

(2000) 09 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2794 of 2000

Union of India and Others

APPELLANT

Vs

C.A.T. and Others

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21, 27
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 14, 16, 226, 227, 311(2)

Citation : (2004) 101 FLR 807 : (2001) 2 RLW 882 : (2001) 1 WLC 85 : (2000) WLC 292 : (2001) 2 WLN 426

Hon'ble Judges : G.L. Gupta, J;Arun Madan and, J

Bench : Division Bench

Advocate : K.N. Shrimal, for the Appellant; Ajay Rastogi and R.P. Vijay, for the Respondent

Judgement

Madan, J.

(1). By this writ petition, the petitioner has challenged the order dated 27.1.2000 of the Central Administrative Tribunal Jaipur whereby it allowed OA No. 92/97 and set aside the order dated 16.2.1996 of the petitioner terminating the respondent employee from service.

(2). The factual matrix leading to this writ petition is that admittedly out of three vacancies notified by petitioner No.2 under letter dated 5.2.95, three candidates were selected by the DPC under its order dated 11.2.1995 according to which respondent No.2 (Pawan Kumar Jhanjaria) was selected at S.No. 2, and accordingly, by order dated 28.7.1995 (Ann. 3) respondent No.2 was appointed as Postal Assistant at Chirawa HQ on purely temporary basis duty governed by CCS/CCA Rules, with the stipulation that his service would be terminated without prior notice if his educational certificates are found false. As per report dated 4.10.1995 (Ann. 4), upon inquiry having been made by Shri N.R. Meena Asstt. Superintendent of Post Offices, Jhunjhunu in consultation with the Statistical

Officer, Bihar Intermediate Education Council, Palna, the educational certificates produced by the respondent No.2 alongwith his application for appointment as Postal Assistant, were found incorrect, thereby under order dated 16.2.1996 (Ann. 5) the petitioner No.4 terminated respondent No.2 from service in pursuance of proviso to sub rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Against his termination, respondent No.2 had presented representation on 21.5.96 followed by reminders dated 6.6.96 (Ann. 18 in OA), 30.6.96 besides other representations (Annexures A5, A12, A13 & A14 to the OA), but with no response. Hence, respondent No.2 presented OA No. 92/97 (Ann. 6) before Central Administrative Tribunal Jaipur on 3.3.97. The petitioners (Postal Department) submitted their reply (Ann.7) to the OA. Rejoinder (Ann. 8) to the petitioners' reply also filed by the respondent employee. After hearing the parties, the Tribunal by its order dated 27.1.2000 (Ann. 9) allowed the employee's OA No. 92/97 and set aside his termination holding it as illegal, capricious and in violation of Articles 14, 16 & 311(2) of the Constitution, and accordingly it directed the postal department (petitioners herein) to reinstate the respondent employee (applicant in OA No. 92/97) in service with all consequential benefits, against which this writ petition arises.

(3). Mr. K.N. Shrimal learned counsel for the Postal Department (petitioner) contended inter-alia that the learned Tribunal failed to consider the aspect of the O.A. itself being time barred as the same having been filed on 3.3.1997 after more than one year of the impugned termination order dated 16.2.1996, whereas a duty is cast upon the Tribunal U/s 21 of the Administrative Tribunal Act, 1985 not to entertain an application being barred by limitation. He placed reliance upon decision of the Apex Court in *Hukumraj Khinvsara vs. Union of India* (1). Moreover the respondent employee having alternative remedy of appeal against his termination, could have preferred an appeal, and having failed to do so, the Tribunal should not have entertained the OA No. 92/97 by interfering with the impugned order of termination of the employee (respondent No.2).

(4). Next contention canvassed by Shri Shrimal is that the respondent employee as per his initial appointment being a temporary employee was terminated from service by impugned order (Ann.5) strictly in accordance with Rule 5(1)(a)(b) of the CCS Rules 1965, inasmuch as the impugned termination being purely innocuous was merely a termination simpliciter as it did not impose any stigma on respondent No.2 and further because as per report of Shri N.R. Meena submitted to the Post Master General Jodhpur, the mark sheet produced by respondent No.2 bearing Roll No. 10398 was false which resulted in the impugned termination, for which no prior notice or departmental enquiry was necessary according to initial appointment itself being purely on probation.

