CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.85 of 1997 decided on 6.8.1998.

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Name of Applicant : Ramesh Kumar

By Advocate : Mrs.Sarla Chandra

Versus

Name of respondent/s I.G.(Prisons) Central Jail Tihar, New Delhi.

By Advocate : Shri Rajinder Pandita

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A.Vedavalli, Member(J)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. ~~-Yes/No~~

(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.85 of 1997

New Delhi, this the 6th day of August, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

Ramesh Kumar, s o Chet Ram, Village Post Office Harevali, Delhi-110039 -APPLICANT

(By Advocate Mrs. Sarla Chandra)

Versus

Inspector General (Prisons), Central Jail, Tihar, Janakpuri, New Delhi. -RESPONDENT

(By Advocate Shri Rajinder Pandita)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The applicant in this Original Application is aggrieved against an order dated 16.10.1996, terminating his services, on the ground that he acquired a right to a post and the punishment had been inflicted on him without going through the procedure outlined in Article 311 of the Constitution.

2. The brief facts leading to the impugned order of termination are that the applicant was appointed on 7.6.1994 on the recommendation of the Staff Selection Board to a temporary post of Warder on a pay of Rs.950/- per month in the scale of Rs.950-1400 in Central Jail,Tihar, New Delhi. Under the terms of appointment, the applicant was to be on probation for a period of two years and it is stipulated in the appointment order that "failure to complete the period of probation to the satisfaction of the competent authority will render him liable to

discharge from service without any notice". Under clause 2 of the appointment order, the appointing authority reserves the right of termination forthwith by making payment of a sum, equivalent to pay and allowances for the period of notice. Thus, where the appointing authority considers that even one month's notice need not be given, it can remit the notice pay and terminate the services forthwith. The applicant completed 1 year, 9 months and 11 days and he had only about 2 months left to complete the two year probation period. On 26.9.1996 the applicant was caught carrying three packets of Newla Brand Tobacco and a cash of Rs.72/-. On 10.10.1996 he appeared before the I.G.(Prisons), admitted the lapse and apologized for carrying with him the said Newla Brand Tobacco. This resulted in the impugned order which stated that the services of the applicant were terminated forthwith with notice pay.

3. The learned counsel for the applicant states that the form of termination may be a form of termination simplicitor but it was a camouflage for an order of dismissal for misconduct; and it is always open to the Court to go behind the form and ascertain the true character of the order. She cited a decision of **Jagdish Mitter** Vs. **Union of India,** AIR 1964 SC 449. She stated that carrying Newla Brand Tobacco per se is not an offence even under the Jail Manual. It is not an intoxicant nor a prohibited drug whose use is injurious to health. It is not a narcotic article whose possession is an offence. Newla Brand Tobacco, Bidi or Cigar - they are forms

of tobacco and carrying them in the person of a citizen, even by a jail employee, is not an offence under the Jail Manual. She stated that termination without any basic cause was arbitrary. Even an order under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 cannot be an arbitrary order without any basis or reason and cannot be an exercise of the whims and fancies of the officer. Such an arbitrary action violates Article 14 of the Constitution.

4. Shri Rajinder Pandita, learned counsel for the respondents questioned the maintainability of the petition on the ground that the applicant straightaway rushed to the Court without filing a representation. He cited for this purpose a Full Bench decision of this Tribunal in the case of **B.Parameshwara Rao** Vs. **Divisional Engineer, Telecommunications & another** ,CAT F.B Vol.II 250 and the Apex decision in the case of **S.S.Rathore** Vs. **State of Madhya Pradesh,** AIR 1990 SC 10; and referred to the provisions of Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985. He stated that the applicant should have filed a representation to the competent authority against the order of termination and such rushing to the Tribunal renders the O.A. liable for dismissal at the threshold. On merits, it is submitted that this is an order of termination simplicitor and no stigma is attached to the applicant and, therefore, the applicant cannot be protected by Article 311 in this regard. He cited the following decisions in support of his case -

Jagdish Prasad Saxena Vs. State of Madhya Bharat AIR 1961 SC 1070; State of U.P. Vs. Kaushal Kishore Shukla, (1991) 1 SCC 691; Dharam Bir Singh Vs. Lt.Governor of Delhi, OA 152/89 decided on 27.7.93; O.N.G.C. Vs. Dr.Mohd.S.Iskender Ali (1980)3 SCR 603; Triveni Shanker Saxena Vs. State of UP and others, 1992(1)SLR 359.

