

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1441 of 1988

5th day of November, 1993

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. B.K. Singh, Member (A)

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  2. Shri Kavya Kumar  
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  8. Rajeev Raj  
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- ..... Applicants

9. Smt. Rachna Johri  
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11. Ms. Preeti Srivastava  
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Prodn. Asstt.,  
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12. Smt. Meeta Chakraborty  
D/O Shri H.P. Chakraborty  
Prodn. Asstt.,  
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13. Jai Chand  
S/o Shri Brij Narain  
Prodn. Asstt., Doordarshan Kendra  
Parliament Street, New Delhi.

14. H.D. Narang  
S/O Shri P.L. Narang  
Prodn. Asstt., Doordarshan Kendra,  
Parliament Street, New Delhi. .... Applicants

By Advocate: Shri P.K. Aggarwal

Versus

1. Union of India, through Secretary,  
Ministry of Information & Broadcasting  
New Delhi

2. Director General, Door Darshan  
Mandi House, New Delhi

3. Director, Doordarshan Kendra  
Akashvani Bhavan, New Delhi ..... Respondents

By Advocate Shri M.L. Verma

ORDER

Hon'ble Mr. B.K. Singh, Member (A)

This O.A. No.1441/88, Anoop Sharma & Ors. as applicants Vs. Union of India & Ors. as respondents has been filed against orders No. 19(26)/84-S/23087, 23146, 23295, 23265, 23117, 13175, 23225, 23205, 23373, 23324, 23471, 23412, 23442, and 23382 dated 30.7.88 terminating the services of the petitioners. These orders were passed by the Director, Door Darshan Kendra, New Delhi. The applications filed by the petitioners were admitted on 5.8.88 by a Division Bench of Principal Bench and a direction was issued on the basis of MP filed by the petitioners that their services shall not be terminated and on the basis of the interim order passed in MP all the petitioners are continuing in their jobs.

2. The petitioners are working as Production Assistants in the Door Darshan under the Ministry of Information and Broadcasting. They applied in response to Advertisement No.DAVP-692(67)/83 and on the basis of interviews held in the first week of December 1984 they were selected. Copy of advertisement is annexure 'A' of the paper book. Copy of the interview call letter is annexure 'B' in case of petitioner No.1. They were given pay-scales of Rs.425-15-500-EB-15-560-20-640-EB-700-25-750 plus other admissible allowances. Copies of letters of appointment have been collectively marked as annexure 'C'. In terms of the appointment letters they were put ~~in~~ probation for two years from the date of their joining and their appointments initially <sup>were</sup> to be on long-term monthly renewable contract pending completion of formalities and thereafter for a period of 3 years and the contract was to be renewed thereafter by mutual agreement for further period.

3. The petitioners 1 to 8 were asked to give their options in terms of order dated 3rd May 1992 (annexure 'D'). Copy of the option form is annexure 'F' of the paper-book. The petitioners 9 to 14 were not given any option form and they continued to be on contract basis. The petitioners 9 and 10 continued on long-term contract basis whereas petitioners 11 to 14 continued on month-to-month contract basis. All the petitioners worked for nearly 3 years. The petitioners 4 to 8 and 10 to 14 were denied their regular increments as per terms of their appointment letter and petitioners 11 to 14 were not given revised pay and other service benefits as per the recommendations of the Fourth

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Pay Commission. Representations made by the petitioners in this regard have been collectively marked as annexure 'G'. The services of the petitioners were terminated on 30th July, 1988. The termination order in respect of petitioners 1 to 8 is ~~under~~ Section 5(1) of the CCS (Temporary Service) Rules 1965. In case of others the renewable contract was declined and an order was issued that their services were not required after expiry of the said agreement. Termination orders have been collectively marked as annexure 'H' of the paper-book.

4. There is an averment in the OA that unsuccessful candidates made hue and cry about favouritism and nepotism having been practised in the selection of the candidates. A copy of their representation addressed to Director, Door Darshan Kendra, New Delhi is annexed as annexure 'H-1' with the O.A. It is also admitted by the petitioners that the father of the petitioner No.12 is working in the All India Radio in the Administration Section, maternal uncle of petitioner No.11 is working as violinist, brother-in-law of petitioner No.14 is working in Door Darshan Kendra, uncle of petitioner No.13 is working in the All-India Radio as Transmission Executive.

5. The charge of favouritism and nepotism was presumed and the respondents decided to scrap the panel and go in for fresh selection on the basis of fresh advertisement and as a first step they decided to dispense with the services of all petitioners - some under Section 5(1) of CCS (Temporary Service) Rules 1965 and others by non-~~renewable~~ <sup>unrenewal</sup> of the agreements

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after their expiry. It has also been stated in O.A. that a CBI Inquiry is still on but the result of the inquiry is not yet known.

6. Being aggrieved by the termination/non-renewal of agreements, the petitioners have come to the Tribunal for redressal of their grievances and are continuing on the basis of stay order passed on 5th August, 1988.

