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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 946 of 1986 (Civil Appeal No.355 of 1985)
Gyan Singh Applicant

Vs.

Union of India Respondent

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This transferred application is a civil appeal and has been received from the Court of District Judge Kanpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant Gyan Singh (hereinafter referred to as the plaintiff) while working as a Sweeper in the Ordnance Factory Kanpur was placed under suspension vide order dated 24.5.1979 on account of his involvement in a criminal case and he was, thereafter, removed from service vide order dated 30.8.1980 issued by the Deputy Manager of the said Factory without any enquiry. The plaintiff, therefore, challenged the validity of his order of removal from service on the ground that he was acquitted in the criminal case and he should have been taken back on duty like other similarly situated persons. The authority issuing the order of termination was not competent to do it and the plaintiff could not be removed from service without affording him an opportunity of hearing. The suit was contested on behalf of the defendant and it was pleaded in the written statement filed on its behalf that the plaintiff was a temporary employee of the Ordnance Factory and he was removed from service under the provisions of Central Civil Services (Temporary Service) Rules, 1964 (for short Service Rules). The plaintiff was reinstated as a fresh entrant in pursuance of the orders of the Director General of Ordnance Factories (for short DGOF) and he also joined his duty w.e.f. 19.5.1984 and his suit is not maintainable. In the replication the plaintiff pleaded that DGOF being his appointing authority, his services could not be terminated.

by an officer of lower rank. His fresh appointment is not in accordance with law as he has not been granted continuity in service.

3. The learned trial Court dismissed the suit of the plaintiff with the finding that the services of the plaintiff were dispensed with in accordance with the provisions of his Service Rules and it was not done by way of punishment. The order of removal was, thus, upheld.

4. In appeal before us, it has been contended that this Bench in Registration Appeal No. 213 of 1986 (General Manager, Ordnance Equipment Factory, Kanpur Vs. Supriya Roy) has held that before 2.1.1987, the General Manager Ordnance Factory Kanpur was not competent to act as disciplinary authority of class III and IV employees of his Factory and was, thus, not empowered to impose any penalty on them. The plaintiff wants to take advantage of the said finding. In our opinion, the ratio of the case of Supriya Roy (Supra) is not applicable to the case before us. In that case, the services of Supriya Roy were terminated by the General Manager while acting as his disciplinary authority on the basis of a report in the disciplinary proceedings conducted against him and it was held that under the OCS (OCA) Rules, the General Manager could not act as a disciplinary authority. In the instant case, the services of the plaintiff were ^{not} terminated under the provisions of OCS (OCA) Rules by way of punishment but they were terminated in accordance with the provisions of his Service Rules. The plaintiff is, therefore, not entitled to the benefit of the said decision in this case. We, however, find from para 3 of the written statement filed on behalf of the defendant that the appointing authority of the plaintiff was the General Manager while he was removed from service by the Dy. General Manager who was lower in rank than his appointing authority-the General Manager. The order of termination is, thus hit by Art. 311 of the Constitution and cannot be maintained. There is no other point for determination in this appeal.

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5. The appeal is accordingly allowed and the impugned order dated 30.8.1978 passed by the Deputy General Manager Ordnance Factory Kanpur terminating the services of the plaintiff is declared to be void. The parties are directed to bear their own costs.

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MEMBER (A)

Wma

MEMBER (J)

Dated: 30th March, 1988
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