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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 402 of 1986

Subhash Chand Applicant

Versus

Colonel Remand Training School
and Others. Respondents.

Hon. S. Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

This is a petition under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner Subhash Chand was engaged as a Syce at the Remount Training School Hempur Nainital. He has filed this application challenging the oral order of his removal from service.

2. The petitioner's case is that he was appointed on the post of Syce on 1.11.1983 at the Remount Training School Hempur. On 18.2.84 he was directed to sign certain papers which he declined because he did not know the contents. But he was manhandled and taken to the office of the respondent by two Sepoys and forced to sign those papers. Injuries sustained by him were examined by a Doctor. On 19.2.84 he lodged a F.I.R. with the police. On 19.3.84 he was not allowed to join duty. Nothing was given to him in writing. It was only in April, 1985

that he was told orally that he has been removed from service. He represented on 3.5.85, sent a reminder on 21.5.85 but he has received no reply. The petitioner further says that he was appointed on probation and his services could only be terminated on the recommendation of the Departmental Promotion Committee in terms of the procedure laid down in Civil Service Rule Appdx. 29. He has therefore prayed for relief that the respondents be directed to allow him to join his duty.

3. The respondents case is that the services of Subhash (not Subhash Chand) were terminated under Sub Rule (1) (a) & (b) of Rule 5 of C.C.S. (Temporary Service) Rule 1965, w.e.f. 18.3.84. According to the respondents the impugned order was passed on 18.3.84 while the petition was filed on 30.8.86 hence it is time barred. Also there was no Syce by the name of Subhash Chand. Father of Subhash is working as a Jamadar. There is no civilian employee Union in the Depot. Appeal submitted by Subhash has been forwarded to higher authorities on 14.4.84. Appendix 29 of C.S.R. is not applicable to class IV employees.

4. In his rejoinder the petitioner has given his alias as Subhash, he has said that his appeal

of 25.3.84 and 3.5.85 have not yet been decided. He filed this petition on 30.8.86 and it is within time. He is the same man Subhash and sometimes signs as Subhash Chand. He has been terminated because his father is Secretary of the Union which is a recognized Union at Hempur. According to him his services have been illegally terminated due to malice and in a most arbitrary manner.

5. We have heard the learned counsel for both sides. The learned counsel for the petitioner contended that the services were terminated after a few months. According to the Supplementary counter stigma is attached to the termination order hence it is malafide and services could not have been terminated by a simpliciter order which the petitioner was forced to sign. The learned counsel for the respondents put forward a plea that detailed comments have been sent to the HQrs. office and the appeal has not yet been decided, it could be decided now. Nothing else was pressed before us.

6. The learned counsel for the petitioner has relied on Manager Govt. Press and Another Versus D.B.Belliappa (AIR 1979 SC 429) where the Hon'ble Supreme Court has observed as follows :-

" The services of a temporary Government servant were terminated without giving any reason while some other employees junior

to him were retained in service. The employee was earlier served with a show cause notice questioning his integrity and fidelity but the Government ultimately adhered to the stand that there was no nexus between the show cause notice and termination of service.

Held, the termination of service was made arbitrarily and not on ground of unsuitability or other reason.

It was further observed that it was perhaps open to the Government to say in view of the complaint alluded to in the show-cause notice against the integrity and fidelity of the employee, that the former had lost confidence in the latter and considered him unsuitable to be continued in the post which was one of trust and confidence. But when the Government instead of taking any such plea has, with obdurate persistency, stuck to the position that the employee's service has been terminated without any reason, it amounted to nearly admitting that the power reserved to the employer under the conditions of the employment has been exercised arbitrarily."

The ratio of this judgement is not applicable to the petitioner's case because the respondents have not withheld the reasons or motive which compelled them to take the impugned action as was done in the relied on case where the termination was maintained to be as not on ground of unsuitability or other reason though it was so.

7. In this case the respondents have said that on the basis of overall performance his services

were dispensed with. This has been further amplified in the comments that the respondents have sent to Army HQrs. on 14.4.84. It has been said that the petitioner failed to work satisfactorily and did not take any interest in his work inspite of repeated guidance and counselling. In B.L.Gupta Versus State of Haryana (AIR 1978 SC 363) the Hon'ble Supreme Court had held :

" Where the intention behind an inquiry against a probationer was not to hold a full departmental trial to punish but a summary inquiry to determine only suitability to continue in service.....the innocuous order of termination.....could not be said to be an order of punishment....."

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8. Similarly in State of U.P. Versus R.C.Trivedi (AIR 1967 SC 2547) it was held that :-

" the plaintiff was a temporary hand and had no right to the post. Both under the contract of service rules governing the plaintiff, the State had a right to terminate his services by giving him one month's notice. The order was exfacie an order of termination of service simpliciter. It does not cast any stigma on the plaintiff, nor does it visit him with evil consequences, nor is it founded on misconduct. In the circumstances, the plaintiff could not invite the Court to go into the motive behind the order and claim protection of Art.31(2) of the Constitution."

9. In P. Subramanian Versus Union of India
(ATR 1987(1) CAT 153) the Madras Bench of this
Tribunal had held :

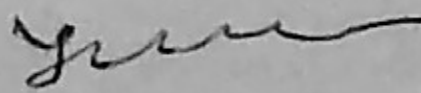
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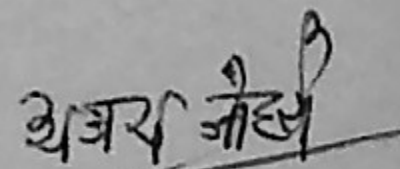
" The question here is whether the impugned order attaches any stigma to the petitioner and is by way of punishment. We consider that even though the motivation for the order may be the alleged conduct and the adverse remarks of the petitioner, the order of termination of service does not have as its foundation any misconduct on the part of the petitioner. It is a simple termination of service simpliciter. What is required for the Tribunal is to discover the nature of the order by attempting to ascertain what was the motivating consideration in the mind of the authority which prompted the issue of the termination order. We find that the motivation in this case is the work and conduct of the petitioner. The department found the continued retention in service of the petitioner not in the interests of administration. Hence the order passed by the authority competent to issue it, is a simple order terminating the services of the petitioner under Rule 5(1) of the Central Civil Services (Temporary Service) Rules 1965. It is not by way of penalty nor is any stigma attached to the individual."

10. Thus termination simpliciter due to unsuitability, not being stigmatory, where opportunity of hearing is not necessary, and malafides is not established, cannot be agitated, and termination is

valid. His is not a case where allegations of misconduct have been levelled and the provisions of Article 311(2) of the Constitution would have been applied and the authorities resorted to the guise of an innocuous termination order. There is also no substance or attending circumstances or basis of the order that would attract allegations of serious misconduct which need following of procedure provided in Article 311(2) while considering the fitness or suitability for purpose of retention. The petitioner's case was a pure and simple case of unsatisfactory work and conduct which led to the termination of his service.

11. The respondents have said that they forwarded the appeal of the petitioner to the Army HQrs. and it is pending disposal. This was sent in April, 1984. It is more than three years now. While we will not like to prejudice the disposal of the appeal by the respondents and they will be at liberty to finally decide it if they so like, we do not find any force in this petition. It is accordingly dismissed with no order as to costs.


V.C.


A.M.

Dated the 24th April, 1987

RKM