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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : GUWAHATI - 5

O.A. No. 84 of 1994
T.A. No.

DATE OF DECISION 3-4-95

Sri Sushanta Mazumder

PETITIONER(S)

Sri J L Sarkar

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri A.K.Choudhury, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE CHAIRMAN.

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

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether the Judgement is to be circulated to the other Benches?

M. G. Chaudhary

Judgement delivered by Hon'ble ~~Justice~~ Vice-Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 84 of 1994.

Date of decision : This the 3rd day of April 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Sri Sushanta Mazumder
S/o Sri Gopal Ch. Mazumder
C/o Sri Manik Kundu
Shantipara T.S. Lane,
Dibrugarh

..... Applicant

By Advocate Sri J.L. Sarkar.

-versus-

1. Union of India,
Through the Secretary,
Small Scale Industries,
Ministry of Industry,
Nirman Bhavan,
New Delhi-11
 2. The Director
Small Industries Service Institute,
Govt. of India,
Ministry of Industry,
P.O. Bamunimaidam,
Guwahati-781021
 3. The Development Commissioner (SSI),
Ministry of Industry,
Nirman Bhavan,
New Delhi-11
 4. The Regional Director,
(North Eastern Region)
Staff Selection Commission,
Chenikuthi Hill Side,
Guwahati-3
- Respondents

By Advocate Mr. A.K. Choudhury, Addl. C.G.S.C.

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O R D E R

CHAUDHARI J V.C.

The applicant was appointed as Lower Division Clerk by the Respondent No. 2 by order dated 16.8.1991 in the Small Industries Service Institute at Guwahati. He joined the service on 22.8.1991. His appointment was made after he was duly selected by the Staff Selection Commission. After he had served for about eight months he was declared surplus consequent upon the closure of Extension Centres at Tinsukia, Jorhat and Field Testing Station (FTS) at Tinsukia and was transferred to SISI Agartala by order dated 1.4.1992. He thereafter started working at Agartala. His service however came to terminated after about one year. ~~Thereafter~~ by order passed by the Respondent No. 2 dated 28.1.93 with retrospective effect from 31.4.92 on the ground that his transfer to SISI, Agartala was considered irregular by the Respondent No. 3.

2. The applicant preferred a representation to Respondent No. 4 on 28.9.93 against the order of retrospective termination. He also prayed for providing him an alternative job in the organisation or that he may be absorbed in some other organisation of the Central Government. As his request made with no response he filed the instant O.A. 26.4.94.

3. The applicant prays that the order of termination of service dated 28.1.93 may be quashed and he may be directed to be reinstated in substantive post with all benefits treating the period between termination and

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reinstatement as period of duty.

4. It is interalia contended by the applicant that his appointment was against a substantive post for which requisition was made by the Director SISI, Guwahati and he was sponsored by the Staff Selection Commission and that his posting at Agartala on transfer was also made against the existing vacant post of Lower Division Clerk. He contends that the termination of his service with retrospective effect is illegal. It violates the terms of appointment ~~which were made against the substantive post~~ with full approval and concurrence of Respondent No.3. He submits that ~~he having rendered service~~ it was obligatory on the part of the respondents to absorb him against some other vacant post. The order of termination thus, it is submitted, is whimsical, arbitrary and against the principles of natural justice. He also contends that his service has been abruptly terminated without giving of one month's notice or pay in lieu thereof. It is also contended by the applicant that as he had served against a substantive post for one and half years completing the period of probation he has acquired the right to be regularised. He complains of violation of Articles 14 and 16 of the Constitution by the Respondents in passing the termination order.

5. The respondents contend that the service of the applicant was terminated with retrospective effect on instruction of the Headquarters i.e. office of the Development Commissioner and ~~on~~ that since on ^{closure} ~~closure~~ of the Extension Centres the applicant stood retrenched ~~to his transfer~~ ~~that retrenchment was cancelled~~ which was considered by the Respondent No. 3 to be wrong. It is denied that the

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applicant has completed the probationary period ~~which~~ ^{is} ~~is stated to be~~ two years. It is contended that the order appointing him at Agartala ^{on} ~~of~~ transfer was passed by the Director, SISI, Guwahati without jurisdiction and it was not ^{within his} ~~even is~~ competence to pass ^{the} ~~an~~ order.

It is however stated that the SISI has received instruction from the Headquarters for deployment of retrenched staff against the existing vacancies under the jurisdiction of Director SISI, Guwahati and that some vacancies of Lower Division Clerks may occur in the near future where the applicant may be accommodated. It is thus contended that the application is liable to be dismissed.

6. On 4.5.94 an interim order was passed by the Tribunal directing the respondents not to fill the post of LDC in SISI, Agartala where the applicant had served till the hearing of the show cause and disposal while making it clear the pendency of the application shall not be a bar for the respondents to reinstate/reappoint the applicant in the said post at Agartala.

7. Thereafter on 3rd October 1994 the applicant has been appointed as LDC at SISI, Agartala. A copy of that order issued by the office of the Development Commissioner, Small Scale Industries is produced for our perusal. It shows that the applicant has been posted at SISI, Agartala. The applicant is not however satisfied with the same because the appointment has been made by way of fresh appointment ~~and as~~ ^{the} from the date of the order and deprives him of benefit of the past service.

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8. There is however no ~~dispute~~ that the applicant accepted the appointment and has joined the post in pursuance of the said order.

