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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1053 1987
T.A. No.

DATE OF DECISION 3-12-1987

Shri Chander Pal Petitioner

Shri R.K. Kamal, Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

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

CORAM :

The Hon'ble Mr. S.P. Mukerji, Member (A)

The Hon'ble Mr. Ch.Ramakrishna Rao, Member (J)

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

(CH.RAMAKRISHNA RAO)
MEMBER(J)

(S.P.MUKERJI)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI

OA No. 1053/87 Dated 3-12-1987

Shri Chander Pal ... Applicant

vs

Union of India & Others ... Respondents

CORAM

Mr. S.P.Mukerji ..... Member(A)
Mr. Ch.Ramakrishna Rao .. Member(J)

For the applicant ... Shri R.K.Kamal, Counsel

For the respondents ... Shri M.L.Verma, Counsel

(Judgement of the Bench delivered by Shri Ch.Ramakrishna Rao)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985.

2. The facts giving rise to the application lie in a narrow compass. The applicant was appointed as Houseman in the Ministry of External Affairs (MEA) in a temporary capacity on 6-5-1986. A memorandum was issued to the applicant on 8-9-1986 by the OSD(Property), MEA, directing the former to meet the latter on 9-9-1986 'in connection with his performance as Houseman'. Thereafter on 24-9-1986, an order dated 24-9-1986 was passed by the Under Secretary(PF), in the MEA, terminating the services of the applicant with immediate effect. Aggrieved by this order, the applicant has filed the present application.

3. The contention of Shri Kamal, learned counsel for the applicant is that reference has been made in the memorandum dated 6-5-1986 offering his client appointment to the post of Houseman in

the MEA, to his application addressed to Shri G.S. Bedi, JS(Estt), MEA, and as such, the appointing authority in the case of the applicant is JS(Estt). According to Shri Kamal, the order dated 24-9-1986 terminating the services of the applicant was issued by the Under Secretary (PF), an authority lower in rank than the JS(Estt) and as such the said memorandum is not valid in law.

4. Shri M.L.Verma, learned counsel for the respondents, submits that a reference to the application of the applicant addressed to Shri G.S. Bedi, JS(Estt), MEA, in the memorandum dated 6-5-1986 informing the applicant that he has been selected for appointment as Houseman in MEA will not, ipso facto, mean and imply that the appointing authority is the JS(Estt). According to Shri Verma, the competent authority to appoint a person as Houseman is the Under Secretary(PF), MEA, and the order dated 24-9-1986 does not, therefore, suffer from any infirmity.

5. We have considered the rival contentions carefully. In our view, the mere reference to the application addressed by the applicant to the JS(Estt) is not conclusive that the appointment itself has been made by JS(Estt). The applicant has not produced the letter of appointment in support of his contention that he was appointed as Houseman by JS(Estt). In the absence of any proof in this behalf, it is reasonable to hold that the appointment was made by the competent authority, namely Under Secretary(PF).

6. Shri Kamal next contends that the order dated 24-9-1986 terminating the services of his client with immediate effect runs counter to clause (i) of the terms and conditions embodied in the memorandum

dated 6-5-1986 which reads as follows:

> "(i) The appointment is purely on a temporary and ad hoc basis for a period not exceeding one year only and does not confer any title to permanent employment. This appointment can be terminated at any time by one month's notice given by either side the appointee or the appointing authority without assigning any reason therefor. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of stipulated period of notice by making payment to him/her of a sum equivalent to the emoluments for the period of notice or unexpired period thereof."

According to Shri Kamal, notice of the kind envisaged by the clause extracted above has not been given by the appointing authority to his client nor has he been paid a sum equivalent to the emoluments for the period of notice and as such, the order terminating the services of his client is legally invalid.

7. Shri M.L.Verma, counsel for the respondents, invites our attention to paragraph 6.8(i) of the reply to the application where it is stated:

> "In accordance with Rule 5 of CCS(TS) Rules, 1965, the applicant may be terminated with one month's notice or his services may be terminated with immediate effect on payment of wages for a month in lieu of notice period. The services of Shri Chander Pal were terminated with immediate effect on payment of wages for one month in lieu of notice period."

8. Shri Kamal refutes this submission made by Shri Verma by relying on paragraph 6.3 of the rejoinder wherein it is stated that neither one month's notice nor one month's pay was given to the applicant and the termination order is, therefore, illegal and void.

