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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No.1295 of 1986

Hazarilal Plaintiff-Applicant.

Versus

Union of India & another Respondents.

Hon'ble S. Zaheer Hasan, V.C.

Hon'ble Ajay Johri, A.M.

(Delivered by Hon. S.Zaheer Hasan, V.C.)

Suit No.768 of 1984 pending in the court of Munsif, Hawali, Varanasi has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant, Hazarilal, was appointed as a Loco Substitute on 9.11.1979. In 1980 he was transferred from Gaya to ^{Now} ~~now~~ Ghalsarai. He was screened in 1981 and his name was put in the seniority list. On 15.11.1984 the services of the applicant was terminated under Rule 149(1) of the Railway Establishment Code, Vol.I giving three months' pay and the retrenchment compensation. The notice is ^{Railway} ~~now~~ illegal, so it was prayed that it may be declared that the termination notice dated 15.11.1984 is illegal and void.

3. The defence is that the applicant was removed from service because he had given false declaration that none of his brothers serve in the Railways except he himself and in that manner he he cheated the Railway Administration and got his appointment so he was removed from service (paragraph 7 of the written statement).

Other pleas or the written statement were not pressed so we are not mentioning the same. The only point argued before us was that it was a termination simpliciter without any stigma, so there is no illegality in the impugned order.

4. In a case reported in A.T.R. 1986(2) S.C. 193 (Jarnail Singh and others v. State of Punjab and others) it was held by the Hon'ble Supreme Court that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. ^{the} ~~to~~ day the attending circumstances as well as the basis of the order that have to be taken into consideration. In such cases the court can lift the veil and ^{the} ~~to~~ see the real circumstances as well as the basis and foundation of the order complained of. The Court will see whether the order was made on the ground of misconduct or not.

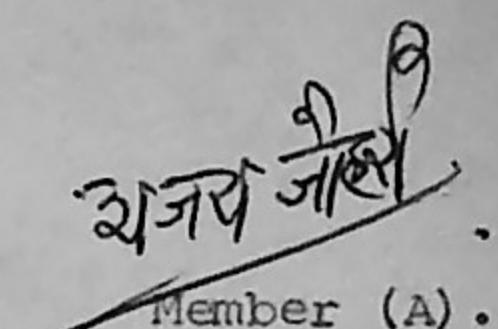
5. In the written statement it is clearly stated that due to dishonest action of the applicant in making a declaration at the time of entry in service his services were terminated and so in view of the facts and attending circumstances we are of opinion that this order of termination has been made by way of punishment on the ground of misconduct, as alleged in written statement and, therefore, it is immaterial that the services were terminated by an order simpliciter without assigning any reason. Since this order was passed by way of punishment so it is clearly illegal

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as no opportunity was given to the applicant to explain the charge. It is an ex parte finding that he gave a wrong declaration and acted in a fraudulent manner.

6. In view of above the impugned order dated 15.11.1984 is set aside with costs on parties. The authorities will be at liberty to proceed against the applicant according to law.


Vice-Chairman.


Member (A).

Dated: August 26, 1987.

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