

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1329 of 2001

New Delhi, this the 13th day of February, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Mohd. Hasim S/o Shri Abdul Mazeed
1/218, Sadar Bazar (Jamma Masjid)
Delhi Cantt.110 010.

-APPLICANT

(By Advocate: Shri Gagan Gupta)

Versus

Union of India Through

1. The Commandant
505, Army Base workshop,
Delhi Cantt.110 010.
2. The Commander Base Workshop Group
The Appellate Authority,
Army Base Workshop,
Meerut.

-RESPONDENTS

(By Advocate: Shri Madhav Panikar)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this OA assailing an order dated 8.9.2000 vide which the applicant's services had been terminated under sub-rule (i) to Rule 5 of the CCS (Temporary Service) Rules, 1965.

2. The facts in brief are that the applicant was appointed to the post of Electrician (MV) under the Commandant, 505, Army Base Workshop, Delhi Cantt. The appointment of the applicant was on probation for a period of 2 years from the date he assumed duty.

3. The applicant claims that he has been performing the duty diligently and successfully to the

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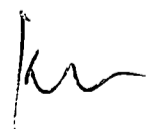
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utmost satisfaction of his superior officers for more than 7 months and there had been no instance of his superior officers issuing to him any memo or otherwise. His work and conduct in the office was without any blemish but all of a sudden his services were terminated under the proviso to sub-rule (i) of Rule 5 of the CCS (Temporary Service) Rules, 1965 vide the impugned order.

4. To assail this order, the applicant alleges that the order passed by the respondent is punitive in nature and it carries with it a stigma and same cannot be upheld without the authorities conducting a valid and proper domestic enquiry and such type of termination is totally against the principles of natural justice as the applicant was not given any opportunity to defend himself.

5. An appeal was also made to the appellate authority but the same is also alleged to have been considered mala fide and rejected.

6. The OA is being contested by the respondents. The respondents in their counter have pleaded that the applicant was appointed on probation though verification of his character and antecedents were sent to District Magistrate Gurgaon on 3.3.2000. It is further submitted that one month after the employment of Shri Mohd Hasim,



the applicant, a news report appeared in Hindustan (Hindi Edition) New Delhi stating that one Shri Abdul Mazeed, Imam of Jama Masjid, Delhi Cantt. had been taken into custody by Alwar Police on suspected involvement in ISI activities, who happened to be the father of applicant. Thereafter SHO Delhi Cantt. was approached to verify the character and antecedents of the applicant, but nothing adverse was found against the applicant. In the mean time, a question was raised in the Rajya Sabha about the appointment of the son of a suspected ISI agent in the 505 Army Base Workshop Delhi Cantt. An assurance was given by the Defence Minister that the factual position would be intimated on receipt. So a high ranking officer of the unit, i.e., Colonel Administration was detailed to obtain the information from Superintendent of Police, Alwar and Additional Director General of Rajasthan Police and received a report that during the investigation of case No.1/2000 under section 3,5,9 of the Official Sects Act. Mulana Abdul Majid S/o Mohd. Suleman aged 48 years r/o Village Rajote, P.S. Kishangah Bas, Alwar was found involved in espionage activities. He was arrested on 26.2.2000 from Delhi Cantt. and it was revealed in his interrogation that his son was employed as Electrician under the respondents. His interrogation also revealed that since 1991 he had been in constant contact with Pakistan Embassy Officials when he went to take visa. He had maintained contact with them for espionage work and charged Rs.15000/- from them. He also introduced Idris,



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a serving Army personnel in 1992 to Pak officials in Karol Bagh. He also introduced Johru Khan another serving Army Personnel to Pak ISI agent in Pak Embassy, Delhi for carrying out espionage activities. It is also stated that these Pak ISI officials used to come to his mosque in Delhi Cantt., so on that basis it was found that it was not possible to repose credibility in the applicant at the cost of national security and there is every possibility of occurrence of major happenings or untoward incidents which could not be ruled out. So for that reason, the services of the applicant had been terminated under Rule 5.

7. I have heard the learned counsel for the parties and gone through the record.

8. The learned counsel appearing for the applicant submitted that from the counter-affdavit of the respondents it is clear that the services of the applicant had been terminated on the ground that his father was involved in espionage activities, but still there is no proof that if he is guilty of the offence as the trial is still going on.

