

23

Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.2 of 1987

(Writ Petition No.6802 of 1985 of the)
(High Court of Judicature at Allahabad)

Raghubir Singh Petitioner

Versus

Union of India & Others Respondents.

Hon. Justice K. Nath, V.C.

Hon. K.J. Raman, Member (A)

(By Hon. Justice K. Nath, V.C.)

The Writ Petition described above is before us under Section 29 of the Administrative Tribunals Act, 1985 for quashing the order dated 3.5.85, Annexure-5 whereby the petitioner's services were terminated.

2. The basic facts are not in dispute. The petitioner was working as an Assistant Station Master when on 19.4.85 a quarrel took place with the Foreman. On 24.4.1985 the petitioner was suspended. On 3.5.85 the suspension order was recalled and the impugned termination order was passed.

3. Among the several grounds taken to challenge the impugned termination order, it is urged that the order is punitive in nature because of the admissions contained in the Counter Affidavit itself. Para 13 of the Counter Affidavit runs as follows :-

" That in reply to para 11 of the petition it is stated that at the time of incident the petitioner was a temporary Railway servant and his behaviour with the Loco Foreman, Tundla was unbecoming of a Railway Servant.

Accordingly, the Railway Administration did

not find the petitioner to be fit for being retained in service. "

Para 21 of the Counter Affidavit is in the following words :-

" That the contents of para 19 of the petition are not admitted. It is further stated that the petitioner's behaviour with the Senior subordinate was most condemnable which necessitated his termination."

4. The background of this stand of the respondents is to be found in para 7 of the petition and its reply in para 9 of the Counter Affidavit. According to para 7 of the petition, the petitioner had visited the office of the Loco Foreman in connection with the coal for domestic use but unfortunately some hot talks were exchanged between the two and in consequence thereof the petitioner was suspended. In para 9 of the Counter Affidavit, it is stated that the petitioner went to Loco Foreman Office in a state of intoxication, misbehaved with the Loco Foreman and used unparliamentary language. He created very ugly situation with ulterior motive to pressurise the Loco Foreman not to take action against petitioner's brother-in-law who is working as clerk in the same office on account of ^{aforesaid} unwarranted acts of the petitioner. The petitioner was put under suspension on 24.4.1985 which was revoked on 3.5.1985. Immediately following the revocation of the suspension order the impugned termination order was passed.

5. The defence is that the petitioner being a temporary railway employee, the Railway Administration was competent to do away his services under Rule 149 of the Railway Establishment Code Volume I with 14 days notice as

9.

stipulated. We are unable to agree.

6. The power of termination under Rule 149 inter alia does not include the power to remove as a disciplinary measure. The Rule clearly says so in so many words. The only question is whether the impugned termination constitutes removal as a disciplinary measure or only in exercise of ^a service condition under Rule 149. It is clear enough that on the incident of 19.4.85 it was considered to be an act of petitioner's gross misbehaviour with his super officer, the petitioner was suspended and it was for this reason that according to para 13 of the Counter Affidavit the Railway Administration did not find the petitioner to be fit for being retained in service. According to para 21 of the Counter Affidavit, the petitioner's misbehaviour with his Senior subordinate was most condemnable which necessitated his termination. There cannot be two opinions about the situation that the order of termination was a result of the alleged gross misbehaviour of the petitioner with his superior officer. The termination therefore was certainly for reasons of ~~the~~ disciplinary ⁷² measure and not in exercise of a condition of service.

7. There is no other reason indicated in the Counter Affidavit for termination of service of the petitioner. It is well settled that where services may be terminated in accordance with the terms and conditions of employment such termination is not punitive and Article 311 (2) of the Constitution of India does not come into play; but in every case the Tribunal has to, what is popularly stated "lift the veil" and find the true ground for termination. Once it is found that the

ground of termination is misconduct, it must be dealt with in accordance with the Rules of the disciplinary enquiry. In this situation, the impugned termination cannot be sustained and must be quashed.

8. The learned counsel for the respondents refers to the case of Ram Singh Varma Vs. Union of India (1990) 1 UPLBEC 8 (Trib) to show that there also the delinquent employee had misbehaved with the Section Officer but the order of termination was upheld by this Tribunal. But on the examination of the decision it is found that the termination order was on the whole based on the ground of unsuitability for the job or unsatisfactory work. The employee had been found to be irregular, unpunctual, and unamenable to discipline showed no improvement despite opportunity. This case does not apply to the present case.

9. We have already mentioned that it is not necessary to examine the other points of challenge raised by the petitioner in this petition. We will only say that the petitioner has also raised a plea of Section 25(F) of the Industrial Disputes Act. We would not like to express any opinion on that point because we think that sufficient material is not before us on either side.

10. The petition is allowed and the impugned order of termination dated 3.5.85, Annexure-5 is

23/5

- 5 -

quashed. The petitioner shall be deemed to have continued in employment and shall be paid his back wages. The respondents shall reinstate him but will also be at liberty to institute proper disciplinary enquiry against the petitioner. Parties shall bear their costs.

[Signature]

Member (A)

[Signature]

Vice Chairman

Dated the 10th July, 1990.

RKM