(5). Shri Ajay Rastogi learned counsel for the respondent No.2 (employee) supported the impugned order of the Tribunal and placed reliance upon the decisions of the Apex Court in *Union of India vs. Jay Kumar Parida* (2) and *Director*

General of Police vs. Mrityunjoy Sarkar (3).

(6). In *Hukumraj vs. Union of India* (supra), only question which arose was whether the application seeking implementation of the earlier order of the Tribunal was barred by limitation ? According to the Apex Court, the final order passed by the Tribunal is executable u/s 27 of the Administrative Tribunals Act within one year from the date of its becoming final, and final order was passed on March 13, 1992, consequently the appellant therein was required to file the execution application within one year from the said date unless the order of the Tribunal was suspended by it in a special leave petition/appeal which is not the case here. In our considered view, we do not dispute the dictum of law laid down by the Apex Court but since in the instant case the facts are different hence ratio of decision (supra) does not help me petitioner in advancing its cause in this writ petition.

(7). Section 21 of the Administrative Tribunals Act prescribes limitation. Its sub section (1)(a) postulates that:

"(1) A Tribunal shall not admit an application,

(a) in a case where a final order such as is mentioned in Clause (a) of sub section (2) of Section 20 has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made."

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of said period of six months."

(8). Section 20 of the Act provides that :

"(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub section (1) of Section 20, a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances-

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance."

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired."

(9). A conjoint reading of provisions of Sections 20 & 21 of the Act (supra) makes it emphatically and precisely clear that these provisions put bar on the Tribunal to entertain any application for being admitted unless other remedies are exhausted and that being so, under sub section (1) of Section 20 of the Act, it is for the Tribunal to satisfy whether all the remedies available to the applicant under the relevant service rules as to redressal of grievances have been availed and exhausted and for this purpose, sub section (2) of Section 20 postulates deeming provision e.g. a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances (a) if final order has been passed by the competent authority rejecting either any appeal preferred or representation made by such person in connection with his grievances, or (b) if no final order has been made by (he competent authority with regard to the appeal preferred or representation within six months from the date of appeal or representation. Contemporaneously Section 21 of the Act prescribes limitation of one year from the date of (a) final order passed rejecting appeal preferred or representation made, as is mentioned in clause (a) of sub section (2) of Section 20, or (b) expiry of six months in case no final order with regard to the appeal preferred or representation made by the employee has been passed by the competent authority.

(10). In the instant case, it is the case of the petitioners (department) that the respondent No.2 has not availed of an alternative remedy of appeal under the CCS Rules, 1965 and secondly that final order of termination of respondent No.2 was passed by the competent authority on 16.2.1996 whereas the Original application was filed by the respondent No. 2 on 3.3.97 hence the same was time barred. But curiously enough the learned counsel for the petitioners (department) failed to show as to under which of provisions of CCS (Temporary Service) Rules, 1965, respondent No.2 was required to prefer any appeal or representation against his termination passed on 16.2.96 if he is governed by the aforesaid Rules 1965. We have also carefully gone through provisions of Rules, 1965 and do not find that such service rules postulate as to any appeal for being preferred against the orders passed under those rules or even for termination order. Be that as it may, we have also carefully perused documents annexed to the writ petition and according to which, it was also the case of the department as per para 5, 6 of the reply (Ann. 7) filed by the petitioners (who were respondent Nos 1 to 4 before the Tribunal) to the OA No. 92/97 that the applicant (respondent No.2 herein) absented from duty when he came to know that termination order was likely to be issued and thereafter he refused to take delivery of registered letter No. 4579 dated 11.3.96 which contained his termination order and was sent to his home address. It means that admittedly till the letter dated 11.3.96 containing termination order dt. 16.2.96 was sent, the termination order was not served upon the respondent No.2, and according to the registered letter dated 11.3.96, service of termination order could be presumed against the respondent No.2 on the date of return of that registered letter.

