

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

RA 89/98. in OA 709/97

New Delhi, this the 8th day of March, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

Richhpal s/o Sh. Hari Chand,
R/o village Sadpura, PO Tigaon,
Distt. Faridabad (Haryana).

.....Review Applicant

(By Advocate: Shri B.B. Raval)

Vs.

1. Employees State Insurance Corporation through
Director General,
Kotla Road, New Delhi.

2. The Regional Director,
Haryana Region,
Employees State Insurance Corporation,
Panchdeep Bhawan, Sector No. 16,
Faridabad.

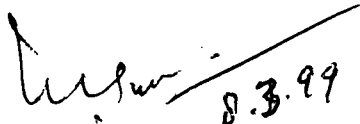
.....Respondents

(By Advocate: Shri G.R. Nayyar)

O R D E R

Hon'ble Shri T.N. Bhat, Member (J):

This R.A. has been filed by the applicant in OA 709/97 seeking review of the judgement/order dated 1.4.1998 passed in that OA by this Tribunal. By the aforesaid judgement the Tribunal held that considering the fact that the applicant is facing a criminal charge before the competent court and also taking into account the preceeding and attendant circumstances of the impugned order by which the applicant's services were terminated it would not be in the interests of discipline or public interest to order reinstatement of the applicant in service when the criminal case is pending. The OA was disposed of with a direction that in case the applicant is acquitted by the competent criminal court in the criminal


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case which is pending against him and that order has become final and binding, the applicant shall be entitled for reinstatement in service as ad hoc Peon.

2. The review applicant takes the plea that there is an error apparant on the face of the record as the judgement goes counter to the decision of the Hon'ble Supreme Court in Jarnail Singh vs. State of Punjab (AIR 1986 SC 1626). According to the review applicant the aforesaid judgement of the Apex Court was binding upon this Tribunal and the Tribunal could not have taken a view contrary to the one taken by the Apex Court.

3. During the course of his arguments learned counsel for the review applicant reiterated the above contention and relied upon the judgement of the Apex Court. It is further contended by him that some other persons who were similarly situated as the applicant had been continued in service on ad hoc basis while the applicant was singled out for termination solely on the ground that he had been allegedly arrested in the criminal case registered against him by the C.B.I.

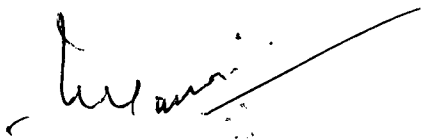
4. The respondents have in their reply denied the contention that the persons who had been appointed on ad hoc basis like the applicant had a right to be continued in service, as, according to the respondents, such appointees could not claim any right to appointment on regular basis. It is further averred that several persons who like the applicant had been appointed on ad hoc basis and purely as a stop gap arrangement had also been terminated from service in March, 1997 and, further,



that action was taken by the respondents to make recruitment to the vacant posts on a regular basis in accordance with the recruitment regulation.

5. In his rejoinder the review applicant has not denied that some of the persons who had been appointed alongwith the applicant on ad hoc basis were not later continued in service. It is, however, contended by him that some of those persons had been continued later.


6. It is well settled that a person appointed on purely ad hoc basis and as a stop gap arrangement has no right to continue on the post. This by itself could be a sufficient ground for dismissal of the applicant's OA. However, since there was an averment by the respondents that a criminal case had been registered against the applicant and a chargesheet had also been filed in a criminal court the Tribunal discussed the law on the subject and also made a mention of the judgements of the Apex Court in Mohinder Singh Gill vs. The Chief Election Commissioner, (AIR 1978 SC 851), Jarnail Singh vs. State of Punjab (Supra) and Shri O.P. Goel vs. Himachal Pradesh Tourism (ATR 1991 (2) SC 197). In Jarnail Singh's case (Supra) the Apex Court had held on the peculiar facts of that case that termination was by way of punishment and, therefore, an enquiry should have been held. Distinguishing the aforesaid judgement on facts the Tribunal held that it is not the mere form of the order that would be determinative of the question whether the order was punitive in nature or not. Referring to another judgement of the Apex Court delivered in State of Bihar vs. S.B. Mishra (AIR 1971 SC 1011) the Tribunal held that

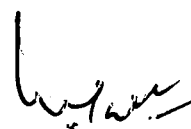


the entirety of the circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order. We may mention that the same principle has also been laid down by the Apex Court in a very recent judgement reported in JT 1999 (1) S.C. 396 (Dipki Prakash vs. S.N. Bose National Centre & ors.). The Tribunal in the facts and circumstances of this case seems to have held the view that in this case the involvement of the applicant in a criminal case and his arrest in that case had been a mere motive and not the foundation of the order of termination. It was further held that considering the preceding and attendant facts it would be neither in the interest of discipline nor public interest to order reinstatement of the applicant.

7. We do not find any error in the view taken by the Hon'ble Members of the Tribunal constituting the Bench which delivered the above judgement. We also do not find ourselves in agreement with the learned counsel for the review applicant that the judgement of the Tribunal is contradictory to the view taken by the Apex Court in Jarnail Singh's case.

8. Viewed as such, we find no merit in this R.A. and agreeing with the contention of the respondents that the appropriate course to be adopted by the applicant would be to assail the judgement in the higher fora, we dismiss this R.A.


(S.P. Biswas)
Member (A)

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(T.N. Bhat)
Member (J)