

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1531/98

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

(X)

New Delhi, this the 5th day of April, 2000

Smt. Suman Bala
w/o Sh. Ved Parkash
r/o BR-25/A, Shalimar Bagh
New Delhi. ... Applicant

(By Shri S.K.Gupta, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Finance
North Block
New Delhi.
2. Presiding Officer
Debts Recovery Tribunal
3rd Floor, Vikrant Tower
Rajendraplace
New Delhi. ... Respondents

(By Shri R.P.Agarwal, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant was appointed to the post of Peon on 3.6.1996 on ad hoc basis in the Debts Recovery Tribunal for a period of six months or until further orders, at the discretion of the competent authority. As per the terms and conditions of her appointment, her services can be terminated on one month's notice from either side. On 28.10.1996 the Registrar of the Tribunal sent a report alleging that the applicant was caught while taking out order sheet from the files without permission of the officers. On 30.12.1996 the applicant was called upon for furnishing her explanation within seven days. Even though explanation did not reach within the stipulated period, she was given another opportunity to explain her position by the Memo. dated 15.1.1997. The

(S)

applicant denied the charges levelled against her. She stated that she never took out any order sheets and that whatever order sheet was given to her, she used to place the same at appropriate place. Thereupon the Presiding Officer of the Tribunal appointed Section Officer of Debts Recovery Tribunal to enquire into the allegation. The enquiry officer without holding any enquiry, drew up the report dated 9.6.1997, in which he has stated that it was not proper to doubt the report of the Registrar and hence the applicant be terminated forthwith. The Presiding Officer, by the impugned order dated 20.11.1997 upon considering the report of the enquiry officer and finding that the allegations were serious, removed the applicant from service. The one months pay and allowances were paid to the applicant in lieu of the one month's notice. The applicant filed an appeal but the same was rejected by the appellate authority, namely, Special Secretary to the Govt. of India by order dated 3.8.1998. The OA is filed challenging the above orders. It is contended by Shri S.K.Gupta, learned counsel for the applicant that the above orders of removal are vitiated inasmuch as there is no proper enquiry into the allegations made against the applicant. It is further contended that as the applicant was removed on the allegations of misconduct, the applicant cannot be removed only on the basis of the report given by the Registrar without any evidence on record. Thus, it is contended that the impugned orders are wholly perverse.

OB

The allegations

are very serious as the applicant was caught red handed while she was taking out the order sheets from the files. A thorough enquiry has been conducted and on the basis of the report of the enquiry officer, the impugned orders were passed. The appellate authority has also considered the pleas raised by the applicant and on the basis of the statements of S/Shri M.L.Sharma, O.P.Sharma and Adesh Gupta the case of the applicant was found false and accordingly the order of removal was confirmed. It is, therefore, contended that the orders of the disciplinary authority cannot be interfered with by the Tribunal in the exercise of judicial review jurisdiction.

(b)

3. We have perused the pleadings carefully and considered the arguments of the learned counsel on either side. It is no doubt, true, as contended by the learned counsel for the respondents, that the applicant being a temporary Government servant, his services are liable to be terminated by giving one month's notice on either side in accordance with the CCS (Temporary Service) Rules, 1965 without assigning any reasons. However, since the applicant was alleged to have ^{been} caught while committing a misconduct which is serious in nature the Tribunal has rightly decided to hold an enquiry into the allegations. An enquiry officer has been appointed and the enquiry officer, in his report dated 12.2.1997, upon considering the statement made by the applicant stated as under:

"Smt. Suman Bala, Peon has denied the charge. It appears that the matter needs further investigation. Ld. Registrar is well aware about the nature of order sheets. The charge levelled by Ld.

OAB

Registrar have force and the statement of Ms. Suman Bala appears to be false.

Mere suspicion on the integrity of a Group 'D' staff is sufficient and the charge may be taken as proved. However, the comments of Hon'ble Registrar were sought before I submit the report to Hon'ble P.O>

In view of above it is requested that I may be given some more time. I may be allowed to submit my report till 18.2.97."

4. From the perusal of the above enquiry report, it is clear that the enquiry officer had thought that further investigations were necessary but he changed his mind immediately and said that mere suspicion on the integrity of a Group 'D' staff is sufficient and the charges was taken as proved. In continuation of the enquiry officer's report, the enquiry officer on 26.3.1997 has stated as under:

"The Secretary/Registrar has given in writing a very serious complaint against a Group 'D' employee. It will not be appropriate to have any doubt on the charge levelled by the Registrar. In the light of above submissions it shall be proper if Smt. Suman Bala is discontinued. Submitted for kind orders."

5. The enquiry officer, on relying upon the complaint given by the Registrar has come to the conclusion that the charges levelled against the applicant by the Registrar as proved. The above report has been considered by the Presiding Officer on 9.6.1997 and has stated that the applicant does not deserve to be in service. Again on 20.11.1997 the Presiding Officer passed a speaking order, considering the enquiry officer's reports dated 12.2.1997 and 26.3.1997 and came to the conclusion that the applicant should be removed from service. Thereafter, the impugned order dated 11.12.1997 has been issued terminating the applicant from service on payment of the normal allowances in lieu of notice.

