

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 633/94.

Dt. of Decision : 5.1.95.

N. Dasarath

.. Applicant.

Vs

1. The Director,
Central Research Institute for
Dryland Agriculture, Santoshnagar,
Saidabad Post, Hyderabad-500 659.
2. The Secretary,
Indian Council of Agricultural
Research, Krishi Bhavan,
New Delhi.

.. Respondents.

Counsel for the Applicant : Mr. V.Venkateswara Rao

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CSG.

CORAM:

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

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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OA 633/94.

JUDGMENT

Dt: 5-1-95

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

counsel for the applicant and Shri N.R.Devaraj, learned
standing counsel for the respondents

to a Group 'D' post of ~~Assistant~~
(SS Grade-I) for short) in the respondents institute
from 23.10.1978 on probation for a period

of two years. ~~Provisional~~
15.5.1981 was issued to the effect that the applicant

24.10.1980 ie., on the expiry of two years from the

date of his appointment. ~~He~~
were terminated forthwith by the impugned order No.

F.No.1-4(30)/93-94.Estt., dated 1.3.1994 and the same
is challenged in this OA.

3. The impugned order dated 1.3.1994 discloses
that it was passed in exercise of powers under Rule
5(1) of Central Civil Services (Temporary Service)
Rules, 1965. One of the main contentions for the
applicant is that as he was not a temporary employee

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by the date of the impugned order, the same has to be held as void. Thus, the point which arises for consideration for disposal of this OA is, as to whether the action has to be taken against the applicant under CCS(Temporary Service) Rules or under CCS(CCA) Rules.

4. The same point arose in O.A.No.278/94 (T.Ayodhya Ramaiah Vs. The Director, Central Research Institute for Dry-land Agriculture and Ors.). The applicant in that OA was a Junior Stenographer on probation for two years as per order dt. 29.12.1980. Eventhough that period of probation was over long back in 1982 itself, he was removed from service by order dt. 5.1.1994 treating him as temporary servant under rule 5(1) of CCS(Temporary Service) Rules, 1965. That impugned order was set aside by this Tribunal by Judgment dt. 21-7-1994 holding that he is deemed to have been confirmed in service as he was continued in service for a very long time after completion of the probation period in 1982.

5. It was held in that OA as follows:-

(a) The order of confirmation has to be passed within a reasonable period after the period of probation is over as observed in [AIR 1991 SC 73 - Sri Dhiraj Ghosh Vs. Union of India and Ors.].

(b) The time taken for written order of confirmation should be reasonable even if there is specific mention for placing the case of the employee before the D.P.C. for confirmation in terms of O.M.No.18011/1/86 dt. 28.3.1988.

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If unwarranted delay is there, there would be deemed confirmation after the lapse of reasonable period from the date of completion of period of probation in view of the principles laid down by the Supreme Court in [AIR 1986 SC 1844.

(c) If there is a test to be passed, then there will not be any deemed confirmation on completion of period of probation when the employee has not passed the test.

6. The condition of availability of vacancy in a permanent post for confirmation had been withdrawn after the issuance of the O.M. dt. 28.3.1988 and hence the employee is deemed to have been confirmed in service even if there is no permanent vacancy after the issue of the above quoted O.M.

7. In the present case, the applicant had completed his probation on 24.10.1980 and the satisfactory completion of probation period was also declared by order dt. 15.5.1981 (Annexure-I). There was no stipulation of passing any test for successful declaration of probation in the case of the applicant. As there was no need for a permanent post for confirming him in terms of O.M. dt. 28.3.1988, the applicant should have been deemed to have been confirmed as S.S.Gr.I within a reasonable period after satisfactory completion of the probation period. In view of the above, issuance of impugned order Under Rule 5(1) of CCS (Temporary Service) Rules as per Memo dt. 1.3.1994 cannot be upheld and has to be held as illegal and hence has to be set aside

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P. J. A.

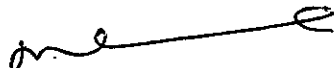
following the dictum laid down by this Bench in the case of the applicant in O.A.No.278/94. No action can be taken against the applicant under CCS(Temporary Service) Rules, 1965.


8. But when it is a case where action can be taken under CCS(CCA) Rules in regard to the misconduct alleged, we have to give opportunity to the concerned authority to initiate action for the misconduct as alleged under CCS(CCA) Rules.

9. This OA was filed on 29.4.1994 i.e. within a reasonable period of less than two months. Hence, we feel that it is a case where salary for the period from the date of removal has to be allowed.

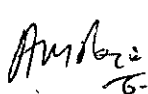
10. In the result, the impugned order dt. 1.3.1994 is set aside. The applicant is entitled to salary from the date of removal i.e. 1.3.1994. However, this order does not debar the concerned authority from initiating proceedings against the applicant in accordance with law in regard to the misconduct alleged which was referred to as the basis for terminating his services as per the impugned order.

11. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 5th January, 1995.


6-1-95
Deputy Registrar(J)C

Vsn/Grh.

To

1. The Director, Central Research Institute for Dryland Agriculture, Santoshnagar, Saidabad Post, Hyd-659.
2. The Secretary, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi.
3. One copy to Mr. V. Venkateswar Rao, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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PSA copy 6-1-95

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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. R. RANGARAJAN : M(ADMIN)

DATED: 5-1-1995

ORDER/JUDGEMENT:

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

in

O.A.No. 633/94

T.A.No. (w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

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