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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1566 of 1990

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New Delhi, this the 5th December, 1994

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI S.R.ADIGE, MEMBER(A)

Ishwár Singh s/o Shri Umrao Singh,
C/O Yadav Service Station,
Near Civil Hospital,
Rewari(Haryana).
(By Advocate Shri V.P.Sharma)

Applicant

Versus

Union of India through

1. The Member (Personnel)
P & T Board, Dak Tar Bhawan, New Delhi.
2. The General Manager(Telecom),
Haryana Circle,
Ambala city(Haryana).
3. Distt. Manager Telegraph,
Faridabad (Haryana).
4. Distt. Engineer, Telegraph,
Gurgaon (Haryana).
5. The Sub Divisional Officer (T),
Rewari, Haryana.
(By Advocate Shri M.K.Gupta)

Respondents

JUDGEMENT(ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The applicant was engaged on a casual basis in the office of Sub Divisional Officer (Telephone). By virtue of a scheme prepared by the Ministry of Tele-communication in the year 1989 and by virtue of the applicant's working earlier as Mazdoor in temporary capacity was granted the temporary status and he continued to work as temporary status holder Mazdoor on Dharuhera in Distt. Rewari.

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2. The grievance of the applicant is against the show cause notice issued by the S.D.O., Rewari on 26.7.90 with regard to an ^{incident} ~~instance~~ which has taken place on 15.3.90. He was asked to submit his explanation. The contents of the show cause notice filed by the applicant as Annexure-I, are that the applicant alongwith two other associates criminally assaulted Sh. Gajraj Singh in pursuance of common intention. It is also stated that earlier the applicant was working in Switch Room and he also criminally intimidated one Shri R.P. Nishal. He also threatened the officers of the department. Thus conduct of the applicant was unbecoming of a Govt. servant. In this application filed by the applicant on 1st August, 1990, he has prayed that the aforesaid chargesheet be quashed and that the applicant be deemed to be in continuous service w.e.f. 20th March, 1990. The applicant has subsequently amended this application on the basis of reply filed by the respondents to unamended application. In the amended application, the applicant has also prayed for quashing of the order of termination dated 2nd August, 1990 said to have been passed by the respondents without giving an opportunity to the applicant as provided under CCS(CCA) Rules, 1965. The relief in the amended application remains the same except that the applicant also prayed that the order dated 2nd August, 1990 of the termination of the service of the applicant be declared as illegal, unjust and be quashed and the applicant be given full pay and allowances of the period from 20.3.90 to 14.10.90 treating the period as spent on duty.

3. The respondents filed reply to both amended and unamended applications opposing the grant of the relief. It is stated that the applicant committed misconduct and that the application filed is pre-mature and liable to be dismissed. It is stated that the applicant absenting himself from duty from 20.3.90 and came only to join his duty after an order has been passed by this Bench hearing the case granting interim relief to the application to the effect that the respondents are restrained to act upon the impugned order dated 26th July, 1990 and further directing the applicant to file the reply to the said show cause notice. In the counter filed by the respondents, it is stated that the applicant himself did not report for duty. It is stated that Shri R.P.Nishal Technician, Rewari was the target of assault by the brother of the applicant and the applicant has in fact incited for committing the assault on said Shri Nishal. The respondents in para No. 4.4 of the counter have ~~stated~~ cited that the complete file concerning the applicant's termination, show cause notice is not available in the respondents' office and, therefore, they cannot say anything about the said order dated 2nd August, 1990. However, it is stated that it is a fact that the services of the applicant were terminated by the order dated 2nd August, 1990 as the applicant was only a temporary status holder Mazdoor and was not governed by the CCS (CCA) Rules, 1965.

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4. We heard Shri V.P.Sharma counsel for the applicant and Shri M.K.Gupta, counsel for the respondents. As regards the show cause notice dated 26th July, 1990, there cannot be two opinions that the show cause notice can never be challenged in an application under section 19. The applicant has to wait after submitting the reply to the show cause notice and if any order is passed adverse to him, only then right accrues to him in the shape of grievance. Earlier to this he has no cause of action. However, we find that not only this application has been admitted but also an interim relief has been granted on 22nd September, 1990. In view of this we do not consider the preliminary objections raised by the learned counsel for the respondents.

5. Neither parties have filed the order of 2nd August, 1990. The contention of the applicant's counsel is that the order has not been served upon him while the rival contention is that the whole of the file relating to show cause notice dt. 26th July, 1990 which was kept in a file is not traceable inspite of best efforts and has been reported missing. In view of this there is no particulars of the order dated 2nd August, 1990. However, the applicant was allowed to join in terms of interim directions issued by the Tribunal and he is continuing because of interim directions of the Tribunal.

6. The contention of the learned counsel for the applicant is that no proceedings whatsoever has been drawn against the applicant and nor any order of 2.8.90 has been served upon him in that capacity, it is desired that the applicant should be deemed to be in active service even after 20.3.90 till he joined on 14th October, 1990. We are not persuaded by this argument. The applicant could get only the pay when he joined the post on 14.10.1990 and onwards. Regarding the earlier period the respondents have to consider in proper proceedings as to whether the applicant absented himself unauthorisedly and the applicant has to substantiate that he was reporting for duty particularly in view of the fact that the applicant showed quite ignorance of the order of termination order dated 2.8.1990. It is not the case of the applicant that he was terminated from service by order dated 2-8-90, what is stated is that he learnt about the same when it was published. The learned counsel for the applicant gave the meaning of the publish, when the respondents filed reply to the unamended original application stated that the services of the applicant had been terminated on 2.8.1990.

7. There appears to be ~~is~~ little justification in the respondents' counsel's contention that the applicant was allowed to join in pursuance of the order dated 20th Sept., 1990 because that order which was stayed by the interim direction by restraining the respondents to act upon the impugned show cause notice is dated 26th July, 1990. If the respondents had already terminated services of the applicant w.e.f. 2.8.90, before the application was filed or before 20.9.90 the interim granted to the applicant had become infructuous. Be that as it may, the applicant is working and we do not want to interfere in any

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manner what-so-ever because of no order of termination dated 2.8.90 has been filed before us neither we quash that order nor we hold that such an order has been in existence.

8. The effect of the show cause notice has gone away by the lapse of time. This fact may also be mentioned that the injured Sh.R.P.Nishal in the report lodged for an offence against the brother of the applicant did not name the applicant as an assailant. Even that case has been acquitted by the Criminal Court. Thus the very basis of issue of show cause notice that the applicant alongwith two assailants/associates on 15.3.90 assaulted Shri R.P.Nishal while he was on duty has no basis.

9. The application, therefore, is disposed of that the show cause notice dated 26th July, 1990 has become redundant and no action will be taken on that. It is also made clear that respondents, if so advised, can proceed according to law against the applicant for any absentee period as per disciplinary Rules and decide the same. The application is dismissed as such with no order as to cost.

Arif Ali
(S.R. ADIGE)

MEMBER (A)

J. P. Sharma

(J. P. SHARMA)
MEMBER (J)

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