IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 389/1987.

DATE OF DECISION: December 21 ,1989.

Suresh Kumar ..... Applicant.

Shri R.K. Kamal ..... Advocate for the Applicant.

Versus

Union of India & Others ... Respondents.

Shri M.L. Verma ..... Advocate for the Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, 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.
4. To be circulated to all Benches of the Tribunal. No.

JUDGEMENT

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

In this application under Section 19 of the Administraive Tribunals Act, 1985, the applicant has challenged order dated 24.2.1987 (Annexure A-I to the application), by which his services were terminated with immediate effect, and has prayed that

(1) the impugned termination order be quashed,

(2) the respondents be directed to put back the applicant on duty on terms and conditions as applicable to him prior to the termination of his services,

(3) the respondents be directed to pay the salary and subsistence allowance due to him with effect from 1.12.86 onwards, and

(4) any other equitable relief which may be considered by the Tribunal to extend substantial justice to the applicant.

2. The relevant facts, in brief, are as under: -

The applicant addressed an application to Shri

G.S. Bedi, Joint Secretary (Establishment), Ministry of External Affairs, New Delhi, for employment in the M.E.A. He received an offer of appointment vide Memorandum dated 6.5.1986 (Annexure A-II) for appointment to the post of Houseman. He joined the post on 12.5.86. He was arrested in connection with a criminal case on 11.9.86. He remained in police custody from 11.9.86 to 14.9.86 and in judicial custody from 15.9.86 to 30.9.86. He was placed under deemed suspension with effect from 11.9.86 vide order dated 13.1.1987 (Annexure A-III) in terms of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. His services were terminate with effect from 24.2.1987, vide order of the same date in terms of para 1(i) of his appointment order, which is said to have been incorporated in accordance with Rule 5 of the CCS (Temporary Service) Rules, 1965.

3. The applicant has challenged the impugned order of termination on more than one ground. The order of terminatio is said to have been issued by an authority which was not the appointing authority, and the argument advanced in support ofthis contention is that he had addressed his application for appointment to the Joint Secretary and as such, the Joint Secretary would be deemed to be his appointing authority. The respondents have rebutted this contention and have shown that under the rules, the appointing authority of the applicant was Under Secretary. The mere fact that the applicant addressed his application to the Joint Secretary, would not ipso-facto make the Joint Secretary as his appointing authority. He has not produced any such appointment letter which might substantiate his contention on this point. An identical plea was raised in O.A. No.1053/87 (Shri Chander Pal Vs. Union of India & Others decided by a Division Bench of the Central Administrative

Tribunal - Principal Bench - Delhi on 3.12.1987). In that case also, the applicant had been appointed as Houseman in the Ministry of External Affairs and the application was similarly addressed to the Joint Secretary. The plea of the applicant that the Joint Secretary was his appointing authority was rejected in that case also. We also do not find any merit in this contention.

4. Another ground of attack is that the applicant had not been paid the wages in lieu of notice period of one month till the date of filing this application before the Tribunal. The impugned order of termination states that "He will be paid one month's wages in lieu of notice". The offer of appointment (Annexure A-II) also states that the appointing authority reserves the right of terminating the services forthwith or before the expiry of stipulated period of notice by making payment of a sum equivalent to the emoluments for the period of notice or unexpired period thereof. The applicant has cited the judgement in the case of Shri Chander Pal Vs. Union of India & Others (supra) in support of his contention that non-payment of wages in lieu of notice rendered the impugned order of termination as non est in the eye of law. The respondents, in their reply on this point, have stated that the applicant was entitled to subsistence allowance for the period of suspension from 11.9.86 to 24.2.87 and one month's wages in lieu of one month's notice, but as the applicant had been paid full wages upto 30.11.86, the payment of wages were stopped with effect from 1.12.86 with a view to making adjustement of over-payments during the said period against his entitled subsistence allowance plus one month's wages in lieu of notice period. The net amount payable after necessary adjustement is stated to be ready for payment to the applicant. In terms of the appointment letter, notice period of one month or wages in lieu thereof was mandatory. Admittedly, this was not paid to the applicant either along

with the termination order or within reasonable period thereafter. The payment due after adjustment could have been made without any difficulty. The respondents have not been able to show any communication by which such payments might have been offered to the applicant. In view of this as also following the observations of the Division Bench in the case of Shri Chander Pal Vs. Union of India & Others (supra) on this point, we are of the view that on this ground too the termination needs to be set aside.