7. Reliefs sought contain prayer -

- (a) for quashing the order of termination dated 30th July, 1988 (annexure H-1);
- (b) declaring and directing the respondents to treat the petitioners No.9 to 14 as regular government servants holding civil posts;
- (c) directing respondents to give all the arrears of increments and arrears of salary and other benefits to petitioners No.4 to 8 and 10 to 14; and
- (d) directing the respondents to revise the pay-scales of petitioners No.11 to 14 in the light of the recommendations of 4th Pay Commission.

8. Heard the learned counsels, Shri P.K. Agarwal for the applicants and Shri M.L. Verma for the respondents. The learned counsel for the petitioners argued that the petitioners were appointed on a regular basis against regular posts notwithstanding the terms and conditions incorporated in their appointment letters. According to him they are holders of civil posts duly appointed by a selection committee and they possessed the requisite qualifications for the posts they are holding. On the basis of representations made by the unsuccessful candidates their services cannot be terminated since this amounted to some sort of punitive action and as such termination will be deemed

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to be by way of punishment and as such Article 311 of the Constitution gets attracted making it imperative to follow the principles of natural justice after following a detailed procedure of enquiry etc. Under proviso to Art.311(2) of the Indian Constitution all the formalities should have been followed and full opportunity given to the petitioners to show cause and only then their services could be terminated. The factor which influenced the respondents was charged favouritism and nepotism alleged by the unsuccessful candidates in the selection and as such the decision to scrap the panel and hold fresh interviews after re-advertisement had a motive behind it and that we must lift the veil to ascertain this motive and once this is done it will be seen that termination is by way of punishment. These are not orders simpliciter. The learned counsel for the applicant repeatedly emphasised that we must delve into the files to infer that the entire transaction of selection was vitiated because of the so-called nepotism and favouritism and that termination is just a corollary of the charge of nepotism and as such Art.311 is attracted and the observance of principles of natural justice was a mandatory requirement. What the learned counsel had in mind is an observation in *Shamsher Singh Vs. State of Punjab* (AIR 1974 SC 2194) where a 7 Judges Bench decision overruled a 5 Judges Bench ruling in the matter of *Sardari Lal Vs. Union of India* (1971) 1 SCC 411 whether it was necessary for the President or the Governor while exercising their constitutional powers to be

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satisfied as to the conditions precedent for exercise of these powers or should they act on the satisfaction or advice of the Ministers. They held that decision of the Ministers was sufficient. The third issue before the 7 Judges Bench was the issue of distinction between basis and background motive for an order to terminate or revert. The larger Bench could have resolved the conflict. Instead it refrained with approval to both sets of decisions. Ray J. on behalf of 5 Judges, in paras 62 to 67 of the report referred to R.C. Lacy Vs. R.C. Banerjee, (AIR 1963 SC 155 2) and Champak Lal (AIR 1964 SC 1854) in one breath and also to K.H. Phadnis (K.H. Phadnis Vs. State of Maharashtra 1971, 1 SCSs 790) and SP Mishra Vs. State of Bihar in the next as if there is no conflict. Krishna Iyer J. (on behalf of himself and Bhagwati J.) in his concurring judgment in paras 158 to 161 of the report observed as follows:-

"If you conscientiously seek to satisfy yourself about allegations by some sort of enquiry you get caught in the coils of law, however, harmlessly the order may be phrased. When <sup>does</sup> motive 'trespass' into 'foundation'? When do we lift the veil of form to touch substance? When the courts say so..... Over the years, under the rulings of this Court the ascent has shifted, the cannons have varied and predictability has proved difficult because the floor of legal alight and shade has been baffling."

9. The learned counsel for the applicant wanted some sort of stigma to be inferred behind the orders of termination so that principles of natural justice come into focus by attracting Art.311 of Constitution.

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With the passage of time the conflict has been more or less resolved. The dominating trend has been against lifting of the veil and to go by the terms and conditions stipulated in the letters of appointment. His Lordships have observed in State of U.P. Vs. Shyam Lal Sharma (1971 2 SCC 574),

"Where there are no express words in the orders itself which will throw any stigma on the Government servant, we cannot delve into the Secretariat files to discover whether some kind of stigma can be inferred on such search."

10. A Bench of 3 Hon'ble Judges of Supreme Court (Shah, Ramaswamy and Mitter, JJ) sought to settle the legal position by laying down the following proposition (State of Punjab Vs. Raj Bahadur, 1968, 3 SCR 234 at 244 AIR 1968 SC 1089):-

"(i) the services of temporary employee or a probationer can be terminated under the rules of his employment and such termination, without anything more, could not attract the operation of Art.311 of the Constitution;

(ii) the circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial;

(iii) if the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it may not be considered to be one by way of punishment no matter whether he was a mere probationer or a temporary servant;

(iv) an order of termination of service in an unexceptional form preceded by an enquiry launched by a superior enquiry authority only to ascertain whether the public servant should be retained in service, does not attract the operation of Art.311 of the Constitution.

