

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.550 of 1988

Date of Decision: 8.9.93

Ajeet SinghApplicant.

Versus

Union of India & othersRespondents.

CORAM:

Hon'ble Mr.C.J.Roy, Member(J)

Hon'ble Mr.S.R.Adige, Member(A)

For the applicant.

Shri V.P.Sharma, Counsel.

For the respondents

Shri P.P.Khurana, Counsel.

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member(A).)

In this application Shri Ajit Singh, who was working as an Extra Departmental Branch Post Master at Bucholi in Mahendergarh district has assailed the order dated 8.1.88(Annexure-A1) terminating the applicant's services and prayed that it should be set aside and he should be deemed ^{to be in} in service without break.

2. From the appointment order dated 20.2.87 ((Annexure-A3), it would appear that the applicant was appointed as Extra Departmental Branch Post Master(EDBPM), Bucholi w.e.f. 8.4.86 on contract basis which was liable to be terminated by the applicant or by the respondents at any time by notifying the order in writing. The appointment order further stated that the applicant would be governed by the Posts and Telegraphs, Extra Departmental Agents (Conduct and Services) Rules, 1964. By order dated 14.8.87, (Annexure-A2) it was stated that as ~~no~~ disciplinary/ criminal proceedings against the applicant were contemplated/pending, in exercise of the powers conferred by Rule 9 of the P & T EDA(Conduct & Service) Rules, 1964, the applicant was put off duty by SDI(P) with immediate effect, and he was

relieved from service with effect from that date. These orders were subsequently confirmed by the Senior Superintendent of Post Offices on 20.8.87. Thereafter, the applicant's services were terminated on 8.1.88 (Annexure-A1) with immediate effect in accordance with the provisions of Rule 6 of the P & T EDA (Conduct and Service) Rules, 1964.

3. On behalf of the applicant, it has been stated that ~~xxx~~ putting off the applicant from duty with immediate effect amounts to suspension, but no charge-sheet had been issued to the applicant, and reasonable opportunity was not given to him, before the impugned order dated 8.1.88 terminating his services was passed. It has further been averred that there was a false complaint made against the applicant by a villager which upon enquiry was found baseless and it is on the basis of those false allegations that his services were terminated.

4. The respondents have challenged the contents of the application in their counter affidavit and have stated that Shri Ajit Singh's services were terminated under Rule 6 of P & T ED Agents (Conduct & Service) Rules, 1964 and since he was having less than three years continuous service, he was not proceeded against, ^{as per} the provisions of Rule 8 of the said Rules. It was also stated that during the course of enquiry, Shri Ajit Singh himself has admitted in his own written statement of not making payment of ^{certain} money-orders to their real payees. In one case, he made payment of a money-order of a deceased payee to his own

brother against the departmental rules. It was also stated that this admission was made by the applicant in his written statement dated 14.8.87, given to the SDI(P) Rewari. No enquiry/departmental proceedings were obligatory in this case as the applicant did not have more than three years continuous service from his date of appointment, and the extant rules permitted the impugned action to be taken.

5. In his rejoinder, the applicant has denied of such having made any/written statement.

6. We have heard Shri V.P.Sharma, learned counsel for the applicant and Shri P.P.Khurana, learned counsel for the respondents.

7. Shri Sharma has highlighted the main points taken in the O.A. and has also referred to certain judgments in support of his case. In 'K.H.Meera Sahib Vs. Sub-Divisional Inspector (Post Offices), Ranni Sub-Division, Ranni & others' (1988(8)ATC 418, decided on 22.7.88), it has been held that "In a case where termination is made by innocuous order, when it is attacked as really punitive in nature, the Tribunal can lift the veil and find out the exact nature of the order. If the Tribunal is satisfied that the termination is really founded upon misconduct on the part of the employee and such conclusion has been arrived at unilaterally without affording opportunity to the employee of being heard, the termination of service is bad as violative of the principles of natural justice!"

It has further been held that

"Rule 6 of the EDA(Conduct & Service)Rules no doubt enables termination without the issue of notice. The provision can be read only as meaning that before an order of termination is issued under the rule a notice is not required. From that it does not follow that when such an order of termination is being issued on the basis of a conclusion that has been arrived at about

the misconduct of the employee, before reaching the conclusion an opportunity of being heard is not to be afforded. If it is not done the process by which the conclusion is reached is bad, so as to vitiate the conclusion itself, as violative of one of the well recognised principles of natural justice that no man shall be condemned unheard!"

8. Much the same view has been expressed in the case 'N. Babu & others Vs. Inspector of R.M.S. TV Ist. Division, Trivandrum & others' (1988(3)SLJ 565 decided on 13.2.87) and in the case 'Tapas Kumar Chowdhury Vs. Union of India & others' (1987(3) ATC 487, decided on 19.12.86).

9. In this connection, we/ have before us the judgment of the Hon'ble Supreme Court dated 11.1.91 in the case 'State of Uttar Pradesh & another Vs. Kaushal Kishore Shukla' arising out of C.A.No.137 of 1991, reported in 1991(2)SLJ 96. In that case, the respondent was a temporary Govt. servant and there was ^{an} adverse report regarding his work which was reflected in the adverse remarks made for the year 1977-78. The competent authority held a preliminary inquiry in the allegations of improper conduct in carrying out unauthorised audit of Boys Fund of an educational institution. On result of the preliminary enquiry, no charges were framed against the respondent; no officer was appointed for holding the departmental inquiry. Instead the competent authority chose to terminate the respondent's services in exercise of its powers under the terms of contract as well as under the relevant rules applicable to a temporary Govt. servant. The termination order did not indict the respondent for any misconduct.

The inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive/proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded. The Hon'ble Supreme Court held that the respondent being a Govt. servant had no right to hold the post, and the action by the competent authority to terminate the respondent's services by an innocuous order of termination without casting any stigma on him, was fully in order. The mere fact that prior to the issue of the order of termination, an enquiry against the respondent regarding unauthorised audit of Boys Fund, was held, did not change the nature of the order of termination into that of punishment, as after the preliminary enquiry the competent authority took no steps to punish the respondent; instead it exercised its power to terminate the respondent's services in accordance with the contract of service and the Rules. The Hon'ble Supreme Court was further pleased to hold that it was erroneous to hold that where a disciplinary enquiry into the allegations against a temporary Govt. servant was held, or where a disciplinary enquiry was held but dropped, or abandoned before the issue of order of termination, such order was necessarily punitive in nature.

10. In the instant case also, the applicant was a temporary Govt. servant, and the competent authority had chosen to terminate the applicant's services in exercise of its powers under the terms of contract as well as under the relevant rules applicable to a temporary Govt. servant. Merely because the competent authority did not resort to a

departmental enquiry before the issue of the order of termination does not make that order punitive in nature, more so, as no steps have been taken to punish the applicant and the impugned order merely terminates the applicant's services under the terms of the contract as well as the relevant rules applicable to a temporary Govt. servant. In fact, the termination order is wholly an innocuous one which does not indict the applicant for any misconduct and casts no stigma upon him.

11. Under the circumstances, we hold that ⁱⁿ ~~the ratio of~~ the judgment of the Hon'ble Supreme Court in Shukla's case (Supra) fully covers the case before us and that being so, the impugned order warrants no interference. This application is accordingly dismissed. No costs.

Adligi
(S.R.ADLIGI)
MEMBER(A)

W.S. Roy
(C.J. ROY) 3/9/93
MEMBER(J)

(ug)

M