

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabd : Dated this 25th day of May, 2001.

Original Application No. 1223 of 1993.

CORAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.O.

Hon'ble Maj. Gen. KK Srivastava, A.M.

Jata Shankar Pandey
Son of Sri Ram Narain Pandey,
Resident of Village Faridpur
PO-Sarnath District Varanasi.

(Sri AP Srivastava, Advocate)

..... Applicant

Versus

1. Union of India, through
Central Intelligence Bureau
(Ministry of Home Affairs) Government of India
through its Director, New Delhi.
2. The Joint Director Central Intelligence Bureau,
Mal Road, Lucknow.
3. Central Intelligence Officer,
D-59/73/H-1, Mahmoorganj, Varanasi U.P.
4. Deputy Central Intelligence Officer,
D.R.T.C. Madhya Pradesh.

(Sri Ashok Mohiley, Advocate)

..... Respondents

O R D E R (oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.O.

This application under Section 19 of the Administrative Tribunal Act, 1985 has been filed challenging the order dated 20-8-1991 by which the applicant was terminated from the service of Security Assistant under Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

2. Learned counsel for the applicant has submitted that from perusal of the material filed by the applicant and from



the allegation made in the counter affidavit, it is clear that the facts mentioned therein were foundation for passing the order and not motive and the order has been passed without holding any enquiry which is liable to be set aside being in violation of Article 311(2) of the Constitution of India. The second submission of the counsel for the applicant is that if the respondents had noticed misconduct as stated in the counter affidavit, they ought to have held enquiry against the applicant and the order impugned in this OA is not an order of termination simplicitor but it amounts to be an order of punishment. Learned counsel for the applicant has also submitted that the order has been passed without giving any opportunity of hearing to the applicant. Hence, the order is void being violative of the principles of natural justice. Learned counsel for the applicant has placed reliance on the judgement of Hon'ble Supreme Court in the case of Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others, (1999) 3 SCC 60.

3. Sri Ashok Mohiley, learned counsel for the respondents on the other hand submitted that the services rendered by the applicant were wholly dis-satisfactory. He misconducted himself and there were occasions which have been narrated in the counter affidavit. If employer decided not to hold any enquiry it only amounted to motive and cannot be made basis for holding enquiry.

4. We have carefully considered the submissions of the counsel for the parties. It cannot be disputed that the applicant was serving in a very sensitive department. We have perused Annexures-1 and 2 filed alongwith the counter affidavit. The applicant was reminded of the fact that he was habitual of leaving office before time. On another occasion he was served with a memo which was about the loss of Register of the Office during his duty.

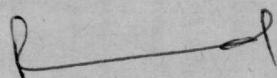


The petitioner was sent for orientation course. There also on account of applicant, trouble was created and he was sent back before completing the course. From all these materials particularly the facts stated in paragraph nos. 12 and 13 of the counter affidavit, learned counsel for the applicant has tried to impress that the allegations were foundation for passing the order. The order is liable to be set aside. The Hon'ble Supreme Court in the case of Dipti Prakash Banerjee (Supra) in para 29^o of the judgement laid down the test for determining where the misconduct will amount to motive and in which case it will amount to foundation for passing the order. Para 21 of the aforesaid judgement reads as follow:-

"If the findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry, but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

5. In the present case it is true that there are certain allegations against the applicant but the employer without entering into any enquiry into allegations passed the order of termination, they can be only termed as motive for the order and the order cannot be held to be illegal.

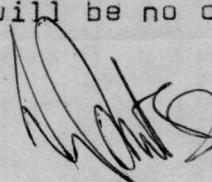
6. Sri AP Srivastava, learned counsel for the applicant also placed reliance in case of BP Ahuja Vs. 2000 (3) SCC 239. On the basis of the judgement referred



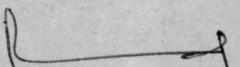
above learned counsel for the applicant has submitted that irrespective of the fact whether the allegations were motive or foundation for passing the order, opportunity of hearing ought to have been given to the applicant. It has also been submitted that invoking of the provisions of Rules of 1965 is only camouflage and the order is punitive.

7. We have carefully considered the submissions of the counsel for the applicant. However, we do not agree with the submissions made by Sri AP Srivastava, learned counsel for the applicant. In case of Ahuja the contents of the order contained stigma and punitive allegations. In the fact of the said case as the order of termination on the face of it was punitive, the Hon'ble Court held that the allegations may be motive or foundation, opportunity of hearing ought to have been given, looking to the order itself. In the present case, we do not find anything in the impugned order dated 20-8-1991 on which basis it may be stated that the order is punitive or stigmatic. The order is simplicitor and in our opinion it does not suffer from any error of law.

8. For the reasons stated above, we do not find any merit in this application and the OA is accordingly rejected. However, there will be no order as to costs.



Member (A)



Vice Chairman

Dube/