

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00739/2019
DATED THIS THE 27th DAY OF NOVEMBER, 2019
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sri. Prashant Venkatesh Avarsekar
S/o. Venkatesh
Aged about 46 years
Working as Master Grade-II (Boat Crew)
Karnataka Naval Area
Naval Base
Karwar-581 308.
Residing at:
H.No.1866/K-10
"Baba Nivas"
Viveknanda Nagar
Kodibag, Karwar-581 303.

....Applicant

(By Advocate Shri P.Kamalesan)

Vs.

1. Head Quarters
Western Naval Command
Ballard Pier, Near Tiger Gate
Mumbai-400 023.
2. The Flag Officer Commanding
HQ (for CSO P&A)
Karnataka Naval Area
Naval Base
Karwar-581 308.
3. The Commodore Supt.
Naval Shift Repair yard
Karwar-581 308.
4. The Flag Officer
Commanding in Chief for (CPO)
HQ Western Naval Command
Ballard Pier, Near Tiger gate
Mumbai-400 023.
5. Union of India
Rep. by Secretary
Ministry of Defence(Navy)
Govt. of Main
New Delhi-110 001.

...Respondents

(By Advocate Sri K.Gajendra Vasu, Sr.PC)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was appointed as Master Grade-II (Boat Crew) at Naval Base, Karwar by the HQ Western Naval Command, Mumbai vide letter dtd.7.12.2017(Annexure-A1). While working as such at HQ Karnataka Naval Area, Naval Base, Karwar, his services were terminated by HQ Karnataka Naval Area, Karwar vide letter dtd.25.6.2019(Annexure-R2) under the provisions of Rule 5 of CCS Temporary Rules 1965(Annexure-R3). The applicant submits that the HQ Naval Base, Karwar conducted a preliminary enquiry with regard to certain allegations against the applicant that he had clicked some photographs and videos of ships in harbour and shared the same on several media with his friends through his mobile. The applicant had submitted explanation and admitted his mistake and stated that the above act was done merely as an interest and in excitement without any wrong intentions. The authorities failed to establish any motive behind the alleged incident. As per Rule 5 of CCS Temporary Rules 1965, the competent authority to issue notice of termination order is the appointing authority. The applicant was appointed by HQ Western Naval Command, Mumbai and he can be terminated by the appointing authority only as per the provisions of Rule 5(1) of CCS Temporary Rules 1965. But the termination order was issued by the non-appointing authority i.e. Chief Officer Commanding Karnataka Naval Area, Naval Base, Karwar stating that the competent authority has approved the termination of his services. Therefore, the termination order is void ab-initio and unsustainable under law and in violation of Rule 5 of CCS Temporary Rules 1965. And the punishment of termination of

services is disproportionate to the alleged action. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- i. *Quash the HQ Karnataka Naval Area, Naval Base, Karwar-581 308, Letter No.CS/1900/Fok/Disc/PVA dtd:25.6.2019-Annexure-A2.*
- ii. *Consequently direct the respondents to reinstate the applicant with all consequential benefits.*
- iii. *Grant any other relief as deemed fit taking into the facts and circumstances of the case in the interest of justice and equity.*

2. Per contra, the respondents have submitted in their reply statement that the applicant was appointed as Master Grade-II(Boat Crew) at NSRY Karwar/HQKNA by Headquarters Western Naval Command, Mumbai vide letter dtd.7.12.2017. The Appointing Authority for the post of Master Gr.II is CSO(P&A)/HQWNC. The applicant was found involved in sharing video/photographs of movement of capital ships on social media through his mobile no.9148427680 i.e. Facebook which is an offence under Sec 5 of the Official Secrets Act, 1923 which disallows to disseminate any information with respect to a prohibited place. The Naval Base, Karwar falls under the category of "Prohibited Area" under Sub Clause (a) of Clause (8) of Sub-section 2 of the Officials Secrets Act, 1923. Therefore, dissemination of any information which is secretive and operational in nature is prejudicial to the safety and security of the nation and is an offence punishable under Section 5 of the Official Secrets Act 1923. The applicant will be a Master of a vessel and a Captain of a boat in his career. There comes an onerous responsibility to safeguard the safety of men and material under his command and he must remain a role model for his subordinates. Operational aspects of Indian Naval Ship is a national security issue and recording the same at close quarters and uploading the same on social media is an act which is bound to help the enemies of the state. The applicant