9. Mr. Sarkar, the learned counsel for the applicant submits that the applicant is entitled to be given benefit of the past service in as much as the impugned order of termination of service is illegal and that implies that there was no break in service of the applicant. He submits that the question is now covered by our decision in Shri Durlave Chandra Medhi Versus Union of India and Others, 1994 I (III) (CAT), Page 447. The learned counsel submitted that the order of reappointment should be deemed to be merged in the original order of appointment and that the circumstance that the applicant had accepted fresh appointment should not be construed to mean that he had waived the benefit of past service or challenged to the impugned order. The learned counsel therefore submits that the impugned order may be set aside and it may be declared that the applicant has been in continuous service.

10. Mr. A.K. Choudhury, the learned Addl. C.G.S.C. for the respondents however submits that since the applicant had already accepted the fresh appointment it is no longer open to him to seek benefit of past service. The learned counsel also submits that the decision relied upon by Mr. Sarkar would not be applicable in the instant case. In the reported case there was no order of fresh appointment made and therefore the challenge to the original order could survive.

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11. In Medhi's case (Supra) the applicant was also employed with the SISI but consequent upon closure of the Extension Centre at Tinsukia he was transferred and posted *at* SISI, Imphal (from Bamunimaidam) in an existing vacancy available at Imphal. His service was terminated on 23.1.93 with retrospective effect from 31.5.92. That order was challenged and it was prayed that he be treated as in continuous service from the date of termination to the date of reinstatement. The contention of the applicant in that case were similar to those of the applicant in the instant application. The respondents contested that application on the same contention as are raised by them in the instant application. We held that even assuming that the termination order was irregular it was not void and could not be termed as termination order and that it was also vitiated by reason of it having been given effect to retrospectively. We also observed that technical grounds to deprive the staff rendered surplus or retrenched of employment should not be over emphasized. Having regard to the State's Labour Welfare Policy. We accordingly quashed the order of termination of service and directed to respondents to reinstate ^{the applicant} him and treat him to be in continuous service from the period between the termination of his service and till his reinstatement with all consequential benefits.

12. It is true that in the instant case there is a vital difference of facts namely that the applicant has been given a fresh appointment and he has accepted the same. In the circumstances, it is difficult to reconcile the two orders namely the impugned order and the order of re-employment.

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If the order of termination is to be set aside the order of reemployment is rendered ineffective. If the order of reappointment is upheld the quashing of the termination order would resultⁱⁿ giving rise to a conflict^{-ing} situation.

We think that the present case would be governed by the same considerations on which we decided the Medhi's case.

It is common ground that the seniority at the Agartala Unit of the Institute is confined^{to} that Institute. We find from the order of appointment^{dated 3.10.94} that two more persons whose service was terminated on similar grounds like the applicant^{and} who are ~~also~~ applicants in companion matters i.e. O.A. 38/94 and 13/94 are the only persons relating to Agartala Unit and there should be no difficulty in working out their interse seniority on they being treated in continuous service on the termination of their service being held illegal. By that process the order of re-employment will be rendered of no consequences. We are inclined to adopt that course because on principle there is no ground to differentiate between Medhi whom relief was granted under our earlier decision and the position of the present application^{applicant}.

13. We, therefore hold that the impugned order of termination of the applicant in the instant O.A. cannot be sustained in law and it is vitiated due to the termination being effected retrospectively. We further hold that although the order of transfer of the applicant from Guwahati to Agartala may have been irregular that was not void and the ground on which the service was purported^{to} to be terminated cannot be sustained and that the termination would not amount to causing a break in the service of the applicant. The course being adopted would also be consistent with Welfare Policy. We hold that there was no justification for the respondents to have

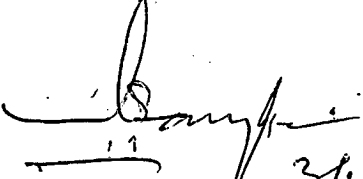
terminated the service of the applicant.


In the result, following order is passed :

The impugned order of termination of service of the applicant dated 28.1.93, Annexure 4 is hereby quashed and set aside. It is declared that the applicant shall be deemed to have been in continuous service from the date of initial appointment. It is declared that the order of re-employment dated 3.10.94 is rendered redundant and shall be treated as of no effect on the validity of the initial appointment of the applicant and ~~he is~~ being treated ^{as in} on continuous service until the date of the said order and thereafter. We further declare that the applicant is eligible for all the service benefits treating the period between the date of termination of his service by the impugned order till his reinstatement by the order dated 3.10.94 as a period on duty and direct the respondent to fix the pay on that basis. We make it clear that the applicant will be assigned his seniority in the SISI Unit at Agartala in accordance with the seniority as on the date of the impugned order i.e. 28.1.93 and regulated thereafter in accordance with the rules. We further make it clear that the re-employment of the applicant by order dated 3.10.94 shall be treated ^{for all purposes} as reinstatement in the service consequent upon the order of termination dated 28.1.93 ^{being} ~~having been~~ set aside. The respondents shall pay the wages to which the applicant may be entitled as per the rules for the period between 28.1.93 and the date on which the applicant may have joined duty in pursuance of the order dated 3.10.94.

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The application is allowed in terms of the
aforesaid order. There will be no order as to costs.


(G.L. SANGLYINE)
Member(A) 3/4/95


(M.G. CHAUDHARI)
Vice-Chairman

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