5. Another ground taken by the applicant is that the suspension order dated 13.1.1987 cast a stigma on him and the impugned order of termination is, therefore, by way of punishment even though ex-facie, it is shown to be an order in terms of the conditions of appointment. The respondents, in their reply, have denied that the impugned order of termination cast a stigma on the applicant. The order of deemed suspension (Annexure A-III) shows that the applicant was placed under deemed suspension with effect from the date of detention, i.e., 11.9.86, and was to continue to remain under suspension until further orders on the ground that a case against him in respect of a criminal offence was under investigation and that he was detained in custody on 11.9.86 for a period exceeding 48 hours. It may be mentioned here that the order of deemed suspension had not been revoked before the impugned order of termination was passed. It was also not shown to us that the investigations in the alleged criminal offence had either been completed and the charges dropped or a charge-sheet had been filed in the court. The misconduct referred to in the order of deemed suspension cannot be legally taken to be a mere motive for passing the impugned order of termination; which in fact constitutes a foundation for the same. This conclusion is also supported by paras 6.6

and 6.7 of the reply filed by the respondents. In para 6.6 of the application, the applicant pleaded that he performed his duties conscientiously and diligently to the full satisfaction of his seniors. In reply to this para, the respondents have stated that the statement of the applicant is not tenable on account of his misconduct which has led to his detention by Police Authorities. It is also said that it was observed that he was irregular, disobedient, a shirker and showed a tendency to form cliques. In para 6.7 of the application, the applicant has given his own version of the incident of 11.9.86 when he is said to have been detained by the police authorities for interrogation in connection with a criminal case registered against one Shri Bhule Singh working as electrician helper in I.T.D.C. and was released from police detention on 2.10.86 and consequently, he reported for duty on 3.10.86. In reply to this para, the respondents have given the dates during which he remained in police custody and the dates during which he remained in judicial custody. This version has not, in fact, been contradicted by the applicant in his rejoinder.

6. From the facts discussed above, it is apparent from the material on record before us that the alleged inefficiency, unsatisfactory conduct in the performance of his duties and misconduct in connection with the police case are the real reasons for passing the impugned order of termination. As such, the impugned order of termination has to be treated as having been passed as a measure of punishment, even though it is ex-facia termination simpliciter in terms of appointment.

7. The learned counsel for the respondents cited the following judgements of the Hon'ble Supreme Court: -

(1) The Union of India and Others
Vs. P.S. Bhatt
(AIR 1981 S.C. 957).

(2) State of U.P. Vs. Ram Chandra Trivedi
(All India Services Law Journal 1976 SC 583).

