

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1869/87 199
T.A. No.

DATE OF DECISION 23-11-90

Shri G.Gochait

Petitioner Applicant

Shri G.D.Bhandari,

Advocate for the Petitioner(s) Applicant

Versus

Delhi Administration & another

Respondent.

Shri M.M.Sudan,

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER(A)

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*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Mr. D.K.Chakravorty, Member(A))

The applicant, who has worked as a Warder in the Central Jail, Tihar, Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order dated 12.2.87 whereby his services were terminated and for declaring him to be continuing in service. He has also claimed the benefit of back wages on reinstatement.

2. The facts of the case in brief are as follows. The applicant was appointed as Warder in 1984. On 3.1.87, Superintendent, Central Jail No.3, New Delhi, issued the following memorandum to him:-

" On 3.1.87 at 3.50 p.m. you were on duty in Ward No.16.P.W.D.Mason after repairing the

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wall went to Ward No.13 and it was found that at the place of repair some body has made a hole again. Because at that time you were on duty in the Ward and this was done in your presence so you should explain in writing as to who and why this was done. If you do not give explanation within two days, it will be presumed that you have deliberately got it done and appropriate action will be taken against you."

3. The applicant submitted the following reply on 4.1.87:-

" With reference to your letter No.CJ/SO/86 dated 3.1.87 I have to state that the applicant was on duty in Ward No.16 on 3.1.87 from 12 to 6 p.m. on the front row and gate. Before this, there was no duty for many days in Ward No.16. The applicant at the time of his duty did not allow any movement on the front ~~row~~ and gate of the Ward. Another sentry was on duty on the rear row. How could the applicant go to the rear without leaving his duty. So, the applicant has no knowledge about the hole in the wall."

4. No enquiry was held thereafter. The following impugned order was passed on 12.2.87:-

" In pursuance of the provisions to Sub Rule 1 of Rule(5) of the Central Civil Services (Temporary) Service Rules, 1965, I, S.P. Singh, Deputy Inspector General of Prisons, Central Jail, New Delhi hereby terminate forthwith the services of Shri G.Gochait Warder and Shri Harkesh Sharma Warder of Central Jail, New Delhi, and direct that they shall be entitled to claim a sum of equivalent to the amount of their pay plus allowances for period of notice at the same rates at which they ~~was~~ drawing immediately before the termination of their service or as the case may be for the period by which such notice fall short of one month."

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5. The contention of the applicant is that he was on duty in Ward No.16 on the front row whereas Shri Harkesh Sharma another Warder was posted at the back row of the same ward. His instructions were to keep the prisoners under his charge i.e. those lodged in the front row under observation and that he cannot be held responsible for the goings on in another ward which could be seen only from the back row where Shri Sharma was posted on duty.

6. The contention of the respondents is that Ward No.16 is a top security ward and the act of removal of wet cement between Ward Nos.13 & 16 was done during the duty period of the applicant in Ward No.16. The respondents have stated in their counter-affidavit that "on receipt of report dated 15-1-87 from the Supdt.Jail No.3, Tihar, the same was placed before the Inspector General of Prisons who asked for the complete service record of the petitioner and considering the over-all performance of the petitioner, orders for termination of service of petitioner under Rule 5 of C.C.S.(Temporary Services) Rules, 1965 was passed".

7. We have carefully gone through the records of the case and have considered the rival contentions. The issue involved is whether the impugned order of termination is an order of termination simpliciter or whether it is by way of punishment.

8. According to the learned counsel of the applicant, the impugned order though worded as order of termination simpliciter is penal in nature. According to the learned counsel of the respondents, the mis-conduct of the applicant may have been the motive for the impugned order of termination but not its foundation. It is well settled by law

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that the 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. The apparent innocuous order would be linked with the stigma if the link is not far to seek and the respondents have disclosed what actually were the grounds for making the order. If the innocuous order is grounded upon features which cast stigma against the affected officer, he is entitled to defend himself in a proceeding provided under the rules applicable to him (vide Harpal Singh Vs. State of U.P. & another, ATR 1988(1) SC 77; Anoop Jaiswal Vs. Government of India and Another, 1984(2) SCC 369.

9. In the instant case the services of the applicant had been terminated on account of the report relating to the removal of the wet cement from the side of Ward No.16 in the front portion of which the applicant was on duty. We are of the opinion that in essence the termination is due to the alleged mis-conduct on the part of the applicant in the performance of his duties. In such a case the more appropriate course for the respondents to adopt was to initiate disciplinary proceedings against the applicant under the relevant rules and not to short-circuit the enquiry by invoking power under Rule 5(1) of the Central Civil Services(Temporary Services) Rules, 1965. During an enquiry under the CCS(CCA) Rules, 1965, the applicant ^{is} entitled to have a reasonable opportunity to defend himself against the charge of mis-conduct. The applicant in the instant case has been deprived of such an opportunity. In view of this,

the impugned order of termination cannot be construed to be an order of termination simpliciter and on that ground it is not legally sustainable. We, therefore, set aside the impugned order of termination dated 12.2.87. The respondents are directed to reinstate the applicant as Warder. He will also be entitled to the arrears of pay and allowances from 12.2.87 to the date of his reinstatement and other consequential benefits normally due to him. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

10. We, however, make it clear that after reinstating the applicant, the respondents will be at liberty to take any appropriate action against him for any act of misconduct in accordance with law, if so advised.

Parties will bear their own costs.


(D.K.CHAKRAVORTY)
MEMBER 28/11/90


23/11/90
(P.K.KARTHA)
VICE CHAIRMAN