

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.1851 of 1998 decided on 25.5.1999.

Name of Applicant : Shri Raj Singh

By Advocate : Shri K.P.Dohare

Versus

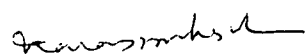
Name of respondent/s Secy Min. of Food & Consumer
Affairs & another

By Advocate : Shri V.S.R.Krishna

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. - No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1851 of 1998

New Delhi, this the 25th day of May, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Raj Singh Aleria S/o Shri Om Prakash. Was Employed as Casual Labour/Peon in National Institute of Sugar Cane Technology, Room No.124, Block No.10/11, Jam Nagar House, New Delhi - 110 011. R/o RZ-28, Gali No.14, Indira Park, Sagarpur, New Delhi.

APPLICANT

(By Advocate Shri K.P.Dohare)

Versus

Union of India through:

1. Secretary, Ministry of Food & Consumer Affairs, Govt. of India, Krishi Bhawan, New Delhi - 110 001.
2. Chief Director, National Institute of Sugar Cane Technology, Mau, Room no.124, Block No.10/11, Jam Nagar House, New Delhi - 110 011.

RESPONDENTS

(By Advocate Shri V.S.R.Krishna)

O R D E R

By Mr. N. Sahu, Member(Admnv)

The grievance of the applicant in this case arises out of the oral order of termination of the applicant's services after putting in 14 months of continuous service as a casual labour on 1.9.1998. The applicant seeks a direction of reappointment in the Department of National Insitute of Sugar Cane Technology with all consequential benefits as are avilable to Group "D" employees in accordance with the provisions of OM dated 7.6.1988 (Annexure-A-6) as well as OM No.51016/2/90-Estt (C) dated 10.9.1993 of Ministry of Personnel & Training, Govt.of India (Annexure-A-5).

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2. Shri Dohare, learned counsel for the applicant contends that the applicant worked from 1.7.1997 to 31.8.1998 and his termination was made without affording him an opportunity of defending himself. He states that the respondents have retained juniors, namely, Shri Mukesh S/o Shri Raj Kishore and Ku. Savita D/o Shri M.L. Misra. It is further stated that appointment of one Shri Vijay in the place of the applicant with effect from 7.9.1988 is illegal. Shri Dohare submits that the Hon'ble Supreme Court in the case of M/s Swadesamitran Limited, Madras Vs. Their Workmen, [1960] 3 SCR 144 has laid down the law as to when the principle of 'last come first go' can be departed by the employer. Their lordships held that the departure can be only when the employer is able to show by reliable evidence, preferably from the recorded history of the workman concerned to the effect that he is "inefficient, unreliable or habitually irregular", and can satisfy the Tribunal that the departure from the rule was justified, by sound and valid reasons; otherwise "the departure from the rule could be treated as being malafide or amounting to unfair labour practice". The Hon'ble Supreme Court also laid down that the retrenched workman would be entitled to claim reinstatement and the fact that in the meantime the employer has engaged other workmen would not necessarily defeat the claim for reinstatement. Applying the above rule of law laid down by the Hon'ble Supreme Court Shri Dohare states that juniors were retained and the applicant was retrenched without giving him any show cause notice

as to how the employer arrived at the conclusion of his inefficiency or unreliability and, therefore, the retrenchment is bad in law. Shri Dohare next contends that in the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, AIR 1991 SC 309 the Hon'ble Supreme Court has directed prior opportunity of hearing even when the appointments were cancelled on the ground that they were made unauthorisedly. He cited the decision of the Hon'ble Supreme Court in the case of Samishta Dube Vs. City Board, Etawah and another, JT 1992 (2) SC 37. That was a case where the rule of "first come last go" in Section 6-P of the UP Industrial Disputes Act, 1947 was dealt with. Citing the decision in the case of M/s Swadesamitran Ltd. (supra), the Hon'ble Supreme Court held that burden will be on the employer to justify the deviation. The learned counsel also cited the decision of this Court in the case of Shri Umesh Singh and others Vs. Union of India and others, O.A. 630 of 1996 decided on 11.4.1997.

3. On the other hand the respondents in the counter reply made the following averments -

"The colleagues and officers of Shri Raj Singh were not satisfied with his conduct due to his arrogant and negligent behaviour.

Shri Raj Singh was many times advised time and again to improve himself, but he did not bother to listen to advise of the fellow employees and officers....

The Institute is under construction and only skeleton staff to meet the bare necessities of the Institute are engaged.

The services of Shri Raj Singh were disengaged by the Institute for the reasons already explained.....

Shri Raj Singh was engaged on casual labour basis, on the need and requirement. But he had to be disengaged from the services for the reasons explained.

Shri Raj Singh was advised to mend his conduct from time to time. But he failed to behave like a disciplined person."

4. I have seen the warning given to the applicant by the Head of the Ministerial Section for his conduct. These warnings were administered on 14.5.1998 and 13.6.1998. The applicant has been accused of giving excuses for not doing his job. He left the office without prior permission for his personal work. On 4.8.1998 it appears that he accepted his fault and assured that he would improve his behaviour. Even after that there was no improvement in his conduct. There were also complaints that the applicant was in the habit of leaving office early on Friday and attending the office almost at lunch time on Monday causing lot of inconvenience. He was accused of misbehaviour and indiscipline and accordingly on 21.8.1998 his services were terminated.