9. As far the conduct of the applicant is concerned, the Rajasthan Police has reported back that there is no act attributable to the applicant which may

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be adverse for his joining the Government service. The counter-affidavit filed by the respondents also reveals that applicant is being branded as a son of ISI agent which is a stigma on the applicant's career. If a person is removed or dismissed from service under the garb of exercise of sub-rule (i) of Rule 5 of the CCS (Temporary Service) Rules than that is a colourable exercise of power and order passed in such like exercise of power cannot be sustained and the same should be quashed.

10. In support of his contention the learned counsel for the applicant has referred to various judgments of the Apex Court such as The State of Bihar Vs. Gopi Kishore Prasad, reported in AIR, 1960 SC 689 wherein it has been held as follows:-

"Constitution of India, Article 311 (2) - Probationer - Enquiry against, for alleged misconduct - Finding of unsuitability to post on account of corruption and unsatisfactory work - Discharge from services is punishment - He is entitled to protection under Article 11 (2)".

11. On the same point he has also referred to some more cases such as (1) Madan Mohan Prasad Vs. State of Bihar and Others entitled as AIR 197 SC 11 (2) The Comptroller and Auditor General of India Vs. Samar Singh reported in 1976 Lab.IC 806 and (3) Chandra Prakash Shahi Vs. State of U.P. and Others reported in (2000) 5 SCC 152.

12. After citing these judgments, the counsel for



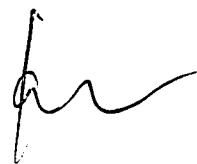
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the applicant submitted that even if an order terminating the services of an employee is an innocuous one but still the court can lift the veil and come to know on what reasons the applicant's services had been terminated and if it finds that the termination has been ordered because of some misconduct on the part of the applicant or as a punishment, then the same can be quashed because a temporary employee also enjoys the protection of Article 311 of the Constitution.

13. I have gone through these judgments.

14. There is no quarrel to the legal proposition as put forward by the learned counsel for the applicant that even the Temporary Government Servant enjoys the protection of Article 311. However, the court has to see in each and every case whether the order of termination is simplicitor or is actuated with any intention to punish the Government employee and/or any stigma is also attached to the career of the Government servant.

15. But now applying all these tests to the facts of the present case I may mention that the applicant in this case has been terminated vide impugned order which is totally innocuous. That does not attach any stigma to the applicant nor it reveals that if it has been passed to punish the applicant for any misconduct as defined under the Conduct Rules or CCS (Conduct) Rules. The



services of the applicant has been terminated only on the report that applicant is the son of a person who is suspected to be an ISI agent. Whatever investigation was carried on that was carried against the father of the applicant and it is true that investigation had revealed that the father of the applicant was an active agent of ISI though case against him is still under trial. It may be that he may not be convicted but the fact remains that on enquiry the respondents had got the information that the applicant's father had earlier introduced two army personnel to ISI for working as agent for carrying out espionage activities for Pakistan so in this background the applicant was not found to be suitable to be retained in the service by the respondents because respondents are a defence organisation from where the chances are that vital informations may be passed on to ISI and it is for this reason the services of the applicant had been terminated.

16. The counter-affidavit in categorical terms stated that it was not possible for the respondents to repose credibility in the applicant at the cost of national security since it was also revealed in the report that the father and son both are residing under the same roof where the father is meeting Pak nationals who were also involved in espionage activities so the applicant's services have been terminated as a preventive measure in the initial stage (emphasis supplied).



17. Thus to my mind the purpose of keeping an employee on probation is also to see his suitability for the organisation. In this case since the department has categorically stated that they are not in a position to repose credibility in the applicant at the cost of national security, so they had every right to terminate his services under sub-rule (i) of Rule 5 of the CCS (Temporary Service) Rules, particularly when no allegations against the applicant are levelled which may amount to stigma to the career of the applicant nor it is by way of punishment.

18. In view of the above I find that the OA is devoid of any merit and the same is dismissed. No costs.

Kuldip Singh
 (KULDIP SINGH)
 MEMBER (JUDL)
 13.2.2003

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