

(54)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 1096/92

Date of Order: 3.3.94

BETWEEN:

Ms. A.E.S.S. Latha

.. Applicant

A N D

1. The Union of India, rep. by
the Secretary, Ministry of Defence,
New Delhi.
2. The Chief of Naval Staff,
Naval Headquarters,
Sena Bhavan, New Delhi.
3. The Flag Officer Commanding-in-Chief
Eastern Naval Command, Naval Base,
Visakhapatnam.
4. The Civilian Gazetted Officer,
Staff Officer (Civilian),
Eastern Naval Command,
Naval Base, Visakhapatnam.
5. The Chief Staff Officer (P&A)
Eastern Naval Command,
Naval Base, Visakhapatnam.

.. Respondents.

Counsel for the Applicant: Mr. E.D. Nathan

Counsel for the Respondents: Mr. N.R. Devraj

HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

HON'BLE SHRI A.B. GORTHY : MEMBER (ADMN.)

J U D G E M E N T

I AS PER SHRI V. NEELADRI RAO, VICE-CHAIRMAN I

Heard Shri E.D. Nathan, learned counsel for the applicant and also Shri N.R. Devaraj, learned Sr. Standing counsel for the respondents.

2. The applicant was appointed as Telephone Operator Gr. II in a Temporary casual capacity for the period from 3.1.89 to 31.3.89 in the Naval Dockyard, Visakhapatnam. She was being engaged after break-up of one or two days for 89 days each time. On 1.9.90 she was transferred to the office of the Officer-in-charge, Communication Centre at the Naval Headquarters. Show cause notice dated 28.1.92 was issued to the applicant for the unauthorised absence from 2.1.92. Then the applicant submitted explanation dated 17.2.92 ^{Annexure} (~~Exhibit~~ 25) stating that she could not attend for the reasons therein and she also added that thereafter she would be regular in her duties and in case she requires leave, she would avail the same only with prior permission. By order dated 29.2.92, the applicant was removed from service. Then she approached the Flag Officer Commanding-in-Chief as per her letter dated 31.3.92 and the same is described as an appeal. The same ~~was~~ ~~was rejected on 8.6.92.~~ Then this OA was filed on 15.12.92 assailing the order of her removal.

3. The two fold contentions for the applicant are:

- (1) that the authority who passed the order of removal dated 29.2.92 removing her

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from service is different from the authority who engaged her as per proceedings dated 3.1.90 (Annexure I) and hence the order of removal is liable to be set aside.

- (2) The said order of removal has to be set aside also on the ground that no enquiry was conducted.

4. The order dated 3.1.89 ^{Annexure} (Exhibit A1) discloses that the Civilian Gazetted Officer Staff Officer (Civilian) signed the said order of appointment for Chief Staff officer (P&A). Thus it is a case of appointment by Chief Staff officer and not by Civilian Gazetted Officer, Staff Officer. In fact that officer is of a rank lower ^{than} that of Chief Staff officer. Show cause notice dated 28.1.92 (Annexure 4) and the impugned order of removal dated 29.2.92 (Annexure A6) were signed by the Chief Staff Officer (P&A) himself. Thus there is no force in the contention that the officer who passed the order of removal is different from the officer who appointed the applicant.

5. Rule 3 (1) (C) of CCS CCA Rules states that those rules are not applicable to any person in casual employment. It is not stated for the applicant that her appointment is in accordance with rules. Even in the order of appointment it was referred to as temporary casual. Hence we find that the CCS CCA rules are not applicable in regard to the applicant.

6. Supreme court held in 1958 SC 36 that the protection under article 311 of the Constitution is applicable only in regard to the substantive appointment to a permanent post or an appointment to a temporary post if that appointment give right to hold the post for the entire period ^{including the service period into a quasi permanent tenure,} As the applicant does not come either of those two categories, she

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to no such protection under article 311 of the Constitution. It is stated that to comply with the principles of natural justice, notice was given to the applicant as to why the order of her removal from service cannot be passed for her unauthorised absence from 2.1.92.

After considering the explanation of the applicant as per her submission dated 17.2.92 (Annexure 5), the respondent 5 removed the applicant from service.

7. The applicant is a handicapped person.

In her representation dated 31.3.92 to the Flag Officer which is styled as an appeal, she stated as to why she has not come up with the true facts earlier, and in view of the facts stated by her in the said representation dated 31.3.92, her case may be considered and she may be engaged. We feel that as these facts were not available to Respondent 5 and as the said authority will be in a better position to verify the facts stated therein, we feel that it is just and proper to direct Respondent 5 to consider the said representation and if what she stated therein is correct, then he has to consider to engage her as temporary casual Telephone Operator if that post is still available and if it is remaining unfilled.

8. In the result, the Respondent 5 is required to consider the representation dated 31.3.92 of the applicant addressed to the Flag Officer (Annexure 7) and it is needless to say that if he is satisfied in regard to what is stated in the said representation, he has to consider in regard to her

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appointment as Telephone Operator Gr. II in temporary casual capacity if that post is still there and if it is still remaining unfilled and of course he may not re-appoint her if she absents frequently even after ^{re-appointment in case} she is re-appointed after consideration of her representation as per Annexure 7. The OA is ordered accordingly. No costs.

(A.B. GORTHY)
Member(Admn.)

(V. NEELADRI RAO)
Vice-Chairman

Dated the 3rd March, 1994
Open court dictation

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Deputy Registrar(Judl.)cc

Copy to:-

1. Secretary, Ministry of Defence, Union of India, New Delhi.
2. The Chief of Naval Staff, Naval Headquarters, Sena Bhavan New Delhi.
3. The Flag Officer Commanding-in-Chief, Eastern Naval Base, Visakhapatnam.
4. The Civilian Gazetted Officer, Staff Officer(Civil), Eastern Naval Command, Naval Base, Visakhapatnam.
5. The Chief Staff Officer(P&A), Eastern Naval Command, Base, Visakhapatnam.
6. One copy to Sri. E.D. Nathan, advocate, 3-4-340/2, Barkat, Hyderabad-27.
7. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. One spare copy.

Rsm/-

PSA [Signature] 10/3/94

O.A. 1096/92

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANJAN : MEMBER
(ADMN)

Dated: 3/31-1994.

ORDER/JUDGMENT:

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

in

O.A. No.

1096/92

T.A. No.

(W.P. No.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

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15 MAR 1994

HYDERABAD

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