(v) if there be a full scale departmental enquiry envisaged by Art.311 i.e., an enquiry officer is appointed and charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter, will attract the operation of the said Article."

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11. A Bench consisting of Alaigiriswamy, Goswamy and Untwalia JJ. have held that Courts will not normally go behind that order to see if there were <sup>any</sup> ~~no~~ motivating factors behind that order (S.P. Vasudev Vs. State of Haryana 1976 1SCC 236).

12. The ratio established by the Hon'ble Supreme Court is that when termination, discharge, compulsory retirement or reversion was ordered by way of punishment, Article 311 of the Constitution was attracted:

"It is only in those cases where the government intends to inflict those three forms of punishment that the government servant must be given reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the government servant whose service is so terminated cannot claim protection of Art.311(2) of the Constitution." (P.L. Dhigra Vs. Union of India AIR 1959 SC 36).

13. Termination per se is not a punishment. It is only when there is a stigma attached or it is by way of punishment that it attracts Art.311(2). Except in the 3 cases just mentioned, a government servant has no right to his post and the termination of service of a government servant does not amount to dismissal or removal by way of punishment. To determine whether termination is by way of punishment is to ascertain whether a servant, but such termination, had a right to hold the post. To put it in another way, if the government has, by contract, express or implied, <sup>d</sup> ~~under~~ the rules the right to terminate the employment at any time <sup>r</sup> ~~than~~ such termination in the manner provided by the contract or the rule is prima facie and per se not a punishment and does not attract the provision of Art.311. This point was summed up as follows:

"Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of contractual right is not per se a dismissal or removal, as has been held by the Hon'ble Supreme Court in Satish Chandra Anand Vs. Union of India (supra)."

The position has been beautifully summed up by Chagla, CJ. in Srinivas Ganesh Vs. Union of India AIR 1956 Bom. 455:-

"It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service rules, nevertheless, if a right exists, under the contract or the service rules to terminate the service, the motive operative in the mind of the government is wholly irrelevant."

In short if the termination of service is founded on the right flowing from the contract or the service rules <sup>e</sup>then prima facie the termination, as is in the present case of these petitioners, is not a punishment and it carries with <sup>it</sup> no evil consequences and so Art.311 is not attracted.

14. The learned counsel for the respondents, Mr. M.L. Verma simply read out the terms and conditions of the appointment and the orders terminating ~~the same~~ <sup>in case of some</sup> under Rule 5(1) of CCS (Temporary Service) Rules 1965 in case of petitioners from 1 to 8 and in case of others, from 9 to 14, termination of agreement was completely in conformity with the terms contained in the appointment letter itself and as such there is no stigma attached and these are all orders simpliciter and nothing should be read in it with a view to infer stigma or to read some motive behind it. He vehemently

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argued that the petitioners had no case at all and that they had continued in their jobs against rules on the basis of interim stay granted by the Hon'ble CAT, Principal Bench, for more than 5½ years. He pressed for vacation of the stay. Art. <sup>311</sup>~~302~~ is not attracted according to him and there is no question of observance of the principles of natural justice. Justice Krishna Iyer quoted Lord. Denning :


"Courts must be tempered by the thought, while compromise on principles is unprincipled applied administration law in modern complexities of government must be realistic, not academic. The myriad, maybes and the diverse urgencies are live factors. Natural justice should not destroy administrative order by insisting on the impossible."


15. The principles of natural justice change with the exigencies of different situations. They do not apply to all situations alike. These are neither cast in rigid mould nor can they be put in a legal strait jacket. These are not immutable but flexible and can be adapted., modified or excluded by rules. If a situation can exclude the principles of natural justice, Art.311 does not get attracted and as such there is no question of giving any opportunity to the petitioners or to observe the principles of natural justice in this case.

16. Thus we conclude that there is no stigma attached to the petitioners in the letters of termination of their services under Section 5(1) of the CCS (Temporary Service) Rules 1965 or in termination of the contract and where the termination takes place under the terms and conditions of appointment or under a contract, there is no scope for interference by the Courts. Once the petitioners opted for such terms and conditions of employment or contract, they are bound by the rules, terms and conditions for which they opted. There is no stigma attached in the termination orders and

as such it is not by way of punishment. We are not inclined to interfere with the termination orders or orders refusing to renew the contracts after the expiry of the terms of the agreement. The application is thus devoid of any merit and substance and is accordingly dismissed. The interim order passed on the 5th August, 1988 staying the termination orders, is vacated. While parting with this case, we will also like to observe that whenever the respondents go in for a fresh selection, they should give a chance to the applicants, even, if need be, by providing relaxation of age.

There will be no order as to costs.

  
( B.K. Singh )  
Member (A)

  
( J.P. Sharma )  
Member (J)

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