has uploaded the videos of movement of ships, thereby subverted national security. This is not only breach of Official Secrets Act 1923 but also compromising National Security. As the applicant is still under the probation period, his service was liable to be terminated as per para 3 of HQ Western Naval Command, Mumbai appointment letter dtd.7.12.2017 which clearly states that 'your service is liable for termination without any notice and without assigning any reasons during the period of probation'. Post approval of the competent authority on file, the reasoned speaking order was issued conveying the termination of services, in spite of the fact that assigning reasons was not needed as per Para 3 of appointment order. The speaking order was issued to ensure the principles of natural justice. The case was examined by the competent authority i.e. CSO (P&A), HQWNC who has accorded approval for termination of services of the applicant for the misconduct. Accordingly, the services of the applicant was terminated in accordance with the Para 3 & 5 of the Appointment Order and also as per G.I.M.H.A. OM dtd.26.8.1967 & Rule 5 of the CCS(TS) Rules 1965. The service has been terminated primarily invoking terms of Para 3 & 5 of Appointment Order and therefore, prescribed format of Rule 5(1) of CCS Temporary Services Rules was not used.

3. The respondents submit that the inquiry was conducted against the applicant under the signature of Cdr Ranjit Singh, Inquiry Officer(IO) with all relevant documents i.e. screenshot of videography, screenshot of Facebook accounts etc., those were closely examined during the inquiry(Annexure-R2). Thereafter, the case was taken up with Headquarters, Western Naval Command for termination of services of the applicant by the appointing authority. The Headquarters, Naval Base, Karwar conveyed the order of termination of service

as per directives of the appointing authority post his approval being the competent authority. The applicant is trying to mislead the Court by referring only Rule 5 of CCS(TS) Rules and not quoting para 3 of the Appointment Order. The services of the applicant have been primarily terminated invoking the terms laid down in para 3 of the appointment order. Therefore, the OA is liable to be dismissed.

4. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The respondents have also filed the details with regard to the private complaint filed before the Magistrate, Karwar with regard to 'Prohibited area' under the Official Secrets Act and the order sheet of the Learned Magistrate who has taken cognizance under section 5 of the Official Secrets Act 1923. The issue in this case involves taking of certain photographs by the applicant of warships in harbour and while they were being moved out of the naval base and posting the same in the social media(Facebook) which is open for viewing by persons who are not connected in any capacity with the work being done by the applicant and whose identities are not known to the respondent organisation. There is no doubt on the fact that the respondent organisation is a prohibited place and any material relating to sketch or documents or photographs of the respondent organisation can only be communicated to the authorised persons as per the provisions of the Official Secrets Act. There is no doubt that the applicant had violated the provisions of the said Act. In fact he himself admits vide Annexure-I relating to the Photographs of the warships which he has taken including uploading the same. He himself admits that he had made a big mistake of sending the same to his friends on whatsapp and uploading the same on Facebook. The respondent

organisation being responsible for the security of the nation cannot compromise on their subordinates doing something on the spur of the moment on excitement or otherwise with probably no criminal intention. They have rightly relied on para-3 of the appointment order at Annexure-A1 where the service of the applicant is liable for termination without any notice and without assigning reason during the period of probation. The applicant has joined the organisation only after confirming the conditions as per the appointment orders. The respondents have also confirmed that the Annexure-A2 has been issued with the approval of the competent authority who is an appointing authority. While such orders are being issued, it is not necessary that such orders are signed by the appointing authority himself/herself and they can be issued by the officers authorised to do so subject to the approval of the appointing authority being competent to take the decision. The respondents have confirmed it. The only mistake in Annexure-A2 seems to be the reference to Rule-5 of the CCS(TS) Rules 1965 which has been replied to by the respondents as follows:

“As per MHA Memo No.4/10/66-Ests. (C) dated 26 Aug 1967, it is stated that “Under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the services of a temporary Government servant, who is not in quasi-permanent service, can be terminated at any time by a notice in writing given either by the Government servant who is not in quasi-permanent service to the appointing authority or by the appointing authority to the Government servant. A question has arisen whether this rule should be invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) has been provided. The position is that the Central Civil Services (Temporary Service) Rules, 1965, do not specifically exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), it has been decided, in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965”.

5. In view of the sensitive nature of the decision taken, we accept the contention of the respondents. The OA is therefore dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00739/2019

Annexure-A1: Copy of HQ Western Naval Command Mumbai-400 001, Letter
No.CS(II)/2577/RB/II/master Grade-II dtd: 7.12.2017

Annexure-A2: Copy of HQ Karnataka Naval Area, Naval Base, Karwar-581 308. Letter
No.CS/1900/Fok/Disc/PVA dtd:25.6.2019

Annexure-A3: Copy of Rule 5 Termination of Temporary Service Rules 1965

Annexures with reply statement:

Annexure-R1: DoP&T Temporary Service Rules

Annexure-R2: Findings of inquiry against the applicant
