

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 34 of 1997

DATE OF DECISION. 14.7.1999

Shri Ajit Kumar Ghosh

(PETITIONER(S))

Mr B.C. Das, Mr B.K. Purkayastha
and Mr I. Hussain

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India and others

RESPONDENT(S)

Mr B.C. Pathak, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

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

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

1. Whether Reporters of local papers 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



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.34 of 1997

Date of decision: This the 14th day of July 1999

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

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

Shri Ajit Kumar Ghosh,
Conservancy Safaiwala,
Station Headquarters,
Masimpur, Silchar Cantt.,
District Cachar, Assam.

.....Applicant

By Advocates Mr B.C. Das, Mr B.K. Purkayastha
and Mr I. Hussain.

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Defence,
New Delhi.

2. The Commanding Officer,
Station Headquarters,
Masimpur, Silchar Cantt.,
Dist. Cachar, Assam.

3. The Administrative Commandant CL-I,
Station Headquarters,
Masimpur, Silchar Cantt.,
Dist. Cachar, Assam.

.....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R

BARUAH.J. (V.C.)

This application has been filed by the applicant
challenging the Annexure 4 notice of termination dated
27.1.1997 removing the applicant from service on the
allegation that he forged the School Leaving Certificate
with a view to get employment as Safaiwala.



2, The facts are;

The applicant was appointed Safaiwala on 27.5.1994. He was appointed temporary worker under the provisions of the Central Civil Services (Temporary Services) Rules, 1965. Later on, the 3rd respondent- the Administrative Commandant CL-I, Station Headquarters, Masimpur, Silchar Cantt. under Ministry of Defence, issued the impugned Annexure 4 notice of termination of service dated 27.1.1997 terminating the service of the applicant on expiry of a period of one month from the date of receipt of the notice. Hence the present application.

3. At the time of admitting the application on 20.2.1997 an interim order was passed by this Tribunal directing the respondents not to remove the applicant from service. On the strength of this interim order, the applicant is still continuing in service.

4. In due course the respondents have entered appearance and filed written statement controverting the averments made in the application. However, the respondents have not disputed the fact that the applicant was removed as a measure of penalty.

5. We have heard Mr B.C. Das, learned counsel for the applicant and Mr B.C. Pathak, learned Addl. C.G.S.C. The

6. The admitted facts are that the applicant was a temporary Safaiwala and he is governed by provisions of CCS (Temporary Service) Rules, 1965. As per the said rules the services of a temporary worker can be terminated with one month's notice. But the established principle is that if an employee is dismissed or removed from service with a stigma or as a measure of penalty then the employee is entitled to the protection of

Article.....

Article 311 of the Constitution. In this connection Mr Das has referred to the decision of the Apex Court in Parshotam Lal Dhingra -vs- Union of India, reported in AIR 1958 Sc 36. In the said the Apex Court observed as follows:


".....if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with."

Mr Das has also drawn our attention to two other decisions of the Apex Court, namely, Anoop Jaiswal vs. Government of India and another, reported in AIR 1984 SC 636 and Allahabad Bank Officers' Association and another vs. Allahabad Bank and others, reported in (1996) 4 SCC 504. In both these cases the Apex Court had followed its earlier decision in Parshotam Lal Dhingra (Supra).

7. In view of the decisions of the Apex Court mentioned above, Mr B.C. Pathak submits that the termination order was not just, inasmuch as the the termination notice, on the face of it, shows that the applicant was terminated as a measure of punishment.

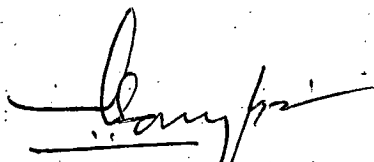
8. Considering the submissions of the learned counsel for the parties, we are of the view that the order of termination was illegal and contrary to the law laid down by the Apex Court. Accordingly we set aside the order of termination and the applicant shall be deemed to be in

service.....

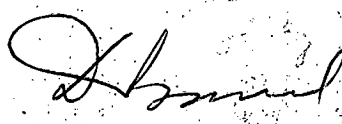


service from the date of his termination. However, it is left to the authority as to whether a fresh action should be taken against the applicant in accordance with law.

9. The application is accordingly disposed of. No order as to costs.



(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER



(D. N. BARUAH)
VICE-CHAIRMAN

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