5. The most important point brought out in the course of argument by Shri V.S.R.Krishna, learned counsel for the respondents is an allegation of forgery by the applicant. He had shown to me the "Majdoori Panji" for the period 1.4.98 to 30.4.98. It contained three entries. The third entry pertains to the applicant. This shows that the applicant was paid Rs.864/- for 9 days of service and the aggregate of payment of two other labourers and the applicant amounted to Rs.4781/-. The other two labourers were

paid for 20 days each whereas the applicant was paid for 9 days. A photostat copy of the "Majdoori Panji" is placed before me on record. But for this period at page 27 of the OA there is another photo stat copy which shows that the applicant has been paid an amount of Rs. 1920/- for 20 days. All the three payments mentioned at page 27 of the OA aggregate to Rs.5837/-. Shri Krishna contends that this is a clear evidence of conduct unbecoming of a worker who seeks to continue in employment. There is evidence of interpolation according to Shri Krishna in the muster roll. The question to be decided is whether in the above background of facts the applicant should have been issued a formal show cause notice before termination.

6. Samishta Dube's case (supra) does not apply to the facts of this case. That was a case of Municipal Corporation of Etawaha. Following certain well considered decisions (Bangalore Water Supply & Sewerage Board etc. Vs. A. Rajappa & others etc. case, (1978) 2 SCC 213, the Supreme Court held that Municipal Corporation was an "Industry" and a clerk, typist was a "workman". There was a reference to the Labour Court as an industrial dispute in that case which directed that the principle of "first come, last go" could not be deviated from. Under those circumstances, the Supreme Court set aside the order of Allahabad High Court and ordered engagement. The employer here, namely, Govt. of India, Ministry of Food and Consumer Affairs cannot be termed as an "Industry". There was no "industrial dispute" and

there was no pronouncement by a Labour Court. Hence the Apex decision in Samishta Dube's case (supra) is not applicable to the facts of the present case.

7. The Tribunal's decision in Umesh Singh's case (supra) is also not applicable to the facts of this case because as a casual labour several warnings were issued and there is an attempt ex-facie of a fabrication of documents filed.

8. Having distinguished the cases cited before me, it is necessary to take ^{note} ~~care~~ of other Supreme Court pronouncements on the subject. In Himanshu Kumar Vidyarthi Vs. State of Bihar, (1977) 4 SCC 391 the Supreme Court held that daily wage employees engaged by a Government Department are not appointed in accordance with any rule. They have no right under the Industrial Disputes Act on the ground that their termination amounted to retrenchment and violation of Section 25-F of the Industrial Disputes Act.

9. In the case of High Court of Judicature of Patna Vs. Pandey Madan Mohan Prasad Sinha (1977) 10 SCC 409 the Supreme Court held that termination of the service of a probationer can be questioned only on ground ^{that} ~~of~~ that it was arbitrary or punitive. In case of termination for unsuitability principles of natural justice are not attracted. In State of UP



Vs. Krishan Kumar Sharma, (1997) 11 SCC 437 the
Supreme Court held as under -

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"During the period prior to 1979 there were remarks indicating that his performance was not quite satisfactory. He was found to have overstayed from leave and a number of punishments were imposed on him. For the year 1979 there were remarks that he was most undisciplined and undesirable type of constable and that he was careless and habitual of leaving the fire station without leave or permission. These remarks reflect upon his performance in the earlier period. Keeping in view the said record of service of the respondent, the competent authority came to the conclusion that the performance of the respondent, who was only a temporary employee was not satisfactory and for that reason his services were terminated. It cannot be said that the termination of the services of the respondent in these circumstances was by way of punishment which required compliance with the provisions of Art.311(2) of the Constitution.

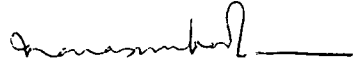
The averments in the State's counter-affidavit were in reply to the allegation made in the writ petition that by virtue of the order passed by the IG of the fire services on 16-1-1980 all firemen stood confirmed w.e.f. 13-12-1978 but the respondent was not confirmed. In the said counter-affidavit it has also been stated that confirmation was to be done only if the work and conduct was found to be satisfactory and up to the mark. The averments in the said counter-affidavit do not, therefore, alter the nature of the order of termination which was termination simpliciter in accordance with the Rules."

10. The dispute before me is not covered and does not arise out of Industrial Disputes Act. Even if we assume that the National Institute of Sugarcane Technology is an "Industry" even so, the tests laid down in Swadesamitran's case (supra) have been fulfilled. These tests are : "inefficient, unreliable or highly irregular". These complaints showed evidence of irregularity and insubordination. With this background material, the rule of "first

come, last go" can be deviated from and the tests in Swadesamitran's case fully stand satisfied. The other Supreme Court rulings cited by me amply support the proposition of law that when a casual labour peon is removed on account of unsuitability, neither show-cause notice nor a written order is necessary. 16

11. In the course of arguments and subsequently by filing a petition, the applicant was accused of misrepresenting the Tribunal by deliberately submitting a forged document with a view to secure from it fraudulently the reliefs prayed. The applicant, therefore, has come with unclean hands. There is substance in Shri Krishna's submission. On this ground alone this OA deserves to be dismissed.

12. For the foregoing reasons, this OA is dismissed. No costs.


(N. Sahu)
Member (Admin)

rkv.