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In the first case, the question for determination was whether the impugned order of termination of employment on probation was passed by way of punishment or not. Their Lordships had observed that if any order terminating the service of a probationer be an order of termination simpliciter without attaching any stigma to the employee and if the said order is not an order by way of punishment, there will be no question of the provisions of Article 311 being attracted. It was further observed that in deciding whether the order is by way of punishment or not, the relevant facts and circumstances may have to be considered. From the facts of that case, their Lordships came to the conclusion that even if the conduct of the respondent in indulging in loose talks and filthy and abusive language may be considered to be the motive or the inducing factor which influenced the authorities to pass the impugned order, the said order cannot be said to be by way of punishment. In the other case, the respondent was a temporary hand and was found to be having no right to the post. It was not denied that both under the contract of service and the service rules governing the respondent, the State had the right to terminate his services by giving him one month's notice. The impugned order was exfacie an order of termination of service simpliciter. It was found not casting any stigma on the respondent nor did it visit him with evil consequences, nor was it founded on misconduct. In the case before us, the facts are somewhat different. The applicant was placed under deemed suspension on account of his alleged misconduct in connection with a criminal case and his consequential detention. The reply of the respondents also talks of inefficiency and unsatisfactory conduct. Moreover, the learned counsel for the applicant cited the judgements of the Hon'ble Supreme Court in the cases of (1) Nepal Singh Vs. State of U.P. (AIR 1984 SC 84), (2) State of Maharashtra v. Veerappa R. Saboji (A.I.R. 1980 S.C. 42), and (3) Jarnail Singh Vs. State of Punjab

(A.I.R. 1986 S.C. 1626).

8. In the case of Jarnail Singh Vs. State of Punjab (supra), the Hon'ble Supreme Court held as under: -

> "In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained. In other words, the Court, in such a case, will lift the veil and will see whether the order was made on the ground of misconduct / inefficiency or not."

9. In the case of State of Maharashtra Vs. V.R. Saboji (supra) also, it was held that where the order discloses on the face of it that a stigma is cast on the Government servant or that it visits him with penal consequences, then plainly the case is one of punishment.

10. In the case of Nepal Singh Vs. State of U.P. (supra) also, it was held that "where allegations of misconduct are levelled against a Government servant, and it is a case where the provisions of Article 311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that, therefore, it is entitled to avoid the mandate of that provision and resort to the guise of an ex facie innocuous termination order."

11. In view of the law discussed above and the facts of the case, we are of the view that the impugned order of termination though ex-facie an order passed in terms of the appointment has, in fact, been passed as a measure of punishment, and as no inquiry contemplated under Article 311(2) of the Constitution has been held in this case, the impugned order cannot be upheld.

12. Another ground taken by the applicant is that the impugned order of termination is arbitrary inasmuch as no show cause notice had been given to him before it was passed and, as such, is violative of Article 14 of the Constitution. The respondents have denied this contention by stating that no violation of that Article is involved in this case. In this case, there is no allegation of juniors having been retained in service and, as such, there can be no plea of discrimination. In view of what we have said above, we do not consider it necessary to go into the question of applicability of the principle of audi alteram partem in this case.

13. The respondents have raised two preliminary objections in this case. Firstly, it has been stated that respondent No.2 is not ~~the~~ a necessary party in the present application. This objection is devoid of any merit inasmuch as respondent No.2 is stated by the respondents themselves to be the appointing authority of the applicant. The second objection is that the petition is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 inasmuch as the applicant has filed this application without availing the departmental remedies available to him. The learned counsel for the applicant opposed at the bar this contention of the respondents. Section 20 (1) of the Act ibid states that "A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances." Section 21 relates to limitation for filing an application before the Central Administrative Tribunal. We find that in this case, the application was admitted after hearing the learned counsel for the applicant vide order dated 31.3.1987. Section 20 of the Act ibid is, therefore, strictly not applicable.

14. In view of the above discussion, we allow the

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application in terms of the following directions: -

(1) Order dated 24.2.1987 by which the services of the applicant were terminated is quashed. Consequently, he will be treated to have continued under deemed suspension from the date of his termination of service, i.e., 24.2.1987. Respondents would be free to initiate appropriate disciplinary proceedings against the applicant, if they consider it proper to do so in accordance with the relevant rules.

(2) The applicant shall be paid within a period of two months from the receipt of a copy of this judgement, the subsistence allowance which may be due to him in accordance with the orders to be passed by the competent authority in accordance with the relevant rules.

15. In the facts and circumstances of the case, we leave the parties to bear their own costs.

(P.C. Jain)
Member(A)

(Amitav Banerji)
Chairman.

Pronounced in open court today.

21/2/89