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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1437/89

Date of decision: 20.4.1990.

Shri Suresh Chand

....Applicant

Vs.

Union of India through the
General Manager, Northern
Railway, Baroda House,
New Delhi.

....Respondents

For the Applicant

....Shri O.P. Gupta,
Counsel

For the Respondents

....Shri Arvind Sinha,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

(The judgment of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who has worked as a Parcel Porter under the Chief Parcel Supervisor at Nizamuddin Railway Station filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order of termination dated 19.1.1989, for reinstating him with back wages and for declaring that he has been in continuous service.

2. Despite service of notice on the respondents and numerous opportunities given to them to file their counter-affidavit, they have not filed their counter-affidavit.

However, when the case was listed for final hearing on 1.2.1990, Shri Arvind Sinha, the learned counsel appeared for the respondents and argued the matter. We have perused the records of the case carefully and have heard the rival contentions of both parties.

3. There is no dispute as regards the facts of the case. The applicant was initially engaged as a Casual Parcel Porter from 27.4.1983 to 31.7.1983. He thus worked for a period of 94 days. Thereafter, he was again engaged as Casual Parcel Porter from 28-4.1984 to 31.7.1984, again for a period of 95 days. Thereafter, he was appointed as a substitute Parcel Porter by order dated 13.11.1984. He worked in that capacity upto 18-1-1989. His services were terminated by the impugned order dated 19.1.1989 which is at Annexure A, page 10 of the paper book.

4. The applicant has stated that his alleged misconduct is the foundation of the order of termination. According to him, in the night of 7th and 8th January, 1989, his duty hours were from 00 hours to 8 hours. However, as he had to come from Rewari and ^{as a} there was rain, he came at about 10.30 P.M. on 7.1.1989 and slept in the parcel office. Shri Ved Parkash, the Parcel Clerk who was on duty at that time requested him that he should help him in booking three parcels to be carried by Neelanchal Express scheduled to leave at 23 hours. There were no other parcel porter around. The parcels were brought by five persons who later on turned out to be persons from the ^{on}

Vigilance Wing. They offered some amount to Shri Ved Parkash who directed that it may be handed over to the applicant. Though the applicant refused, the amount was forcibly put in his pocket by the passengers concerned. Immediately thereafter, they disclosed their identities as persons belonging to the Vigilance Wing. He was forced to sign on a plain paper at the dictation of these persons under threat of keeping him in Tihar Jail.

5. Subsequently, the Vigilance officials asked the applicant to become a witness against Shri Ved Parkash, but he did not oblige them. In view of this, the impugned order of termination was passed.

6. The applicant has alleged that several juniors have been retained in service, while terminating his services. He has further contended that he is entitled to the protection of Section 25 F of the Industrial Disputes Act, 1947 as he has worked continuously for about 5 years. He has also become overaged by now.

7. The learned counsel of the respondents has produced at the hearing of the case, a copy of the inquiry report in the case of Shri Ved Parkash against whom disciplinary proceedings had been taken in terms of Rule 9(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. Though the applicant had also been cited as a prosecution witness, it has been stated in the inquiry report that he did not turn up to give his evidence. The Inquiry Officer came to the finding that that part of the charge of deploying the

applicant dishonestly and with ulterior motives was not proved. It was, however, stated that Shri Ved Parkash was responsible for allowing Shri Rohtas Singh to go early and taking the applicant on duty early without authorisation. The Inquiry Officer further found that that part of the charge that the applicant demanded and accepted Rs.30/- as illegal gratification from the decoy traveller on behalf of and at the instance of Shri Ved Parkash for expeditious loading of three parcels was proved. The presence of Shri Ved Parkash at the time of demand and acceptance of this money from the decoy was not proved. The Inquiry Officer also found that that part of the charge of excess charging of Rs.3/- from the decoy in realizing the railway freight was proved.

8. It will be noticed that the inquiry was held only against Shri Ved Parkash and not against the applicant. The services of the applicant have been terminated on the finding of the Inquiry Officer in the disciplinary case initiated against Shri Ved Parkash. According to the inquiry report, the inquiry was held on various dates from 22nd May, 1989 to 25th August, 1989. The impugned order was passed on the recommendation of S.K. Jain, AVO(P) who submitted an interim report on the decoy check held at the luggage office, Nizammudin Railway Station. His recommendations were that ~~the~~ the service of the ^{or}

applicant be terminated forthwith and that Shri Ved Parkash be put under suspension.

9. The applicant had worked for over 5 years as a Casual Parcel Porter as a substitute. He had acquired temporary status. Termination of his service without holding an inquiry against him in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 is not legally sustainable. The legal position in this regard has been set out in our judgment dated 6.4.1990 in a batch of cases (OA 305/90 and connected matters - Ratti Ram & Others Vs. U.O.I. & Others through the General Manager, Northern Railway, Baroda House, New Delhi) and we follow the same.

10. In the light of the forgoing, we set aside and quash the impugned order of termination dated 19.1.1989. The respondents are directed to reinstate the applicant in service. In the facts and circumstances of the case, we do not, however, direct payment of back wages to him. After reinstating him, the respondents will be at liberty to take appropriate action against the applicant for any alleged misconduct in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968, if so advised.

11. The respondents shall comply with the above directions within a period of three months from the date of communication of this order. The parties will bear their own costs.

(D.K. CHAKRAVORTY)
(D.K. CHAKRAVORTY)
MEMBER (A)

20/4/90

(P.K. KARTHA)
20/4/90
VICE CHAIRMAN (J)