(11). Contrarily in OA No. 92/97 so also rejoinder to the reply it has been consistent case of respondent No.2 that termination order's copy had not been delivered or served to him, and in paras 4.10, 4.11 & 4.12 of his OA No. 92/97 the respondent No. 2 specifically stated that he met the Director Postal Services Jodhpur on 13.8.96 personally and had also sent reminders dated 9.10.96, 10.1.1997 and 3.2.97 but no reply had been received, and that a representation was also sent to the Post Master General, Jodhpur on 21.5.1996 followed by reminder dated 30.6.1996, besides a representation to Chief Postmaster General Rajasthan Circle Jaipur on 6.6.96. In reply to these averments, the petitioners (department) in their reply (Ann. 7) stated as under:-

"4. 10 That as regards contents of para 4.10, making representation after representation does not improve case of the applicant. If he is aggrieved of termination order he ought to have preferred appeal to the concerned authority through proper channel.

4.11 That as regards contents of para No.4.11, it is submitted that applicant had submitted application and on which the orders passed by answering respondent No. 4 were "confirmed.

4.12 That contents of para 4.12 are denied. Applicant had not submitted any representation through proper channel that is to say through answering respondent No.4."

(12). In rejoinder, respondent No.2 at para 4(12) stated that contents of para 4.12 of the reply are not admitted; representation dated 6.6.96 was given personally to Chief Postmaster General which has been acknowledged by Senior PA to Chief Post Master General on 6.6.96 (Ann. A18). This acknowledgment receipt given by Sr. PA to Chief Post Master General on 6.6.96 produced as Ann. A.18 to the OA could not have been controverted by the department.

(13). Keeping in view the deeming provisions quoted above envisaged for period of limitation and applying the same to the facts and circumstances of the instant case appearing from the pleadings of the parties on record, we do not find any merit in any of the contentions advanced by Shri K.N. Shrimal so as to hold that OA No. 92/97 was either time barred or not sustainable for the reason of respondent No.2 having not availed any alternative remedy of appeal if any under the CCS Rules, 1965. If the period is computed from 11.3.96, the date of sending the registered letter containing termination order dated 16.2.96 as narrated above then also the OA was not time barred as having been filed within prescribed period of one year. Likewise, representations presented on 21.5.96 followed by reminders dated 6.6.96 (Ann. 18 in OA), 30.6.96, besides other ones (Annexure A5, A12, A13, & 14 in OA) remained undecided and no final order appears to have been passed by the competent authority to whom those were sent or presented and if the case is considered from this angle as well i.e. that no final order has yet appeared to have been passed, and the case is held to have been covered under Clause (b) of sub section (2) of Section 20, then also the

prescribed period is computed from (he date of expiry of six months from the dale on which last representation was made i.e. 6.6.96. In this view of the matter also, the OA No. 92/97 cannot be held to have been time barred, as is pleaded by the learned counsel for the petitioner.

(14). As regards validity of impugned order of the Tribunal in the context of the termination order, firstly we would like to browse through the ratio of decisions cited by Shri Ajay Rastogi on behalf of respondent No.2.

(15). In Union of India vs. Jayakumar Parida (supra) the Apex Court held as under:-

"If any material adverse to the respondent formed a foundation for termination, principles of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply, an appropriate order may be passed giving reasons in support thereof. If it is only a motive for taking action, in terms of Rule 6, which provides that such a termination could be made within three years without any notice, there would be no obligation on the part of the appellant to issue any notice and to give opportunities before termination. So each case requires to be examined on its own facts.

Since the action was initiated on the basis of a report submitted against the respondent that he had produced false income certificate, it formed a foundation and nol a motive for taking the impugned action. Accordingly, the order of the CAT selling aside the terminalion is not liable to be interfered with. However, the person concerned is not entilled to any back wages."