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6. It is contended by the learned counsel for the respondents that as the impugned order was not stigmatic, the applicant cannot have any grievance and as she is only a temporary employee she was liable to be terminated without assigning any reasons. This contention, in our view, cannot be countenanced. The respondents have considered the misconduct alleged against the applicant as very serious and having held an enquiry into her misconduct, the Presiding Officer has taken a decision to remove the applicant on the basis of the enquiry officer's findings. It is therefore evident that the applicant was removed as she was found liable for misconduct. Hence, it is not open to the respondents to pass an order removing the applicant without assigning any reason and contend that the order does not cast any stigma against the applicant. The learned counsel for the respondents has relied upon the Supreme Court in State of U.P. and Others Vs. Rajendra Kumar Singh and Another, (1997) 10 SCC 682 and Sudhir Vishnu Panvalkar Vs. Bank of India, (1997) 6 SCC 271. We find that both these cases have no application to the facts of the present case. The first case, i.e., State of U.P. and Others (Supra), was the case of a Probationer and after expiry of the period of probation and on consideration of adverse remarks a decision was taken to terminate the temporary service and respondents therein passed an order without attaching any stigma. In those circumstances their Lordships held that the order cannot be held as illegal. Again in Sudhir Vishnu Panvalkar (Supra), it was the case where a termination order was passed simpliciter but at the

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request of the appellant therein who insisted to reveal the reasons for his termination, the bank was constrained to inform the appellant that the termination was resorted to because of loss of confidence. Their Lord Ships held that such an order of termination on the ground of loss of confidence could not be said to be a malafide action. Thus, in the aforesaid two cases, no enquiry was held for any misconduct and no enquiry officer's report was drawn up on the basis of which the impugned orders in those two cases were passed. On the other hand, in the instant case, an enquiry has been held and on the basis of the findings given by the enquiry officer, the disciplinary authority has passed the impugned order.

7. The learned counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in Radhey Shyam Gupta Vs. U.P.State Agro Industries Corporation Ltd. and Another, (1999) 2 SCC 21. It was the case of temporary/probationer employee whose services have been terminated simpliciter. Their Lordships, however, held that it was ^{open} to the Court to ascertain whether the order of termination is simpliciter or punitive and the test was based on the purpose of the enquiry, whether it was to find out the truth of the allegations of the misconduct or whether it was only to decide whether to retain the employee against whom a cloud is raised on his conduct, such enquiry only serves as a motive for the termination. But ^{by} the enquiry officer on the basis of the evidence a definite finding is reached at the back of the employee about his misconduct and such finding forms



the basis or foundation for the order of termination, such order would be punitive.

(20)

8. In view of the above decision, it is clear that in the instant case, enquiry having been held to ascertain whether the applicant had committed the misconduct and on the basis of the findings given by the enquiry officer that the applicant was guilty of misconduct, the disciplinary authority had passed the impugned order. Thus, we are of the view that the impugned order is punitive and not a mere order of termination simpliciter.

9. The next question that is to be considered is whether a proper enquiry has been held against the applicant and whether there is any material in support of the findings arrived at by the enquiry officer which were agreed to by the disciplinary authority.

10. We have extracted supra the proceedings of the enquiry officer as well as that of the disciplinary authority, namely, the Presiding Officer of the Debts Recovery Tribunal. On a perusal of the same, we are of the view that the enquiry officer has arrived at the findings only on the basis of the report given by the Registrar against the applicant. The Registrar was not examined in the enquiry. For that matter, no witness has been examined in the enquiry. The enquiry officer ~~has~~ fell into a serious error in treating the report of the ^{Registrar} ~~enquiry~~ officer as gospel truth. It should be noticed that the applicant is also entitled for the protection of Article 311 of the Constitution of India though ^{she} is a Group 'D'



employee. She has got equal rights under the Constitution as any other employee. She can be removed only on the basis of the valid evidence that was collected during the enquiry.

(21)

11. In the circumstances, it should be held that this is the case of 'no evidence' and the findings of the enquiry officer as well as the disciplinary authority are wholly perverse. The same error has been committed by the appellate authority. He has relied upon the statements made by the three officers in rejecting the appeal. They were neither examined before the applicant nor was she allowed to cross-examine them.

12. In view of the aforesaid discussion, we are of the considered view that the impugned orders are vitiated and are liable to be set-aside and are accordingly quashed.

13. The respondents are directed to reinstate the applicant in service with back wages within two months from the date of receipt of a copy of this order. The OA is accordingly allowed. No costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER(A)

Ambygopal Reddy

(V. RAJAGOPALA REDDY)
VICE CHARIAMN (J)

/RAO/