Rules of 1974 is meaningless and must be ignored. The rules themselves were upheld. Secondly in regard to retrospective applicability of the rules, it was held that the rule which declares that the rules shall be deemed to have come into force on 27th July, 1956 must be held ultra vires. The ratio is, therefore, of no relevance in considering the validity of C.C.S.(Temporary Services) Rules, 1965. Even if the contention of Shri Jayant is accepted that the rules are not applicable, the applicant will then be bound by the conditions laid down in her appointment order in which it was stated that the appointment was purely temporary and would be governed by the CCS(TS) Rules, 1965 and is liable to termination without assigning any reasons under rule 5 ibid. As the appointment order has clearly laid down the condition of appointment, we see no infirmity in the impugned order issued invoking that rule.

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9. In the result the Application fails and is accordingly dismissed. No order as to costs.

B.N. Jayasimha
(B.N. Jayasimha)
Vice-Chairman

ms
(J. Narasimha Murthy)
Member (Judicial)

Dated: the 31st day of May, 1991.

Deputy Registrar
Deputy Registrar (J)

mhb/-

To

1. The Deputy Comptroller & Auditor General of India,
New Delhi -2.
2. The Accountant General, A.P.I, Hyderabad-463.
3. One copy to Mr. T. Jayant, Advocate, CAT. Hyd. Bench.
4. One copy to Mr. G. Parameswara Rao, SC for IA & AD.
5. One copy to Mr. J. Narasimha Murthy, Member (J) CAT. Hyd.
6. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.

AND

THE HON'BLE MR. D. SURYA RAO: M(J)

AND

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

AND

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

DATED: 31.5.1991.

~~ORDER~~ JUDGMENT.

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

in

T.A. No.

W.P. No.

O.A. No.

472/90

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.