5. Our initial reaction was one of surprise that for carrying Newla Brand Tobacco - an item commonly used by many civilians - on the person of an employee, even a jail warder, which was not an offence should render him liable for drastic punishment of termination from service. Even though the competent authority had full discretion during period of probation under Rule 5(1) ibid, the punishment appeared to be drastic. However, we have called for the official records and we noticed the following aspects revealing the full magnitude of the case. - (i) the applicant was carrying Tobacco in a clandestine manner underneath the underwear in the "Langot"; (ii) he stated before the Deputy Superintendent, Central Jail that he was supplying tobacco to an undertrial prisoner, namely, Om Prakash S/o Shri Prem Chand for the last 2-3 months; (iii) he stated that he made phone call for passing the personal message on telephone no. 2182019 to the girl friend of the accused Om Prakash, namely, one Priyanka; (iv) the applicant made a profit of Rs.150/- for each consignment of tobacco sold to the prisoners. The conclusion was that not only this article was brought and supplied to the prisoners but

it was done on a commercial scale for a continuously long period of time out of which the applicant made a profit. He further was engaged in the prohibited activity of carrying messages of the prisoners outside the Jail premises and conveyed the same to civilians or close relatives. Both these activities are prohibited under the Jail Manual. Para 158 of the Jail Manual prohibts a Jail official from engaging in trade or business and Para 166 prohibits him against communicating with prisoners, their relatives and friends. Under these circumstances, when on 8.10.1996 the applicant appeared before the I.G.(Prisons) and admitted his mistake and wanted one chance to improve himself, the I.G. (Prisons) reminded him of his warning to the recruits in an address made to them earlier. He wrote that the applicant "was not at all suitable for the prison job - he is discharged from service". We are convinced that this is neither an arbitrary action nor a wilful, capricious act on the part of the respondents. The order of termination shows that the applicant was simply discharged in terms of his employment without casting any stigma in the order of termination. We, therefore, hold that the order cannot be said to be penal in character so as to attract Article 311 (2) of the Constitution.

6. We are aware that the recent view is that the express terms of the order are not conclusive. Smt. Sarla Chandra, learned counsel for the applicant maintains that the order of termination was made with the object of punishing the applicant for

some misconduct. She urged us to go behind the term of order of termination and examine all the attendant circumstances in order to find out whether the form of the order was only a camouflage. We have carefully considered this submission. We have also gone through the record. We are satisfied that there was no arbitrary action involved. The applicant was not as innocent as he was made out to be by his learned counsel. He was carrying a commercial activity in a clandestine manner. He was making profit out of it. He supplied information of the prisoners to the outsiders and that too for a profit. Both these activities are totally unbecoming of a Jail Warder and definitely contravened the Jail Manual. It was not a simple case of someone carrying Bidi or Newla Brand Tobacco in his pocket and going about for his own consumption. It was not an innocent case. It was a case of a deep design of hiding tobacco in a clandestine manner and but for the thorough search, it could have gone unnoticed. Secondly, it was an organised activity for a certain period with the object of distributing this tobacco to prisoners at an exorbitant rate and the applicant made a profit out of it and, thirdly, he ran errands for the prisoners by way of supplying information to outsiders. It was open to the authorities either to treat the above as a misconduct or to terminate the services simplicitor on account of his unsuitability to be a prison employee. Each item of activity listed above cannot be an offence under the IPC but the cumulative effect is such that it erodes Jail discipline. Jail discipline should be absolutely

strict in the public interest and no dilution in any form can be tolerated. It is under these circumstances that the I.G. (Prisons) in his order simply wrote that the applicant was unsuitable for Jail service and terminated his services. The law on the termination of service of a Government servant is laid down in the case of Kaushal Kishore Shukla (supra) as follows -

> "A temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servants. A temporary Government servant, can, however, be dismissed from service by way of punishment. Whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant."

7. Under the circumstances of the case, we are of the view that the respondents are justified in terminating the services of the applicant by exercising powers under Rule 5(1) ibid in a simple order of termination on the ground of his unsuitability to service and they are competent to do so in terms of the appointment order.

8. On the question of limitation, and maintainability, we are not convinced with the arguments of Shri Pandita. In the first place, we

are not shown any statutory right of appeal against the termination order under Rule 5(1) ibid. When there is no statutory right one cannot insist on a nonstatutory informal representation. The order having been passed by the I.G. (Prisons) himself, an appeal against his order could lie only to the President of India. It was another matter that either on application by the applicant himself or on their own the respondents could reopen the case within three months of the date of termination and review the case. It is nobody's case in this O.A. that such a power was sought to be exercised either by the applicant himself or by the respondents on their own. We are not shown any right of appeal or review other than this. Therefore, the arguments address to us on maintainability of O.A. in our view are unfounded.

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9. In the result, the O.A. is dismissed. No costs.

A.Vedavalli

(Dr.A. Vedavalli)
Member(J)

Narasimhan

(N. Sahu)
Member(Admnv)

6/8/98.

rkv.