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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 56 of 1986 (T)

Harish Chandra Sharma ..... Applicant

Versus

Union of India & Others. ..... Respondents.

Present: 1. Hon.S.Zaheer Hasan, V.C.(J)

2. Hon. Ajay Johri, Member (A)

Judgement delivered by Hon.Ajay Johri, Member(A)

This is appeal No.93 of 1985 received on transfer from the Court of the District Judge Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985. In this appeal the judgement and decree dated 28.1.85 by the Xth Munsif Varanasi in Suit No.120 of 1983 Harish Chandra Sharma Versus Union of India dismissing the suit, has been challenged. The grounds of appeal are that the learned munsif has gone through the case with wrong angle of vision and did not rely upon the rules and rulings applicable to the case. Thus the judgement dated 28.1.85 was unwarranted by the facts and law and contradictory. It has been pleaded that on these grounds the judgement be set aside.

2. The plaintiff, Harish Chandra Sharma, was employed as a casual Blacksmith on 15.4.72 under S.I. Construction Eastern Railway Mughalsarai and his services were terminated on 9.7.80 by an order No.Mughalsarai/SG/CON/CONF dated 8.7.80. According to this order the plaintiff had indulged in acts of gross indiscipline,misbehavious and misconduct. He caused obstruction to Govt. servants in performing their duties and resorted to highly indisciplined, violent and rowdy conduct. The plaintiff thus rendered himself unfit

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for retention as casual labour and his services were terminated as a disciplinary measure. The plaintiff appealed against the order to the authorities on 14.7.80 but when he did not get a reply he sent a representation to the Railway Minister on 20.7.80. The results of these appeals are not available but ultimately he filed a suit on 4.3.83 which was decreed against him.

3. The learned munsif, in his judgement, has observed that no evidence had been brought in front of him to show that the plaintiff had been given C.P.C. scales of pay against the averment made by the defendants that he was a casual worker getting Rs.4/- per day. In accordance with para 2501 -b(i) of the Establishment Manual if a casual labour works continuously for six months he attains a temporary status but if he is working in a project he does not get this status. This is what has been said in the A.I.R. 1982 S.C. 854 too. The plaintiff has failed to provide any evidence that the organisation where he was working was not a project. In his statement he has not denied this fact. The learned munsif, therefore, concluded that he was working on a project, and he had not attained temporary status. A notice was not required to be given to such a person, and he was also not covered by articles 310 or 311 of the Constitution. The defendants, therefore, were well within their right to terminate his services and the cause of the same is not justiciable. The learned Munsif decreed the case against the plaintiff.

4. On the matter of C.P.C. scales of pay, the learned counsel for defendants has submitted a letter dated 5.9.86 from Block Inspector (Works) that the plaintiff was in receipt of 1/30th of the appropriate scales of pay and evidently not Rs. 4/- per day as averred by the defendants in

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their written statement. He had, however, not attained temporary status because he was working on a project. The defendants have to this extent been negligent in the preparation of their reply and in the lack of precision, They had shown a payment of Rs. 2053-50 to the plaintiff as his dues - this amount could not be possibly due if he was drawing only Rs.4/- per day.

5. The learned counsel for plaintiff has challenged the termination on the grounds that the termination was as a disciplinary measure, the plaintiff was not issued any chargesheet, no enquiry was held and the termination also violated the provisions of Section 25F of the Industrial Disputes Act.

6. Provisions of Article 311 of the Constitution are applicable to persons employed in the civil capacities under the Union or State. Rule 102(13) of the Railway Establishment Code was amended on 6.4.1959. After this amendment the definition of Railway servant does not include casual labour. Casual labour do not hold any civil post. Thus provisions of Rule 311 do not apply to casual labour. The view held by the learned Munsif in this regard, therefore, needs no change. It was not necessary to give a chargesheet to the plaintiff.

7. The incidents of indiscipline on the part of the plaintiff have been given in the papers 25(Ga), 27(Ga), 29(Ga), 30(Ga), 31(Ga), 32(Ga), and 33(Ga). 33(Ga) is the plaintiff's own admission to the acts of intimidation, indiscipline and misconduct indulged in by the plaintiff, though for all these he places the blame on another colleague under whose instigation he committed these.

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The principles of natural justice have to be confined within their proper limits. Under their protectionist garb one cannot go on committing acts making the working of a department impossible. Even if Article 311 could be invoked in plaintiff's case his behaviour as he has himself admitted 3b m 33(Ga), may have not given him any better and result. It was another matter that the provision does not apply to him as he does not hold a civil post.

8. When a workman has worked under an employer for not less than one year (240 days), provisions of Industrial Disputes Act of 1947 apply to him. The defendants made a payment of Rs. 2053-50 to the plaintiff which he has not drawn. The reason for this payment has not been indicated. The plaintiff was being paid 1/30th scale pay per day. He was a casual Blacksmith. It has not been indicated what this sum indicates. We presume that it covers the compensation and notice pay. The defendants can look into this aspect and make amendments if necessary. The law on this point is very clear and an enlightened and wise employer will not commit an error of violating it. We have no doubt that the defendants have acted in accordance with these provisions.

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9. On the point of the termination order of 8.7.80 saying that the plaintiff's services are terminated w.e.f. 9.7.80 as a disciplinary measure, it is evident that the plaintiff was marked off for discharge on the basis of a differentia having nexus with the object of maintaining discipline, efficiency and peace in the organisation and lack of information in this regard would have made the impugned order violative of articles 14 and 16(i)

of the Constitution resulting in vice of unfair discrimination because as alleged by the plaintiff some of his juniors have been retained by the defendants. No such ground exists now.

10. Under the circumstances, we do not find ourselves convinced that there is any illegality in the learned Munsif's order of 28.1.1985 and that it needs any change. The appeal is accordingly dismissed with no order as to costs.

(S.Zaheer Hasan)
Vice Chairman(J)

(Ajay Johri)
Member (A)

RKM

Dated the 26th Sept.,1986.