

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Date of order: 14-5-1996

OA NO.325/95

Mukesh

.. Applicant

Versus

Union of India and others .. Respondents

Mr. R.S.Bhadauria, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. G.P.Sharma, Administrative Member

Hon'ble Mr. Rattan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. G.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Mukesh has prayed that order dated 13-9-1994 (Annexure-A1) terminating the services of the applicant be quashed as it has been passed without affording reasonable opportunity of hearing to the applicant and observing the principles of natural justice. The applicant has further prayed that the respondents may be directed to reinstate the applicant in service with all consequential benefits including back wages.

2. The case of the applicant is that he was appointed on the post of Sweeper in a regular vacancy in place of his deceased father vide order dated 12-10-92 (Annexure-A2). Certain show-cause notices were issued to the applicant for absenting ^{himself} during ~~from~~ his service period which, however, did not state the correct position of the applicant's absence from duty. The applicant replied to the show-cause notices, denying the allegations regarding unauthorised absence from duty. However, without ~~paying heed~~ to the reply

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furnished by the applicant and without ascertaining true cause of his absence by holding the departmental enquiry, the applicant's services were terminated vide order dated 13-9-1994 under Rule 5 of the Central Civil Service (Conduct) Rules. The order of termination is penal in nature as it is grounded on misconduct on the part of the applicant and therefore, the departmental enquiry ought to have been held before terminating services of the applicant. Applicant's appeal against the order of termination has been rejected by the competent authority.

3. The respondents in their reply stated that on his appointment, the applicant was on probation for a period of two years. During the period of probation he frequently absented ^{himself} from duty without prior information/intimation and repeated verbal warnings etc. by the higher authorities were of no avail. Show-cause notices were issued to the applicant in this regard but the applicant did not reply to the show-cause notices nor he did show any improvement in his performance. Accordingly his services were terminated by order dated 13-9-1994 (Annexure-A1). The applicant's denial about being absent from duty without any reason have not been accepted by the respondents. However, according to them, the applicant was a temporary employee on probation for a period of 2 years and his services were found to be unsatisfactory during the probation period and, therefore, his services were terminated. The action taken by the respondents is, therefore, perfectly legal and valid.

4. The applicant has also filed a rejoinder to the reply filed by the respondents.

5. We have heard the learned counsel for the parties and have perused the records.

6. The order dated 12th October, 1992 shows that the

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appointment of the applicant as Safaiwala was on a regular basis, though it was temporary and he was kept on probation for a period of 2 years. In the order Annexure-A1 dated 13th September, 1994 by which the applicant's services have been terminated, it has been stated that the applicant has been found habitually absenting himself from duty and repeated instructions/warnings given to him by the authorities from time to time have had no effect and that the applicant has continued to absent from duties frequently. Therefore, as stated in the order Annexure-A1, his services have been terminated under Rule 5 of the Central Civil Services (Conduct) Rules, with payment of one month's pay from the date of the order, as per rules. There are two clear infirmities in the order passed by the respondents, one of which is procedural while the other is substantive. The procedural irregularity is that while the order in fact seems to be under Rule 5 of the Central ^{Civil} Services (Temporary Service) Rules, it has been described as under Central Civil Services (Conduct) Rules. This by itself would not be fatal to the order passed but the substantive irregularity in the order passed is that the order is grounded on misconduct alleged to have been committed by the applicant in habitually absenting himself from duty. This alleged misconduct is the foundation of the order passed by the respondents. Obviously, a stigma has been cast on the applicant in the order itself and the order is apparently penal in nature.

7. In the circumstances, we are of the view that regular disciplinary proceedings should have been held against the applicant, if at all the respondents wanted to take action against the applicant for the misconduct

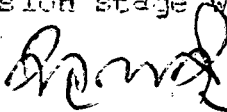
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alleged on his part. In the circumstances, the order Annexure-A1 is not sustainable. It is hereby quashed with consequential benefits. The respondents are, however, not precluded from taking appropriate action against the applicant after following the prescribed procedure under the rules.

8. The OA stands disposed of accordingly at the admission stage with the consent of the parties.


(Rattan Prakash)

Judicial Member


(O.P.Sharma)

Administrative Member