

17

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.902/2003

New Delhi this the 28th day of April, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

S.P. Tanti,
son of Sh. D.P. Tanti,
R/o Qtr. No.A/722,
Transit Camp, Near Lal Chowk,
Govindpuri, Kalkaji,
New Delhi.

-Applicant

(By Senior Counsel Sh. P.P. Khurana with Sh. Amit Anand)

-Versus-

1. The Director,
Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi.

2. Union of India,
through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

3. Shri Subhash Bhattacharya,
Senior Public Prosecutor,
Office of SP/CBI/ACB,
Patna, Bihar,
to be served through Department -Respondents

(By Advocate Shri M.M. Sudan)

1. To be referred to the Reporters or not? *yes*
2. To be circulated to other Benches or not? *yes*

S. Raju
(Shanker Raju)
Member (J)

16

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.902/2003

New Delhi this the 28th day of April, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

S.P. Tanti,
son of Sh. D.P. Tanti,
R/o Qtr. No.A/722,
Transit Camp, Near Lal Chowk,
Govindpuri, Kalkaji,
New Delhi.

-Applicant

(By Senior Counsel Sh. P.P. Khurana with Sh. Amit Anand)

-Versus-

1. The Director,
Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi.
2. Union of India,
through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
3. Shri Subhash Bhattacharya,
Senior Public Prosecutor,
Office of SP/CBI/ACB,
Patna, Bihar,
to be served through Department -Respondents

(By Advocate Shri M.M. Sudan)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 15.4.2002, whereby his services have been terminated under Rule 5 (1) of the CCS (TS) Rules, 1965 as well as order dated 1.10.2002, where representation preferred against termination was rejected. Reinstatement with all consequential benefits has been sought.

2. Applicant, in pursuance of an advertisement of UPSC applied for the post of Public Prosecutor in the CBI. His name was recommended and on police verification and completion of other formalities he was appointed vide letter dated 9.12.96. Applicant was also appointed as a Special

(19)

-2-

Public Prosecutor on 25.4.97 to conduct cases instituted by Delhi Special/Establishment in the trial courts as well as in appeal. During working of applicant he was communicated adverse remarks in his ACRs pertaining to the years 1997 and 1998 which were subsequently expunged on representation. In so far as ACR for the period 1999 is concerned, representation preferred against the adverse remarks was rejected only on 3.7.2003. The DPC extended the probation. The post of applicant though designated as Group 'B' on coming into effect of revised recruitment rules in force w.e.f. 27.3.2001 and in pursuance of remunerations of 5th Central Pay Commission, which was accepted vide letter dated 14.3.2001 the pay scale of the Prosecutor in CBI has been revised and as per the recruitment rules the post of Public Prosecutor in CBI has been given a nomenclature of Group 'A'.

3. Applicant was conveyed office order dated 15.4.2002 whereby the DPC after extending the probation period keeping in view the alleged unsatisfactory performance of applicant recommended his case for termination, which was approved by the competent authority, i.e., the Minister of State, a duly designated authority the service of applicant in lieu of sum equivalent to one month's pay and allowances was terminated under Rule 5 (1) of the CCS (TS) Services Rules.

4. On representation the termination was upheld, giving rise to the present OA.

5. Learned Senior Counsel of Applicant Sh. P.P. Khurana appearing with Sh. Amit Anand, learned counsel raised several contentions in support of his case. One of the contentions put-forth is that as on revision of the recruitment rules for the post of Public Prosecutor this post has been designated as Group 'A' as per CCS (CCA) Rules, 1965 President is the appointing authority of applicant. As the termination order has not been issued by the President or its delegated authority and also the termination order is not in the proper format envisaged in Rule 5 (1) of the Rules, as the termination is not issued in the name of President nor duly authorised by the competent authority and there is no communication in the order as it has been passed by the President, the same violates Article 311 of the Constitution of India.

6. Shri M.M. Sudan, learned counsel for respondents has produced before us the relevant record and stated that applicant's services have been terminated by the competent authority as the Minister of State, the duly delegated authority has approved the termination and mere communication of the order by an incompetent authority is only a technical defect which would not vitiate the order of termination.

7. For proper adjudication of the issue relevant provisions of Rule 5 of the CCS (TS) Rules, 1965 are relevant to be highlighted. Rule 2 (a) under definitions of the rules ibid defines 'appointing authority' in relation to a specified post, the authority declared as such under the Central Civil Services (Classification, Control and Appeal), Rules, 1965. Rule 5 of the Rules is reproduced as under:

"5. Termination of temporary service

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant;

(b) the period of such notice shall be one month:

provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, or the period by which such notice falls short of one month.

NOTE--The following procedure shall be adopted by the Appointing Authority while serving notice on such Government servant under Clause (a):-

(i) The notice shall be delivered or tendered to the Government servant in person;

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post acknowledgement due at the address of the Government servant available with the Appointing Authority;

(iii) If the notice sent by registered post is returned unserved, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

(2) (a) Where a notice is given by the Appointing Authority terminating services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-opened the case, and after making such enquiry as it deems fit,-

(i) confirm the action taken by the Appointing Authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper:

provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months-

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule (2), the order of reinstatement shall specify-

(i) the amount or proportion of pay and allowances, if any, to be paid to Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

8. In case where the President is the appointing authority, Government of India, Ministry of Home Affairs OM dated 11.1.1974 provides that prescribed standard proforma are to be used for termination of service. Forms III and IV are to be used in cases where the appointing authority is the President. These forms are reproduced as under:

"FORM III

Notice of termination of service issued under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965, where the Appointing Authority is the President.

