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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
~~TA-198.~~

325/

1986.

DATE OF DECISION August 31, 1989

Amrik Chand

Applicant (s)

Shri O.P. Saxena

Advocate for the Applicant (s)

Union of India

Versus

Respondent (s)

Shri N.S. Mehta

Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.
yes.
no.
no.

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 21st December, 1979 terminating his services as Cash Clerk in Delhi Milk Scheme under C.C.S. (Temporary Service) Rules, 1965 and has prayed for the following reliefs: -

- " (i) Set aside and quash the impugned order of termination No.2-59/69-Estt.I dated 21.12.1979, passed by the General Manager, Delhi Milk Scheme.
- (ii) Direct re-instatement of applicant in service with full back wage, continuity of service and all other attending benefits.
- (iii) Or in the alternative direct respondent No.2 to dispose off applicant appeal dated 22.2.1980 within fixed time.
- (iv) Allow the cost of present proceedings.
- (v) Pass such orders, appropriate in this case, as deemed fit in the interest of justice, in favour of applicant. "

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2. The brief facts of the case are as follows: -

The applicant was first appointed as L.D.C. in Delhi Milk Scheme in 1969. Consequent upon 10 posts of L.D.C. having been declared surplus by the Staff Inspection Unit, Ministry of Finance, he opted for the post of Cash Clerk and was appointed against a temporary post of Cash Clerk vide order dated 22.6.1974 subject to the condition that he will not claim the benefit of his past services towards seniority in the post of Cash Clerk. On 5.2.1976, he was given a cheque of Rs.3 lakh for encashment and distributing the money at various milk collection centres. A shortage of Rs.10,000/- was discovered in the balance remaining unpaid. Vide order dated 10.2.1976, he was placed under suspension with immediate effect in exercise of the powers under sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as disciplinary proceedings were contemplated against him. An F.I.R. was lodged in Kotwali, Mathura on 11.2.1976. A case was registered under Section 409/IPC and he was arrested by the police. On 21st December, 1979, an order was issued in pursuance of sub-rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 terminating the services of the applicant (Annexure 'A' to the Application). He preferred an appeal against the termination order to the Joint Secretary to the Government of India (The Reviewing Authority), Ministry of Agriculture & Irrigation, (Department of Agriculture), New Delhi on 22.2.1980. The appeal had not been disposed of till the filing of this application, and thereafter because of initiation of proceedings in the Central Administrative Tribunal. He was convicted under Section 409/IPC by First Judicial Magistrate, Mathura, vide order dated 17.10.1984 and sentenced to Rigorous Imprisonment for two years and a fine of Rs.3,000/- and in default of payment of fine, a simple imprisonment for a further period of three months. On appeal against this

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conviction, he was acquitted of the charge under Section 409/IPC by the Additional Session Judge, Mathura on 17.7.1985. When he was not reinstated even after his appeal and his appeal had not been decided, he filed this application on 30.4.1986. The applicant has challenged the termination of his services mainly on the following grounds: -

- (1) The order of termination of his services, may be on the face of it, a termination simpliciter; in effect it is a punitive order and attracts the provision of Article 311⁽²⁾ of the Constitution.
- (2) The termination order is in violation of Articles⁽¹⁾ 14 and 16 of the Constitution as services of his juniors have been retained.
- (3) As he had completed his probation period of two years, he would be deemed to have been granted the status of a quasi-permanent or a permanent employee and as such, his services could not have been terminated under the C.C.S. (Temporary Service) Rules, 1965.

3. The applicant's case, in brief, is that he was appointed as L.D.C. in 1969 and on his own option, he was appointed as a Cash Clerk in 1974. Till the incident of shortage of Rs.10,000/- occurred on 5.2.76, he had never been communicated any adverse remarks about his conduct and performance, nor had he ever been charge-sheeted or punished. He was suspended on 10.2.76 as disciplinary proceedings were said to be contemplated against him. It is, therefore, only due to this incident and the allegation of misappropriation of funds against him that his services have been terminated, which is a punitive order of dismissal, and as no inquiry was ever held and no opportunity given to him to explain, the order of termination of his services is mala-fide, arbitrary and illegal and in violation of the provision of Article 311 of the Constitution. He has also filed

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(Annexure 'D' to the application) a copy of the provisional seniority list of Cash Clerks / Cash Counter Clerks by which he has tried to show that services of his juniors were retained while his services were terminated and as such, the action of the respondents is arbitrary and discriminatory, thus violating the provisions of Articles 14 and 16 of the Constitution. He has also mentioned the efforts made by him and the reminders sent to the authorities concerned for disposal of his appeal dated 22.2.1980. He has, therefore, prayed that the impugned termination order (Annexure 'A' to the application) be quashed and set-aside and the respondents be directed to reinstate him in service with full back wage, continuity of service and all other attending benefits, or in the alternative direct respondent No.2 to dispose of his appeal within a fixed time.

