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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 18/10 day of ~~September~~, 1997

Original Application No. 1711 of 1992

District : Moradabad

CORAM :-

Hon'ble Mr. Justice B.C. Saksena, V.C.

Hon'ble Mr. S. Das Gupta, A.M.

Dinesh Kumar Sharma
R/o Mohalla Bangal Gaon,
Moradabad.

(BY Sri Anupam Shukla, Advocate)

. Applicant

Versus

1. Union of India
through its Senior Superintendent of Post Offices,
Moradabad.
2. The Senior Post Master,
Head Post Office, Moradabad.
3. The Post Master General,
Bareilly.

(By K.M. Sadhna Srivastava, Advocate)

. Respondents

ORDER

Hon'ble Mr. S. Das Gupta, A.M.

Through this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged an order dated 31-8-1989 passed by respondent no. 2 terminating the services of the applicant. He has sought quashing of the aforesaid order and a direction to the respondents to reinstate him on the post of Chowkidar in Head Post Office Moradabad and also to pay him arrears of salary.

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2. The admitted position in this case is that the applicant had been initially appointed as a contingent Chowkidar on 21-2-1980. By an order dated 1-1-1992 he was conferred temporary status retrospectively w.e.f 29-11-189. During 1990-91, his services were also ordered to be utilised as a caretaker of the Inspection Quarters at Moradabad. The applicant was served with a memo dated 13-6-1992 issued by respondent no. 2 in which it was alleged that the applicant had collected room rents from a number of officers, who had stayed in the Inspection Quarters at Moradabad, but did not deposit the same on the days such amounts were received. The applicant was directed to submit his reply, if any, to the show cause notice. The applicant submitted reply through his letter dated 17-7-1992 and thereafter the impugned order was passed by respondent no. 2 removing the applicant from service.

3. The ground taken by the applicant in challenging the impugned order is that the said order casts a stigma on the applicant and visits the applicant with civil consequences and yet such order was passed without holding an inquiry and disciplinary proceeding which required initiation of proceedings by framing charges, appointing Inquiry Officer and Presenting Officer and also allowing the applicant to engage a defence assistant. The applicant has pleaded that these were obligatory on the parts of respondents since the applicant had been conferred temporary status.

4. The plea taken by the respondents in the counter

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affidavit is that even though the applicant was conferred temporary status, the applicant did not have status of departmental group 'D' employee and, therefore, the provisions of CCS (CCA) Rules, 1965, were not applicable to him. Moreover, as the applicant was not an Extra Departmental Agent, Rule 8 of the EDA (Conduct and Service) Rules, 1964, would also not be applicable to him. It is stated that the respondents had given the applicant full opportunity by serving him with a show cause notice and after considering his reply dated 17-7-1992, the decision to remove him from service was taken by the appointing authority. The respondents have also brought out that the applicant had admitted his guilt vide his written statement dated 1-12-1991, a copy of which has been annexed as Annexure CA-1.

5. During the course of argument, the only point urged by the learned counsel for the applicant was that the applicant was not given adequate opportunity to defend himself as no inquiry was held into the charges against the applicant. He urged that the respondents ought to have recorded evidence of witnesses and allowed the applicant to cross-examine such witnesses and thereafter the finding in respect of the charges should have been recorded. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of Dr. MN Dasamma Vs. State Andhra Pradesh, A.I.R. 1973 S.C. 2275. The learned counsel for the respondents on the other hand took the plea that the applicant, not being departmental

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group 'D' employee, nor an Extra Departmental Agent, it was not necessary to initiate proceedings against him either in accordance with the CCS(CCA) Rules or Rule 8 of the EDA (Conduct and Service) Rules.

6. We have perused the pleadings on record carefully. The only issue which is required to be adjudicated by us is whether in the facts and circumstances of the case, the applicant was given sufficient opportunity before he was removed from service.

7. There is no denial of the fact that the applicant, who was ^a full-time contingency-paid chowkidar was granted temporary status. Such temporary status was conferred in pursuance ~~of~~ a scheme which was formulated by the department in compliance with a direction in this regard given by the Hon'ble Supreme Court. The outline of the scheme is contained in the letter dated 12-4-1991 issued by the Department of Post. A copy of this order has been placed by the applicant at Annexure-A-3. This order sets out various entitlements and privileges that would accrue to a casual worker who is conferred with temporary status. This order, inter alia, provides that if such a casual worker with temporary status commits a misconduct and the same is proved in an inquiry, after giving him reasonable opportunity, his services ~~are~~ may be dispensed with. This order, therefore, presupposes that if the services of a casual worker with temporary status ~~are~~ to be dispensed with, there has to be an inquiry to prove the alleged misconduct after giving him reasonable opportunity.

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8. It is clear from the show cause notice issued to the applicant that the applicant was alleged to have committed a ^{grave} misconduct. It is also clear that the respondents wanted to dispense with his services on the basis of such allegations. It was, therefore, very necessary that an inquiry was held into the charges against the applicant in which evidence appearing against the applicant, whether documentary or otherwise, should have been recorded and the applicant was to be given an opportunity to test the veracity of the evidence by cross-examining the witnesses appearing in the inquiry. It is immaterial whether the provisions of the CCS(CCA) Rules were applicable to the applicant or not. What is material is that an inquiry should have been made into the specific charges against the applicant in which the applicant should have been given adequate opportunity to defend himself. This not having been done, the action taken by the respondents in removing him from service, would appear to be highhanded and arbitrary.

9. We have gone through the decision of the Hon'ble Supreme Court in the case of Dr. MN Dasamma. The decision in this case, does not appear to have any application to the present controversy since it involves interpretation of certain provisions of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act defining the aspects of an enquiry. We, therefore, see no need to discuss this decision in detail.

10. We have also given our anxious consideration

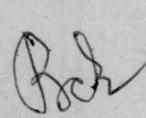
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to the arguments advanced by the learned counsel for the respondents that no inquiry was necessary in this case in view of the admission of guilty by the applicant in the written statement dated 1-12-1991. We are, however, unable to accept her argument in view of the fact that much after this statement was submitted, the show cause notice was served on the applicant asking him to submit the representation and the representation, which he submitted on 17-7-1992 did not contain an admission of the charge as levelled though the applicant had stated that he might have committed an error being unaware of the rules and regulations regarding deposit of the ~~amount~~ amounts collected from the officers. Since the charge was a grave one, as the respondents have asserted, ^{themselves} it was necessary that an inquiry was held into the charge. Admittedly, no such inquiry was held.

11. In view of the foregoing, this application succeeds. The order dated 31-8-1992 is quashed. The applicant shall be reinstated in service forthwith. The respondents, however, shall be at liberty to initiate proceedings against the applicant in the light of the observations made in the preceding paragraphs and to take further action in accordance with law. Keeping in view the facts and circumstances of the case, we are not inclined to ^{order} payment of backwages to the applicant.
12. The parties shall bear their own costs.

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Member (A)


Vice Chairman