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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 222  
T.A. No.

198 6.

DATE OF DECISION 2.7.1987

Shri V.C.Sharma Petitioner

Shri Vijay Chaudhary, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

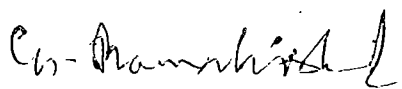
Shri M.L.Verma, Advocate for the Respondent(s)

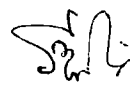
**CORAM :**

The Hon'ble Mr. S.P. Mukerji, Administrative Member

The Hon'ble Mr. Ch.Ramakrishna Rao, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

  
(Ch. Ramakrishna Rao)  
Judicial Member

  
( S.P. Mukerji )  
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: DELHI

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Regn.No.OA-222/86

Date: 2.7.1987

Shri V.C.Sharma.

... Applicant.

Versus

Union of India & Ors.

... Respondents.

For applicant.

... Shri Vijay Chaudhary,  
Advocate.

For respondents.

... Shri M.L.Verma,  
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.  
Hon'ble Shri Ch.Ramakrishna Rao, Judicial Member.

JUDGEMENT

(Delivered by Shri Ch.Ramakrishna Rao)

The applicant initially served the Indian Air Force as Sergeant for 15 years and was reemployed as Lower Division Clerk (LDC) in the office of the Cement Controller (CC), New Delhi. A letter of appointment was issued on 31.3.81 by the office of the CC offering the applicant a temporary appointment as L.D.C. The applicant accepted the offer and joined duty. His services were, however, terminated by order dated 14.1.85 issued by the CC. Aggrieved by this order, the applicant has filed this application.

2. Shri Vijay Chaudhary, learned Counsel for the applicant contends at the threshold that his client being an ex-serviceman is governed by the provisions of re-employed personnel (conditions of service) Rules, 1932 (RP Rules, for short) but not by the provisions of Central Civil Service (Temporary service Rules), 1965 (TS Rules, for short), under the proviso to Rule 5(1) of the ~~TS Rules~~, under which, his services were terminated.

3. Shri M.L.Verma, learned Counsel for the respondents submits that RP Rules only deal with the fixation of the pay of ex-serviceman re-employed as Government servant like the applicant and the TS Rules are equally applicable to them.

*Chd*

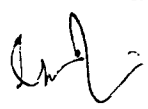
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4. In our view, unless there is a specific provision in the TS Rules excluding the applicability of the same to those governed by the RP Rules, the case of the applicant will be governed by the former. On a perusal of the TS Rules, we do not find any such provision. Further, from the provisions of the RP Rules, we find that they only regulate the manner and method by which the pay of persons discharged or permitted to retire on the conditions contained in the retrenchment orders will have to be fixed, taking into account the retention of the compensation, pension or gratuity for the services rendered by them prior to their discharge/retrenchment to the extent indicated therein. These Rules obviously escaped the notice of the office of the CC, while fixing the scale of pay for the applicant <sup>in</sup> the letter of Jt. CC dated 31.3.81 and subsequently the pay of the applicant was redetermined by Office Order dated 30.1.81 (Annexure VI). We, therefore, find no force in this contention.

5. Shri Vijay Chaudhary next contends that the offer of appointment was made by the Joint Cement Controller, whereas the order terminating the services of his client was issued by the CC. In other words, the contention of Shri Vijay Chaudhary is that the letter dated 31.3.81 and the order dated 14.1.1985 were not issued by an officer of the same rank and status.

6. Shri M.L.Verma submits that the order dated 14.1.85 was issued by an officer higher in rank and status than the officer who issued the letter dated 31.3.81 and as such there is no violation of the provisions of Article 311(1) of the Constitution of India.

7. In our view, this contention lacks substance, since the order dated 14.1.85 was passed by the CC who was higher in rank and status than the Joint CC who issued the letter dated 31.3.81 containing the offer of appointment.



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8. Shri Vijay Chaudhary endeavoured to draw a distinction between the case of a person appointed temporarily in a permanent post and a person appointed temporarily in a temporary post. According to him, the provisions of the TS Rules are not applicable to the former category to which his client belongs but only to the latter. We are not impressed by this argument since no such distinction has been drawn by the provisions in the TS Rules and we hold that these Rules apply to all categories of temporary appointment.

9. Shri ~~Vijay Chaudhary~~ Vijay Chaudhary strenuously contends that his client should have been considered for quasi-permanency under the provisions of the TS Rules after completion of 3 years of service and the same was not done in his case.