4. Respondents No.1 and 2, in their reply, have accepted that a representation against the order of termination of the services of the applicant was submitted in February, 1980 and on consideration, it was decided that the decision of the Court in the criminal case be awaited before taking a decision on the question of reinstatement of the applicant and, as such, no final orders were passed on the appeal submitted by the applicant. It is further stated that after his acquittal by the Court in July, 1985, the applicant submitted in September, 1985 a representation to the Minister of Agriculture & Rural Development praying for his reinstatement. The representation was examined in detail and submitted to the competent authority in December, 1985. As certain clarifications were sought by the competent authority, the papers were resubmitted in January, 1986. The competent authority asked for some additional papers and by the time these were collected from Delhi Milk Scheme and resubmitted in March, 1986 and May, 1986 and thus ^{when} the matter was under consideration, they received an intimation that the applicant had moved the Central Administrative Tribunal.

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5. Respondents No.3 and 4, in their reply have contended that the services of the applicant were terminated on administrative grounds as his work was not considered satisfactory and that the impugned order of termination is not a punitive order of dismissal / removal and as such the provisions of Article 311 (2) are not attracted. They have also denied the allegation of discrimination and contended that there is no violation of Articles 14 and 16 of the Constitution. It is admitted that the order of suspension was not revoked before the impugned order of termination was passed; but it is contended that it was not necessary to revoke the order of suspension before passing the impugned order. It is further contended that the appointment of the applicant as Cash Clerk was a fresh appointment and before the period of probation of two years could be completed by him, he was placed under suspension and that he was only temporary and had not acquired quasi-permanent or permanent status. They have also raised the plea of limitation as more than three years had elapsed since the impugned order was passed and as such, the application is stated to be barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

6. We have carefully gone through the case and have also heard the learned counsel for the applicant and for the respondents No.3 and 4.

7. The first question to be considered is whether the impugned order of termination is an order of termination simpliciter or it is a punitive order. The applicant has contended that before the incident which occurred on 5.2.1976, he was never charge-sheeted or punished or communicated any adverse remarks. Though respondents No.3 and 4, in their written statement, have alleged that the work of the applicant was not satisfactory and he had been warned a number of times, yet this contention was not substantiated

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by filing copy of any such warning or copy of any adverse report which might have been given to the applicant. Moreover, as the applicant was under suspension from 10.2.1976 till the impugned order of termination was passed on 21.12.1979, there was no occasion for respondents No.3 and 4 to see and assess the work and conduct of the applicant. In the facts and circumstances of this case, we have to hold that the impugned order of termination was passed because of the criminal charge of misappropriation of Government funds against the applicant for which an F.I.R. had been lodged on 11.2.76 and in connection with which he was placed under suspension pending contemplated disciplinary proceedings which were never initiated. Reply of Respondents 1 and 2 also shows that they had decided to await the judgement in the criminal case pending in the court before taking a decision on the appeal of the applicant against termination of his services.

8. It is well settled⁽¹⁾ by now that mere form or language of the order is not sufficient to hold that the order of termination is an order simpliciter and that in the process of judicial review, the foundation of the order simpliciter can be gone into. Therefore, even if the contention of respondents 3 and 4 is accepted that the applicant was temporary and holding a temporary post of Cash Clerk, the facts and circumstances of the case establish beyond any doubt that the order of termination was really based on the misconduct which was the subject-matter of a criminal case and as such, the provisions of Article 311(2) of the Constitution were attracted. No charge-sheet was issued to the applicant and no inquiry was held.

(1) Shri Jarnail Singh & Others Vs. State of Punjab & Others - 1986 (2) SLJ (SC).