(16). In Mrityunjoy Sarkar"s case (supra), as per the discharge order, the Director General of Police had exercised the power under Rule 34 (b) of the West Bengal Service Regulations (Part I) & inslructions contained in memo No. 4145 (2) dt. 22.11.95 and the foundation for discharge was production of fake list of persons from the employment exchange for recruitment as Armed Reserved Constables, therefore, the Apex Court held that if that is accepted, then it would cause a stigma on the employees who were discharged from service for future recruitment as they had produced fictitious record to secure employment and that being so, principles of natural justice require that they should be given reasonable opporlunfty of representation in the enquiry to be conducted and appropriate orders with reasons in support thereof need to be passed.

(17). In the case at hand, respondent No.2 had passed Intermediate Examination with first division in the year 1994 as per mark sheet issued by Bihar Intermediate Education Council Patna bearing Roll No. 10398. During process of verification made by Shri N.R. Meena, as per his report (Ann. 4 to the writ petition) it was found that mark sheet produced by the respondent No.2 bearing Roll No. 10398 was false. To controvert this, the respondent No.2 produced original certificate issued by Bihar Intermediate Education Council Patna dt. 3.4.1997 bearing No. EVC 000234 alongwith his rejoinder as Annexure R.A.I (Ann. R-2/4 lo this writ petition). Annexure R-2/4 is letter No. 285/ST/1996

dt. 13.5.1996 written by A.K. Upadhyaya Statistical Officer Bihar Intermediate Education Council Patna, sent to Superintendent of Post Office Jhunjhunu according to which, mark sheet in respect of Pawan Kumar Jhanjaria roll code 1145 Roll No. 10397 (10398 roll number was mistakable) registration No. PT.43746/92 for Intermediate Science Examination 1994 has been verified from the records of the council and found correct and in this letter details of marks obtained by aforementioned Pawan Kumar have also been mentioned, which shows that there was no difference in the mark sheet except roll number and his correct roll number was 10397, to which the department had not taken notice. In this view of the matter, the mistake was on the part of the Bihar Intermediate Education Council Patna who issued the mark sheet with wrong roll number 10398 as against correct number 10397 to respondent No.2 as is evident from the letter dated 13.5.96, referred to above, which could not have been controverted by the department in its pleadings.

(18). Admittedly as rightly held by the learned Tribunal services of respondent No.2 were terminated upon a report of Mr. N.R. Meena, Asstt. Superintendent of Post Offices Jhunjhunu in respect of verification of academic qualification's certificate and according to that verification report it was found that respondent No.2 had submitted for his selection a fake and false mark sheet and had thus secured his appointment as Postal Assistant, on the basis of a fake mark sheet which amounted to misconduct. Curiously enough, during this process of verification whatever the inquiry made by the petitioners or NR Meena referred to above was behind the back of respondent No.2, to whom neither any show cause notice was given nor report of NR Meena alongwith material collected during process of verification or inquiry against him was supplied which has resulted in termination of respondent No.2 who was duly selected and an approved candidate for being appointed to the cadre of Postal Assistant as is evident from the order dated 28.7.95 (Ann. 2).

(19). In our considered view, the foundation for termination of respondent No.2 is production of a fake mark sheet, as has been based in the report of N.R. Meena referred to above, and therefore, the impugned termination would cause a stigma on respondent No.2 for future employment. It is settled law that principles of natural justice require that in such cases the delinquent should be given reasonable opportunity of making representation so as to enable him to participate in the enquiry to be conducted and appropriate orders duly supported by reasons is required to be passed. Our view is fortified from observations made in the matter of Director General of Police vs. Mrityunjay Sarkar, and Union of India vs. Jayakumar Panda (supra). Thus viewed, since such procedure referred to above has not been followed in case of the termination of respondent No.2, hence, we decline to interfere with the order of the Tribunal setting aside the impugned termination.

(20). As a result of the above discussion, this writ petition being devoid of any merit is dismissed with no order as to costs.