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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.140 of 1987

Kunj Behari Lawania Applicant

Versus

Union of India & Another Respondents

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. S.Zaheer Hasan, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant Kunj Behari Lawania was appointed as Extra Departmental Branch Post Master on 28.2.1984. On 13.2.1987 his services were terminated under Rule 6 of the E.D.A. Conduct and Service Rules, 1964. The applicant has challenged the legality of this order.

2. In a case reported in 1986 (2) A.T.R. SC.193 Jarnail Singh and Others Versus State of Punjab and Others the following observations were made by the Hon'ble Supreme Court :-

" It thus appears on a consideration of the averments made in the affidavit verified on behalf of the petitioners as well as on behalf of the respondents that the impugned order of termination of service of the petitioners had been made on the ground

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that there were adverse remarks in the service records of the petitioners as well as there were serious allegations of embezzlement of funds against some of the petitioners. It is quite clear that on consideration of all these adverse entries in the service record as well as serious allegations relating to misconduct, the petitioners were not considered fit by the Departmental Selection Committee to recommend the petitioners for regularisation of their services as Surveyors. The impugned orders of termination of services of the petitioners are really ~~order~~ by way of punishment and they are not termination simpliciter according to terms of the appointment without any stigma as wrongly stated....."

3. It was further observed ^{that} when the order of termination is challenged as casting stigma on the service career, the Court can "lift the veil" in order to find out the real basis of the impugned order even though on the face of it the order in question appears to be innocuous. Mere form of order is not sufficient to hold that the order of termination was innocuous and the order is merely a termination simpliciter. It is the substance of the order that is to say the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when the allegation is made by the employee assailing the order of termination as is based on misconduct, though couched in innocuous terms, it is the incumbent on the court to lift the veil

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and to see the real circumstances as well as the basis and foundation of the order complained of. The Court will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not.

4. Rule 6 lays down that the services of the employee who has not already rendered more than three years continuous service shall be liable to termination at any time without notice. The applicant has not completed three years and his services could be terminated under Section 6. So we have to simply see whether the allegations of corruption etc. are the very foundation of the impugned order and the same was passed by way of punishment. A number of complaints were received against the applicant regarding certain bunglings. It was alleged that he paid a money order of Rs.1000/- to a wrong person. The next charge is that he received Rs. 100/- but he deposited only Rs.10/- in the Account and misappropriated Rs. 90/-. The charges were of serious nature (embezzlement and misappropriation etc). So far as the charge of misappropriation of Rs.90/- is concerned it is serious one. The complainant is said to have deposited Rs.100/- was examined behind the back of the applicant. On page 11 of the Counter Affidavit it has been stated that the applicant misappropriated Rs.90/-. On page 12 it is alleged that he committed such a misconduct that he was not entitled to be retained in the Department. It is further alleged in the Counter Affidavit that there

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were several complaints published in Daily Newspaper against the applicant. It was further alleged that the applicant delivered the money order of Rs. 1000/- to a wrong person with a bad intention and ~~and~~ misappropriated Rs. 90/- and deposited only Rs. 10/- in the Account. It was also alleged in the Counter Affidavit that there were lot of complaints published in the Daily Newspaper, ^{So} the applicant did not deserve further retention in the Department. So the person who commits such misconducts ^{two instances cited above} is not entitled to be retained in service. The Counter Affidavit and the attending circumstances referred to above clearly show that the aforesaid misconduct was the very foundation of the impugned order which was passed by way of punishment and it is immaterial that the impugned order is an order of termination simpliciter. There were several complaints. The complainant who claims to have deposited Rs. 100/- out of which Rs. 90/- misappropriated was examined behind the back of the applicant. No explanation was called from the applicant. ^{on this count} No charges were framed as already stated. The misconduct was the very foundation of the order which was passed by way of punishment. So the impugned order dated 13.2.1987 is quashed with costs on parties. The authorities will be at liberty to proceed against the applicant according to law.

[Signature]
Vice Chairman

[Signature]
Member (A)

Dated the 31 Aug., 1987

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