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9. It is not disputed that at the time the services of the applicant were terminated, the services of some of his juniors were retained. It was argued at the bar on behalf of respondents 3 and 4 that the question of seniority and juniority was not relevant for action under the C.C.S. (Temporary Service) Rules, 1965. We are unable to uphold this contention as the protection of Articles 14 and 16 of the Constitution would be available even to a temporary Government servant if there is arbitrary discrimination against him and he has been singled out for harsh treatment vis-a-vis his juniors similarly circumstanced.⁽²⁾ Therefore, the impugned order of termination is arbitrary and discriminatory and as such violative of Articles 14 and 16 of the Constitution.

10. In view of the above discussion, it is not necessary to give a specific finding as to whether the applicant was temporary or had acquired the status of quasi-permanent or a permanent employee.

11. In para 5 of the application, the applicant has stated that it is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985, as the appeal of the applicant was still pending since 22nd. February, 1980. In reply to this para, respondents 3 and 4, in their written statement, have stated that more than 3 years have elapsed since the impugned order was passed and the application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. In his rejoinder-affidavit, the applicant has stated with reference to para 5 of the written statement *ibid* that the contents of para 5 of reply are wrong and denied and the corresponding contents of the application of para 5 are reiterated to be correct.

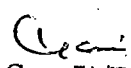
(2) Manager, Government Branch Press & Another Vs. Shri D.B. Belliappa - 1979 SLJ 233 (SC).

12. The cause of action in this case arose on 21.12.79 when the impugned order of termination of services of the applicant was passed. Admittedly the appeal filed by him against this order was pending with the Reviewing Authority till the application was filed on 30.4.86. It is also true that the applicant pursued the matter of disposal of his appeal vide his letters dated 14.8.1982 and 6.10.1982 addressed to the Minister for Agriculture (Annexures 'F' and 'G' to the application); copies of his appeal were supplied to the Section Officer and Under Secretary, as required by them vide their letters dated 29.10.1982 and 13.10.1982 (Annexures J and I to the application) vide his letters dated 10.11.1982 and 13.11.1982 (Annexures L and K to the application); his representation dated 21.3.1984 addressed to the Minister for Agriculture (Annexure M to the application); his representations dated 4.9.1985 and 18.11.1985 addressed to the Minister for Agriculture & Rural Development (Annexures O and Q to the application); his representation dated 30.12.1985 addressed to the Additional Secretary to the Government of India, Department of Agriculture (Annexure R to the application); and letter dated 16.10.1985 addressed to the General Manager, Delhi Milk Scheme, praying for permission to resume duties in pursuance of the judgement of the ~~District~~ Sessions Court, with a copy to the Joint Secretary to the Government of India, Department of Agriculture. He also gave a notice under Section 80 C.P.C. on 7.2.1986. All these representations and the appeal in connection with which these were made remained unanswered/undisposed of. The plea of limitation taken by respondents 3 and 4 in their written statement was also not pressed at the bar. The learned counsel for these respondents submitted before us that this case could be disposed of on the lines on which TA-351/86 (S-848/85) - Shri Mahender Singh Vs. Union of India & Another - was disposed of by the Central Administrative Tribunal, Principal Bench, on 5.9.1988.

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In view of these facts of the case and in the interest of natural justice, we do not propose to adjudicate on the plea of limitation in this case and decide the case on its merits.

13. In view of the above discussion, we hold that the impugned order passed under sub-rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965, on 21st December, 1979 has to be quashed and is accordingly set aside. The result is that the applicant will be deemed to have continued under suspension which was in existence on the date the impugned order was passed. It will be open to the competent authority to take a final decision on the continuance or otherwise of the suspension in the light of the judgement of the Additional Sessions Judge, Mathura delivered on 17.7.1985 in criminal case under Section 409 I.P.C. against the applicant. It will also be open to the competent authority to revoke the order of suspension and reinstate the applicant into service as Cash Clerk. If the competent authority does so, the pay and allowances of the applicant during the period of his actual suspension from 10.2.76 to 20.12.79 and deemed suspension thereafter shall be regulated in accordance with the provisions of F.R. 54-B. The subsistence allowance already paid to the applicant would be adjusted in these payments. Respondents 3 and 4 should also consider and decide whether the period of actual and deemed suspension shall be treated as a period spent on duty or not. It will also be open to the competent authority, if so advised, to continue the applicant on suspension if it is decided to initiate disciplinary proceedings against him based on his conduct which led to his prosecution before the criminal court. The disciplinary proceedings, if initiated, should be completed within a period of six months from the date of communication of this order. The competent authority shall take appropriate decision in the above matter within a period of two months from the date of receipt of this order. The parties will bear their own costs.


(P.C. JAIN)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN (J)