

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. NO. 233 of 1997.

DATE OF DECISION..... 20.8.1999.

Shri Vim Kharkhonger

(PETITIONER(S))

Shri J.L.Sarkar, M.Chanda.

ADVOCATE FOR THE  
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.

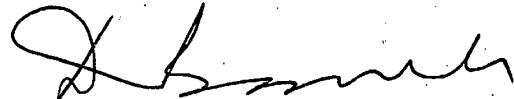
ADVOCATE FOR THE  
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local paper may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 33 of 1997.

Date of Order : This the 20th Day of August, 1999.

Hon'ble Mr Justice D.N.Baruah, Vice-Chairman.

Hon'ble Mr G.L.Sanglyine, Administrative Member.

Shri Vim Kharkhonger,  
Driver,  
Office of the Commissioner,  
Customs & Central Excise,  
Shillong, Meghalaya.

... Applicant

By Advocate Shri J.L.Sarkar.

- Versus -

1. Union of India,  
represented by the Secretary, to  
the Government of India,  
Revenue Department,  
Ministry of Finance,  
New Delhi.

2. The Chief Commissioner (EZ)  
Customs & Central Excise,  
15/1 Strand Road,  
Calcutta-700001.

3. The Commissioner,  
Customs and Central Excise.  
Shillong.

... Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

BARUAH J.(V.C)

The applicant was a Driver in the department of Customs and Central Excise, Shillong. He was appointed for a probationary period of 2 years. The probation period was expired on 18.7.1996. During this period the applicant while on duty was found in a drunken condition. Thereafter show cause notice was issued. The applicant replied to the show cause notice denying the allegation. Later on, the authority closed the matter by issuing an warning by order dated 19.10.1995. Thereafter Annexure-IV notice was issued terminating the service of the applicant on 23.2.1996 invoking the power under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Being



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agrieved the applicant preferred an appeal before the appellate authority. The appellate authority also rejected the appeal by Annexure-VII letter dated 24.7.1996. The grounds taken in the appeal were however not referred to in the said order. Being aggrieved the applicant has approached this Tribunal.

2. In due course the respondents have entered appearance and filed written statement. We have heard both sides. Mr J.L. Sarkar, learned counsel appearing on behalf of the applicant submits that once the applicant was warned, the matter was closed. Thereafter the authority had no jurisdiction to re-open the same. Besides, the removal was attached with stigma. According to the respondents the applicant was habituated in drinking during the duty hours. Mr Sarkar further submits that for this so called misconduct, the authority had no jurisdiction to terminate the service without following the procedure prescribed. Mr Sarkar has also referred to a decision of the apex Court in P.L.Dhingra vs. Union of India, reported in 1958 S.C.R 828. Mr A.Deb Roy, learned Sr.C.G.S.C on the other hand tries to support the case by saying that in spite of giving repeated warning, the applicant did not correct himself in his habituated drinking. Therefore the authority was compelled to dismiss the applicant from service under the provision of Rule 5 of Temporary Service Rules 1965. In para 6 of the written statement the respondents have stated as hereunder :

" . . . . the contention is not correct as the applicant did not improve himself even after warning was issued to him as mentioned in para 6.4. On 2.2.96 he did not bring the official vehicle to the office without knowledge of his Controlling Officer. Next day i.e. on 3.2.96 the applicant came to office in drunken state and damaged official property."



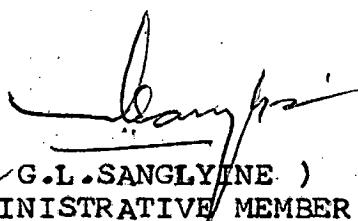
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In P.L.Dhingra's case (supra) the apex Court very clearly observed that the services of a temporary employee can be terminated without following the procedure prescribed but if the termination is attached with a stigma then the enquiry must be held as contemplated under Article 311 of the Constitution. We quote the relevant portion of P.L.Dhingra's case :

" . . . . . This does not mean, however, that the termination of service or reduction in rank of a servant who has no right to the post can never be dismissal or removal or reduction by way of punishment. If government expressly chooses to penalise the servant for mis-conduct, negligence, inefficiency or the like by inflicting on him the punishment of dismissal, removal or reduction, the requirements of Article 311 must be complied with. Besides, the reduction of rank in violation of Articles 14 and 16 cannot also be sustained. If one officer is booked to the exclusion of others for reduction of rank, in that case also the provisions of Article 311 will apply."

From the written statement it is abundantly clear that the applicant was removed from his misconduct as referred to in para 6 of the written statement. Under the circumstances the termination of the applicant without following the procedure prescribed under Article 311 is illegal and liable to be set aside. Accordingly we set aside the order of termination as well as the order passed by the appellate authority. The applicant shall be deemed to be in service with all consequential service benefits.

The application is allowed. No order as to costs.

  
( G.L.SANGLYINE )  
ADMINISTRATIVE MEMBER

  
( D.N.BARUAH )  
VICE CHAIRMAN