9. In our view, the obligation to give notice of one month to the applicant or pay/wages in lieu thereof, flows out the terms and conditions incorporated in the offer of appointment made to the applicant and it is

mandatory in nature. Such a notice is envisaged by rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, and the Central Government has also prescribed a proforma for giving notice in which it is clearly mentioned that a temporary employee whose services are terminated, is entitled to payment of wages for one month in lieu of notice period if no such notice is given. Actual payment of wages for one month need not be made simultaneously with the order terminating the services of a temporary employee, but it should be made within a reasonable period thereafter, if the order of termination does not conform to the proforma prescribed as in the present case. As the requisite notice was not given nor payment in lieu thereof made to the applicant, the memorandum dated 24-9-1986 is non est in the eye of law.

10. Shri Kamal also contends that the order dated 24-9-1986 is punitive in nature since his client was called on 9-9-1986 by OSD(Property) MEA for assessing his performance as Houseman and thereafter his client was not informed of the grounds on which his performance was considered unsatisfactory/ or he was found inefficient. Instead, the memorandum dated 24-9-1986 was issued terminating the services of the applicant. The action of the respondents is, therefore, legally untenable.

11. Shri M.L.Verma submits that the right to terminate the services of the applicant who was holding a temporary/ad hoc appointment as Houseman, is liable to be terminated as provided in the memorandum dated 6-5-1986 and there is no punitive element involved in issuing the said memorandum.

12. Normally in cases where termination of the services of the temporary employee is made pursuant to a term in the offer of appointment in the rules, the termination will not cast any stigma on the temporary employee. But in a case like the present where the applicant was directed to appear before the OSD(Property) for assessing his performance, it is quite essential that the respondents should apprise the applicant as to what exactly was defective in his performance: otherwise, he would be handicapped in securing an alternative employment. In other words, if no notice is given to the temporary employee and the appointing authority itself comes to a conclusion that his work has not come up the mark and an order is passed terminating his services, it would conform to the requirements of a termination simpliciter but not by way of punishment. As held by the Supreme Court in P.L.DHINGRA VS UNION OF INDIA AIR 1958 SC 36 page 1707 (24348):

> "If the termination of service is founded on the right flowing from contract or the service rules, then, prima facie the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualifications, then it is a punishment and the requirements of Art.311 must be complied with." (Emphasis supplied)

It has been laid down in several decisions of the Supreme Court of which a recent one is KANHAIYA LAL VS DISTRICT JUDGE AIR 1983 SC 351 that even a temporary servant is protected under Article 311(2) of the Constitution of India. Therefore, if services of a

temporary servant are terminated on the ground of inefficiency or unsuitability after giving notice to the applicant and if the precise ground is not disclosed to him, it will be violative of principles of natural justice as held in K.C.JOSHI VS UNION OF INDIA AIR 1985 SC 1046 page 367:

> "The contract of service, if any, has to be in tune with Arts.14 and 16 and such unilateral power of termination of service without giving reasons is so abhorrent that it smacks of discrimination and therefore, violative of Art. 14."

13. In the present case, the applicant was appointed only four months before the order terminating his services was passed and during such a short period, it would be difficult to assess his performance. The services of a temporary employee being ~~for~~ unsatisfactory ~~are unsuitable~~ is one thing and ~~to say~~ that his performance is being not up to the mark is another. As already stated, if no memorandum of the kind dated 8-9-1986 was issued to the applicant in connection with his performance as Houseman, but an order simpliciter terminating his services was passed, there would have been no scope to speculate upon the ground which weighed with the respondents in coming to the conclusion that the applicant's performance did not fulfil the requirements for the post to which he was appointed. The issue of the order terminating the services of the applicant within a fortnight after the memorandum dated 8-9-1986 was issued, shows that there was a nexus between the two. We are, therefore, satisfied that the order of termination is punitive in nature and has not been passed in conformity with the requirements of Article 311(2) of the Constitution.

14. To sum up: The order dated 24-9-1986 is vitiated on two counts namely the absence of a notice to the applicant before terminating his services as required by clause (i) of the terms and conditions of appointment and non-observance of the provisions of Article 311(2) of the Constitution before passing the order and we, therefore, set aside the same.

15. In the result, the application is allowed. There will be no order as to costs.

(CH.RAMAKRISHNA RAO)
MEMBER(J)

3.XII.87

(S.P.MUKERJI)
MEMBER(A)