

(2019) 02 CAT CK 0015

In the Central Administrative Tribunal

Case No : Review Application No. 212, 211, 213, 210 Of 2018 With
Miscellaneous Application No. 4588, 4587, 4589, 4581 Of 2018 In
Original Application No. 2455 2456, 2457, 2458 Of 2018

Santosh Kumar Upadhyay

APPELLANT

Vs

Director (RL)

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)

Citation : (2019) 02 CAT CK 0015

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, J

Bench : Division Bench

Advocate : P.K. Jaiswal, P.S. Bhullar, Arun Bhardwaj, Piyush Gaur

Final Decision : Allowed

Judgement

V. Ajay Kumar, J

1. The facts and law involved in these batch of RAs are identical and hence are disposed of by way of this common order. However, the facts in RA No.212/2018 in OA No.2455/2018 are taken into consideration.

2. Heard Shri Arun Bhardwaj with Shri Piyush Gaur, the learned counsel for the review applicants, i.e., original respondents in the OA and Shri P.K. Jaiswal and Shri P.S. Bhullar, the learned counsel for the respondent in the RA/original applicants in the OA and perused the pleadings on record.

3. The sole respondent in the R.A. No.212/2018 is the original applicant in the OA No.2455/2018. He joined in the post of Chemical Assistant on 24.12.2008 and was placed under probation for 2 years from the date of his appointment. However, his probation was extended vide Memorandum dated 27.09.2012, until further orders. When the respondents instead of declaring the probation of the applicant and confirming his services, issued the impugned notice dated 12.06.2018 terminating his services under Rule 5(1) of the Central Civil Services

(Temporary Service) Rules, 1965, he filed the O.A. No. 2455/2018 challenging the said order. On 04.07.2018, i.e., the date when the OA came up for admission, the learned counsel for the respondents appeared on receipt of advance notice and the OA was listed on 09.07.2018 for consideration of the interim relief. However, since both the counsels advanced arguments on the main OA, the same itself was heard and reserved for orders on the same date. The judgment was pronounced on 23.07.2018, whereunder this Tribunal, by answering the sole issue that is "whether the services of the applicant can be terminated without conducting the regular departmental enquiry", in favour of the OA applicants, quashed the impugned order and also quashed the consequential order, if any, passed after the orders were reserved.

4. In the similar circumstances, three other OAs, i.e., OA No.2456/2018, OA No.2457/2018 and OA No. 2458/2018, were also allowed along with OA No.2455/2018, by way of the same common judgment dated 23.07.2018.

5. Aggrieved with the said common order, the respondents filed a W.P. (C) No.10235/2018 and batch and the Hon'ble High Court of Delhi, by its order dated 27.09.2018, in the said batch of Writ Petitions, observed as under:-

"2. Mr.Bhardwaj, learned counsel for the petitioners states that though several grounds have been taken in the present petitions to assail the impugned judgment, the petitioners are amongst others, aggrieved by the fact that while passing the impugned judgment, quashing the orders of termination passed in respect of the respondents and directing their reinstatement in service, the Tribunal has not reserved the right of the petitioners to take fresh action after putting the respondents to notice and conduct a fresh inquiry wherein they can be afforded an opportunity of placing their stand.

3. Learned counsel for the respondents/caveators who appears on advance notice, states that in case the petitioners are willing to reinstate the respondents in terms of the impugned judgment, then his clients cannot have any objection to the petitioners conducting a fresh inquiry subject to the condition that the respondents shall be afforded an opportunity of hearing and of presenting their case in the departmental proceedings.

4. Learned counsel for the petitioners states that he may be permitted to obtain clear instructions from the department in this regard.

5. List on 28.09.2018".

6. However, the said batch of Writ Petitions were finally disposed of by the Hon'ble High Court of Delhi by its order dated 28.09.2018 as under:-

"1. Mr.Bhardwaj, learned counsel for the petitioners states that he has obtained instructions from the department to the effect that instead of pressing the present petitions on merits, the department propose to file a review petition before the Tribunal for seeking review of the common impugned judgment dated 23.07.2018 passed in the four connected Original Applications that were filed by

the respondents before the Tribunal.

