

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 26th DAY OF Nov, 2010)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No.230 of 2002
(U/S 19, Administrative Tribunal Act, 1985)

Alok Saxena S/o Sri Ram Swaroop Saxena R/o H. No.628 Mohalla
Gadhiwan, District-Mainpur.

..... Applicant

Present for Applicant : Shri K.B. Dixit,, Advocate

Versus

1. The Union of India, through the Secretary Ministry of communication Department New Delhi.
2. Superintendent of Post Office Mainpuri Division Mainpuri.
3. Assistant Superintendent of Post Offices, West Sub. Division Mainpur.

..... Respondents

Present for Respondents : Shri R.D. Tiwari, Advocate
Shri Himanshu singh, Advocate

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

1. **Brief facts of the case**

(i) For the purpose of EDDA at Branch Post Office Auden Mandan, District Mainpuri, applications were invited by respondent no.3. The applicant was one of the aspirants to the said post, and he has at his credit qualification as M.A (Master of Arts) and according to him, he fulfilled all the requirement qualifications. He was issued appointment order

on 08.03.2001 vide Annexure A-2. The applicant accordingly, joined the post on 19.03.2001 vide Annexure A-3.

(ii) The applicant was served with a Notice dated 19.12.2001 under Rule 8 of GDS (Conduct and Employment) Rules, 2001 and his services were terminated from the said date. According to him, there has been no reason assigned for such drastic steps taken by the Department nor was any opportunity offered to the applicant to disprove any allegations against him. The applicant has challenged the order of termination on various grounds as contained in Paragraph No.5 of the Original Application.

2. Respondents have contested the Original Application. According to them, the mark sheet of 'Prathama of Hindi Sahitya Sammelan Prayag' submitted by the applicant was found to be forged, consequent which, his services were to be terminated. It is also indicated that the post should be reserved for S.T. Candidate and the applicant belongs to general category. Of course, when it was so notified no S.T. Candidate was available and the post was kept de-reserved. The appointment of the applicant was on account of the fact that he has secured 78% and thus he was No.1 in the merit list. However, subsequently when an inquiry was conducted to verify the genuineness of the mark sheet from the 'Bihar Hindi Vidya, Mandir, Sarugan, Mainpuri, it came to the light that the certificate was not a genuine one. Thereafter, the verification for the mark sheet was sent to 'Prathama of Hindi Sahitya Sammelan Prayag' which had informed that in the Prathma Examination on 1988, the name of the applicant was not found against the Roll

No.4193. As such by tendering the monthly emolument of Rs.2550 in lieu of notice through money order, the applicant's services were terminated. In his place one Shri Chand Pratap Singh has been now functioning.

3. The applicant has filed Rejoinder Affidavit, which was taken on record. He maintains that the mark sheet was given to the applicant by an Institution called Shri Bihari Hindi Vidya Mandir, Gadhiwan, Mainpuri. The applicant did appear in the examination in 1988. Without giving any opportunity to submit his version, the authority has concluded that certificate is forged one and the services of the applicant have been illegally terminated.

4. Counsel for the applicant as well as respondents submitted that they have nothing else to say more than what has been stated in the pleadings.

5. We have given out anxious consideration to the case. Two aspects are to be considered in this matter. Whether termination under Rule 8 could be applied to this case and if not whether the principles of natural justice have been violated as the termination is based on the alleged fact that the applicant had secured the job by submitting a forged certificate. Provision does exist for termination of service under Rule 8 of the GDS (Conduct and Employment) Rules 2001. The said Rule reads as under:-

8. *Termination of Employment*

- (1) *The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak;*
- (2) *The period of such notice shall be one month:*

Provided that the employment of any Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic time Related Continuity Allowances plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment, or, as the case may be, for the period by which such notice falls short of one month.

6. The impugned order reads as under:-

DEPARTMENT OF POSTS

O/O the Asstt. Supdt. of post Offices (West) Sub Dn. Mainpuri. Memo No.B/GDS-81/Auden Madan/01-02 dated at MPI. the 19.12.01.

In pursuance of provision contained in Rule-8 of G.D.S. (Conduct and Employment) Ruled-2001, I Babu Lal, ASPOs (West) Sub. Dn. Mainpuri hereby terminate the service of shri Alok Saxena GDS (MD) Auden Mandan with immediate effect.

As the termination has to take effect immediately, one month, time related continuity allowance plus Dearness allowance as admissible is being remitted to said Shri Alok Saxena in lieu of period of notice of One Month through service money order.

7. The above order does not cast any stigma or aspersion against the applicant. But at the same time, the fundamental reason for the termination of the applicant's services is that he had produced a false or fabricated educational certificate, which information had

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been gathered by the authorities, but the applicant had not been provided with any opportunity to vindicate his stand. The question then is whether this action on the part of the respondents is right and is sustainable in law.

8. A look at the decisions of the Apex Court in this regard would be of immense use at this juncture. The CCS (Temporary Services) Rules provides for termination with notice of one month or one month's emoluments in lieu of notice in respect of temporary government servants. The Apex Court has in the case of *S. Sial v. State of U.P., (1975) 3 SCC 111*, had occasion to deal with such a situation in respect of temporary government servants. The Court has held as under:-

9. Officiating and temporary government servants are also entitled to the protection of Article 311 as permanent government servants if the Government takes action against them by meting out one of the punishments i.e. dismissal, removal or reduction in rank [see Parshotam Lal Dhingra v. Union of India, Champaklal Chimanlal Shah v. Union of India and Appar Apar Singh v. State of Punjab.