10. Shri M.L.Verma, on the other hand, urges that the applicant was found in an inebriate condition in the office on 7.11.1981 which resulted in misbehaviour on his part. As a sequel thereto disciplinary proceedings were initiated against him on 7.11.81 and the same culminated in the penalty of reduction in pay of the applicant which was ultimately confirmed by the appellate authority by order dated 31.10.84. The Metropolitan Magistrate also fined him a sum of Rs.50/- for offences under Section 92,93 and 94 of the Delhi Police Act. In view of this, the case of the applicant could not be considered for quasi-permanency during the period from 1981 to 1984. Later his services were terminated under the proviso to Section 5(1) of the T.S.Rules which is legally permissible.

11. This leads us to the question whether the termination of the services of the applicant was done simpliciter or by way of punishment. This <sup>question</sup> was considered by the Supreme Court in Municipal Corporation of Greater Bombay V. P.S. Malvenkar, 1978 SCC (L&S) 430. The following

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observations in the judgement in that case are of considerable assistance in determining the controversy in this case:

"The order was not passed by way of punishment for any misconduct. The view that the service of the respondent was unsatisfactory was based on past incidents set out in the record. For each of the incidents punishment in one form or another had already been meted out. It was not by way of punishment for any of these incidents, but because, as gathered from the incidents, the respondent's record of service was unsatisfactory that her service was terminated."

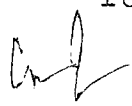
The following enunciation of the law by the Supreme Court in State of U.P. Vs. Bhoop Singh Verma, 1979 SCC (L&S) 122 is also relevant:

"The reprehensible conduct of the respondent merely constituted the motive for passing the order but was not the foundation of that order. There was no element of punishment."

The law on the subject has been reiterated by the Supreme Court in Nepal Singh Vs. State of U.P. 1980 SCC (L&S) 376 as follows:

"An order is not punitive if the material against the Government servant on which the superior authority has acted constitutes the motive and not the foundation of the order. The function of the court is to discover the nature of the order by attempting to ascertain what was the motivating consideration in the mind of the authority which prompted the order. The intent behind the order can be discovered and proved, like any other fact, from the evidence on the record. In each case it is necessary to examine the entire range of facts carefully and consider whether in the light of those facts the superior authority intended to punish the government servant or having regard to his character, conduct and suitability in relation to the post held by him it was intended simply to terminate his services. The circumstance that disciplinary proceeding had been instituted against him earlier does not in itself lead to the inference that the impugned order was by way of punishment."

12. Applying the legal position stated above to the case on hand, we note that the applicant had to face disciplinary proceedings in which he was given an opportunity to defend himself and the proceedings terminated against him. Besides, it is stated in the reply filed on behalf of the respondent that the applicant was very erratic in his attendance and also neither performed the journey nor refunded the L.T.C. advance of Rs. 1,575/- taken by him. The respondents were not satisfied with his record of service



and, therefore, chose to terminate his service by invoking the provisions of the T.S. Rules. We have no doubt that such termination is not in the nature of a punishment and does not constitute the foundation but only the motive for the impugned order. We, therefore, hold that the order is wholly innocuous and does not cast any stigma on the applicant.

13. Shri Vijay Chaudhary, calls in aid the sentence in the offer of appointment dated 31.3.81; "This appointment is purely temporary but is likely to continue" and contends that the appointment of his client to the present post of L.D.C. amounts to an appointment to a substantive post. Such a contention raised was before the Supreme Court in Union of India and Ors. Vs. Arun Kumar Roy, A.T.R.-1986-S.C.-61 wherein it was held:

"Where the appointment order makes it clear that the appointment will be on a temporary basis then the mere fact that he was put on probation does not ipso facto make the appointment any the less temporary and for that reason his extended probation also. Unless the respondent makes out a case based on some rules which requires confirmation to a post on the expiry of the period of probation, he cannot succeed on the mere ground of his being put on probation for a period of two years or by the fact that his probation was extended. He cannot rely upon the first clause in the order of appointment either which states that though the post is temporary it is likely to continue indefinitely." (Emphasis supplied).

In view of the observations of the Supreme Court extracted above, we repel this contention.

14. The last contention of Shri Vijay Chaudhary is that the appeal preferred by his client against the order dated 14.1.85 was rejected by the Under Secretary in the Department of Industrial Development in and by his letter dated 21.11.85 but not by the CC himself who was redesignated as Development Commissioner for Cement Industry (DCCI). Shri Verma submits that from the language and tenor of the letter, it is apparent that the order was not passed by the Under Secretary but he only communicated the decision taken at the level of DCCI.

15. We find considerable force in the submission made by

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Shri Verma and we uphold the same.

16. After giving the matter careful thought, we are satisfied that the order of CC dated 14.1.85 does not suffer from any infirmity-legal or otherwise- and we, therefore confirm the same.

17. In the result, the application is dismissed.  
There will be no order as to costs.

*Ch. Ramakrishna Rao*  
( Ch. Ramakrishna Rao )  
Judicial Member

*S.P. Mukerji*  
2.7.87  
( S.P. Mukerji )  
Administrative Member