2. Learned counsel for the respondents states that apart from the four OAs that have been decided by the impugned judgment, one OA filed by some third party for the same relief is pending before the Tribunal and on the last date fixed in the said OA, instead of arguing the matter on merits, counsel for the Union of India (respondents before the Tribunal) had sought an adjournment on the ground that the present petitions are being filed before the High Court to assail the judgment dated 23.07.2018. He states that in view of the said position, the Tribunal had adjourned the pending OA to a date in January, 2019.

3. It is made clear that the mere pendency of the 5th OA on the same issue as raised in OA Nos.2455/2018, 2456/2018, 2457/2018 and 2458/2018 decided by the impugned judgment will not be a ground for the Tribunal to examine the pleas proposed to be taken by the petitioners in the review application that shall be filed before the Tribunal. The said review application shall be decided as per law.

4. Needless to say that if the Tribunal decides to entertain such a review application, then the respondents in these petitions shall be entitled to take all the pleas that may be available to them to oppose the review application.

5. The petitions are disposed of along with the pending applications with liberty granted to the petitioners as prayed for".

7. Accordingly, and in terms of the liberty granted by the Hon'ble High Court of Delhi, the respondents in the OA filed the RAs along with connected MAs seeking condonation of delay in filing the RAs. In the circumstances and for the reasons mentioned therein and in the interest of justice, the delay in filing the respective RAs has been condoned.

8. Shri Arun Bhardwaj, the learned counsel for the review applicants, besides arguing on the merits of the case, mainly contended that as the OAs were disposed of without giving an opportunity to file a counter, they could not bring certain facts and documents to the notice of this Tribunal, which have a heavy bearing on the subject matter of the OAs. He further submitted that had those facts and documents were placed before this Tribunal, this Tribunal would not have concluded that the ex-parte enquiry constituted the foundation for the impugned termination of the applicants.

9. Per contra, Shri P.K. Jaiswal, the learned counsel appearing for the respondents in the RAs/original applicants submitted that what was decided by this Tribunal, is the legal issue that "whether the services of the applicants can be terminated without conducting the regular departmental enquiry", and once admittedly, the respondents have not conducted any regular departmental enquiry, no other fact or document will change the said scenario. On the other hand, if the RAs are allowed, this Tribunal will again come to the same conclusion and in such an event, everything would be a futile exercise.

10. Since it was an admitted fact that the respondents have not conducted any regular departmental enquiry under the discipline and appeal rules applicable to the applicants, this Tribunal, after hearing arguments of both sides on the OAs, disposed of the same basing on the facts and documents placed before it. But once it is the contention of the review applicants that as they could not state certain facts and file certain documents, this Tribunal came to the conclusion that the ex-parte enquiry conducted by them constituted the foundation for the impugned termination and that if this Tribunal allow the review applicants to place those facts and documents, the same will change the findings of this Tribunal, the said opportunity should be given to them.

11. It is submitted that though the termination orders were quashed by this Tribunal by its common order dated 23.07.2018, the same were not complied with till date.

12. We find justification in the submission made by the review applicants. Like the applicants, the respondents in an OA are also equally entitled for equal opportunity of hearing, which includes filing of the counter and documents. The applicants cannot have any objection for disposing of the OA after the respondents are given an opportunity to file counter and the documents.

13. In the circumstances and for the reasons mentioned above, we are of the view that an opportunity of filing counter and documents should be given to the review applicants in order to do the complete justice to both the parties.

14. Accordingly, all the review applications are allowed and the judgment in common order dated 23.07.2018 in OA Nos. 2455/2018, OA No.2456/2018, OA No.2457/2018 and OA No. 2458/2018 is set aside and the OAs are restored to its original file and be listed on 24.04.2019 for final hearing. The review applicants, who are the respondents in the OAs shall file their counters along with the necessary documents within 2 weeks from the date of receipt of a copy of this order, after service on the counsel for the original applicants, failing which they are liable to pay costs of Rs.10,000/- to each applicant in each OA.

The applicants may file their rejoinders thereto, if any, within 2 weeks therefrom. Let a copy of this order be placed in all the RA files.