In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the President hereby gives notice to Shri/Smt./Kumari.....that his/her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on, or, as the case may be, tendered to him/her.

By order and in the name of the President.

Station: Signature of the authority empowered
to authenticate documents in the
Date: name of the President.

"FORM IV

Order of termination of service issued under the proviso to sub-Rule (A) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, where the Appointing Authority is the President.

In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the President hereby terminates forthwith the services of Shri/Smt./Kumari.....and directs that he/she shall be entitled to claim a sum equivalent to the amount of his/her pay plus allowances for the period of notice at the same rates at which he/she was drawing them immediately before the termination of his/her service, or as the case may be, for the period by which such notice falls short of one month.

By order and in the name of the President.

Station: Signature of the authority empowered
to authenticate documents in the
Date: name of the President"

9. If one has regard to the above, even a temporary government servant who is under probation the contract of service terms and conditions provided therein cannot be resorted to when statutory rules framed under Article 309 of the Constitution of India lay down procedure and the manner in which termination of temporary services is to be effected. It is no more res integra that as per the revised recruitment rules for the post of Public Prosecutor and on implementation of recommendations of 5th CPC pay scale of applicant brings the post of Public Prosecutor to Group 'A' as per CCS (CCA) Rules, appointing authority in case of Group 'A' officers is the President of India or its delegated authority in the light of Allocation of Business Rules.

10. On reading and interpretation of Rule 5 in its contextual terms where it is decided to terminate the services of a temporary Government servant the appointing authority has to serve a notice in the prescribed proforma. This proforma requires the order to be passed by the President of India or by the order and in the name of the President and it should be signed by the authority empowered to authenticate documents in the name of President. Though the President is the appointing authority of applicant the order of termination has been passed by the Deputy Director (Admn.) CBI. There is nothing in the order which suggests that it is in the order and name of the President and has also not been signed by the authority competent to authenticate the documents in the name of the President.

11. No doubt, as per the Allocation of Business Rules and principle of subordinate legislation the competent authority, i.e., appointing authority for a Group 'A' officer is the President of India who has validly delegated its power to the Minister of State concerned. However, the requirement of Rule 5 (1), which is statutory framed under Article 309 of the Constitution of India cannot be dispensed with. The order of termination has not been passed by the competent authority, i.e., appointing authority of applicant and approval on file by the Minister of State cannot legalise the order. The order should have been passed in the name of the President by the competent authority.

12. The Apex Court in Omprakash v. Union of India, AIR 1975 SC 1265, held as follows:

"This should be enough to dispose of the appeal. However, despite the agreement among the parties on the point, it is possible to entertain some doubt as to whether the definition in Rule 2 (a) would apply to this case. The Central Civil Services (Temporary Services) Rules, 1965, which govern the appellant's case also defines 'appointing authority'. This definition refers to the definition of 'appointing authority' in the Central Civil Services (Classification, Control and Appeal), Rules, 1965 only for one class of posts called the specified posts. It might be reasonably argued that this indicated that the definition in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was not available for temporary Government servant not holding the specified post. In the absence of any definition of appointing authority in the Central Civil Services (Temporary Services) Rules, 1965 in relation to a temporary Government servant not holding a specified post, as the appellant was, we think the term 'appointing authority' must be understood in its plain and natural meaning, namely, the authority which appointed him. From this point of view also the impugned notice of termination was given by an authority which was not the appointing authority and as such did not satisfy the requirements of Rule 5 (1) (a) of the Central Civil Services (Temporary Services) Rules, 1965."

13. If one has regard to the above, as the order of termination was given by an authority which is not the appointing authority of applicant mandatory requirement of Rule 5 (1) (a) of the CCS (TS) Rules, 1965 has not been met, rendering the termination order as illegal and nullity in law.

14. The contention put-forth by respondents that it is only a technical defect, cannot be countenanced as the valid requirement of statutory rules and condition precedent for invoking Rule 5 (1) of the Rules (ibid) has not been followed, this cannot be cured by approval of termination on file by the delegated authority. Once the requirement of rule is to be carried out in a particular manner after following the procedure, non-compliance cannot be said to be

26

a technical defect. We strengthen our conclusions on the basis of the decision of the Apex Court in **Union of India v. Ashok Kumar Roy**, wherein it has been held:

"18. The question whether the terms embodied in the order of appointment should govern the service conditions of employees in government service or the rules governing them is not an open question now. It is now well settled that a government servant whose appointment though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract. The powers of the government under Article 309 to make rules, to regulate the service conditions of its employees are very wide and unfettered. These powers can be exercised unilaterally without the consent of the employees concerned. It will, therefore, be idle to contend that in the case of employees under the government, the terms of the contract of appointment should prevail over the rules governing their service conditions. The origin of government service often-times is contractual. There is always an offer and acceptance, thus bringing it to being a completed contract between the government and its employees. Once appointed, a government servant acquires a status and thereafter his position is not one governed by the contract of appointment. Public law governing service conditions steps in to regulate the relationship between the employer and employee. His emoluments and other service conditions are thereafter regulated by the appropriate statutory authority empowered to do so. Such regulation is permissible in law unilaterally without reciprocal consent. This Court made this clear in two judgments rendered by two Constitution Benches of this Court in *Roshan Lal Tandon v. Union of India* ((1968) 1 SCR 185) and in *State of J. & K. v. Triloki Nath Khosa*, (1974) 1 SCR 771."

15. Leaving all other contentions open, we allow this OA. Impugned orders are quashed and set aside. Respondents are directed to reinstate applicant in service within a period of three months from the date of receipt of a copy of this order. He shall be entitled to all consequential benefits, excluding back wages. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman (A)
28.4.04

"San."