10. The test for attracting Article 311(2) of the Constitution is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee. The form of the order, however, is not conclusive of its true nature. The entirety of circumstances preceding or attendant on the impugned order must be examined by the Court and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order (see State of Bihar v. Shiva Bhikshuk Mishra) (emphasis supplied)

11. In the case of State of Punjab v. Shri Sukh Raj Bahadur this Court enunciated the following propositions which have to be borne in mind: (at p. 244).

"1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything

more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

4. An order of termination of service in unexceptionable form preceded by an inquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said Article."

9. In an earlier decision in the case of *Union of India v. R.S.*

Dhaba, (1969) 3 SCC 603, the Apex Court has held as under:-

"....even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the express or implied terms of the contract of employment or under the statutory rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant. The test for attracting Article 311(2) of the Constitution in such a case is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee (see the decision of this Court in *Chamapaklal Chimanlal Shah v. Union of India*).

In the above case of *Dhaba*, the order of reversion does not contain any express words of stigma attributed to the conduct of the respondent and, therefore, it cannot be held that the order of reversion was made by way of punishment and the provisions of Article 311 of the Constitution are consequently attracted.

In *State of Bombay v. F.A. Abraham* (1962) 2 Supp SCR 92, in which the respondent who held the substantive post of Inspector of Police and had been officiating as the Deputy Superintendent of Police was reverted to his original rank of

Inspector without being given any opportunity of being heard in respect of the reversion. His request to furnish him with reasons of his reversion was refused. Later a departmental enquiry was held behind his back in respect of certain allegations of misconduct made against him in a confidential communication from the District Superintendent of Police to the Deputy Inspector General of Police but these allegations were not proved at the enquiry. The Inspector General of Police thereafter wrote to the Government that the respondent's previous record was not satisfactory and that they had been promoted to officiate as Deputy Superintendent of Police in the expectation that he would turn a new leaf but the complaint made in the confidential memorandum was a clear proof that the respondent was habitually dishonest and did not deserve promotion. As the order of reversion was maintained by the Government, the respondent filed a suit challenging the order. The suit was decreed by the Court of first instance and the decree was affirmed by the High Court on appeal. On further appeal to the Apex Court it was held that the reversion of the respondent on the ground of unsuitability was an action in accordance with the terms on which the officiating post was being held and was not a reduction in rank by way of punishment to which Section 240 of the Government of India Act, 1935 would be attracted. The appeal of the Government was allowed and the suit of the respondent dismissed.

10. In one of the comparatively latest cases, **Kendriya Vidyalaya Sangathan v. Arunkumar Madhavrao Sinddhaye**, (2007) 1 SCC 283, an identical question arose.

The Apex court has held in that case as under:-

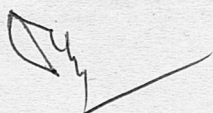
11. *The question which arises for consideration is, whether the order of termination of services of the respondent had been passed by way of punishment or it had been passed in accordance with the conditions mentioned in the appointment order by which the respondent had been appointed on a temporary post of Physical Education teacher. If it is found that the termination of services was by way of punishment, another question may arise whether a formal departmental enquiry was held prior to the passing of termination order and whether the respondent was given adequate opportunity to defend himself in the said enquiry. It will be seen that the complaint made by Capt. V.K. Balasubramanyam about forcing his son Master V.K. Srinivasalu to do six rounds (4 km) around the school when he ²⁹⁰ was having chest pain and was unwell and further forcing him to do PT and other exercises in spite of the advice of the doctor and also giving him beating was forwarded by the Principal to the regional office of the Kendriya Vidyalaya Sangathan, Bombay. The Assistant Commissioner of the*

Kendriya Vidyalaya Sangathan asked the Principal to submit a report along with original statements of the students, who had been subjected to beating by the respondent. The Principal was not an eyewitness to the incident relating to Master V.K. Srinivasalu and also of the corporal punishment which was awarded by the respondent to the other students. Therefore, in order to ascertain the complete facts it was necessary to make enquiry from the students concerned. If in the course of this enquiry the respondent was allowed to participate and some queries were made from the students, it would not mean that the enquiry so conducted assumed the shape of a formal departmental enquiry. No articles of charges were served upon the respondent nor were the students asked to depose on oath. The High Court has misread the evidence on record in observing that articles of charges were served upon the respondent. The limited purpose of the enquiry was to ascertain the relevant facts so that a correct report could be sent to the Kendriya Vidyalaya Sangathan. The enquiry held can under no circumstances be held to be a formal departmental enquiry where the non-observance of the prescribed rules of procedure or a violation of principle of natural justice could have the result of vitiating the whole enquiry. There cannot be even a slightest doubt that the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bombay Region, terminated the services of the respondent in accordance with the terms and conditions mentioned in his appointment order which expressly conferred power upon the appointing authority to terminate the respondent's services by one month's notice without assigning any reasons. The services of the respondent were, therefore, not terminated by way of punishment.

12. A similar question was considered in considerable detail in *State of Maharashtra v. Veerappa R. Saboji* and it was observed as under:

"Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether it casts any stigma on the government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the government servant who challenges such an order."

11. In view of the above, the OA lacks merit and is therefore, dismissed. No costs.



(D.C. Lakha)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil