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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 153 OF 1986
~~Exxxxxx~~

DATE OF DECISION 27-4-1989.

SHRI R.R. PATHAK Petitioner

MR. R.K. MISHRA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr. P.S. CHAUDHURI, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

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Shri R.R. Pathak,
Residing at C/o.Parasnath Dubey,
Room No. 9,
U.P. Estate,
Chamundanagar, Ahmedabad. ..... Petitioner.

(Mr. R.K. Mishra, Advocate)

Versus.

1. Station Director,
Doordarshan Kendra,
Ahmedabad.

2. Union of India,
(Copy to be served through
The Secretary,
Ministry of Information &
Broadcasting) New Delhi. ..... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A. No. 153 OF 1986

Date: 27-4-1989

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri R.R.Pathak of Ahmedabad, has filed this application on 22.7.1986, under section 19 of the Administrative Tribunals Act, 1985. While he was serving as Security Guard, T.V. Transmitter Pij-Doordarshan Kendra, Ahmedabad, his services were terminated vide order No.AHD/DD.1(2)/86-S/2029, dated 28th February 1986. He has challenged the validity of the order passed by the Station Director, "Doordarshan Kendra", Ahmedabad, which reads as under :-

ORDER

"In pursuance of the proviso the sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rule, 1965, I,J.B.Desai, Station Director, Doordarshan Kendra,Ahmedabad hereby terminates forthwith i.e. from 28-2-86 (A.N.), the services of Shri R.R.Pathak, Security Guard, T.V. Transmitter Pij-Doordarshan Kendra, Ahmedabad and direct that he shall be entitled to claim a sum equivalent to the

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amount of pay plus allowances from the period of notice at the same rate at which he was drawing them immediately before the termination of his service, or, as the case, may be, for the period by which such notice falls short of one month. "

2. According to the case set up by the petitioner, he was initially appointed as Security Guard after an interview on adhoc basis vide order dated 6th July 1984, (Annexure-B). But later on, he was appointed on probation, as Security Guard for a period of two years with effect from 2.3.1985, vide order dated 28th March, 1985 (Annexure-E). It is alleged that his services has been terminated not on the ground on unsatisfactory one but applying absolutely wrong criteria and invoking the rules which has no application. It was further submitted that one Mr. Prabhusing Prahaladsingh Rajput, who was also appointed on the same day, and who is similarly situated has been retained and as such the action of the respondents is violative of Articles 14 & 16 and 311 of the Constitution of India, and also offending the provisions of Section 25(f) of the Industrial Disputes Act, 1947. The petitioner therefore, prayed that the impugned order be quashed and set aside and the respondents be directed to reinstate the petitioner with full back wages and with continuity of services with all other benefits.

3. The respondents in their counter denied the petitioner's assertions and allegations made against them. According to them the petitioner was on probation for two years from 2.3.1985 and his services are terminated on the grounds of unsuitability which do not amount to stigma and as such, the provisions of Article 311 are not

attracted. It was further submitted that opponents are not "industry" within the Industrial Disputes Act and hence the question of following the procedures prescribed under section 25 F of the Industrial Disputes Act, is not called for.

4. When the matter came up for hearing we have heard Mr. R.K.Mishra and Mr. J.D. Ajmera, the learned counsel for the petitioner and the respondents respectively. We have also perused and considered the materials including the rejoinder and further reply filed on behalf of the opponents.

5. During the course of his arguments Mr. R.K. Mishra assailed the impugned order on the grounds inter-alia that the petitioner was a selected candidate and placed under probation after regularisation and thus Rule 5 of the C.C.S. (Temporary Service) Rules, 1965, does not apply in the case of the petitioner and even otherwise the impugned order being penal in nature, it is violative of the Article 311 of the Constitution and also the provisions contained under section 25 F of the Industrial Disputes Act. In support of his contentions, he relied on the cases namely: (1) Anoop Jaiswal V/s. Union of India, A.I.R. 1984, S.C. 636, (2) Samsher Singh V/s. State of Punjab & Anrs., A.I.R. 1974 S.C. 2192, and (3) Management of Karnataka, State Road Transport, Bangalore V/s. M.Boraiyah, A.I.R. 1983, S.C. 1230. As against this Mr. J.D. Ajmera, relying on the case of Champaklal Chimanlal Shah V/s. The Union of India, A.I.R. 1964, S.C. 1854 and the State of U.P. V/s. Ram Chandra Trivedi, A.I.R. 1976 S.C. 2547,.

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strenuously urged that Rule 5 of C.C.S. (Temporary Service) are applicable in the case of the petitioner and the Government is competent to terminate the services of Temporary servant because of his unsatisfactory work and the action can not be said to be discriminatory because his junior was retained in the service. According to him, the impugned order is ex-facie, order of termination of service simpliciter and it does not cause any stigma on the petitioner nor does it visit him with any evil consequences nor is it founded on misconduct. He has also relied on the judgment dated 26.11.1987 rendered by this Bench of Tribunal in O.A.589/87 (Shri D.M.Bhatt V/s. Director Doordarshan Kendra & Ors.).

6. At the outset it may be stated that during the course of arguments Mr. R.K. Mishra was told that the petitioner was at liberty to exhaust the remedy by approaching to the Industrial Tribunal or Labour Court to enable the petitioner to get redressal his grievance under the Industrial Disputes Act. However, Mr. R.K.Mishra, in view of our aforesaid judgment declared that he restricts his arguments assailing the impugned order on the grounds other than Section 25 of the Industrial Disputes Act.

7. Before adverting to the rival contentions canvassed by the learned counsel for the parties, it may be stated that the law on the point is now well settled that if the servant is appointed to officiate in a permanent post or to hold a temporary post, other than for a fixed term substantially on probation or on an officiating post, under the General Law, the implied term of his

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employment is that his services may be terminated on reasonable notice and the termination of the service of such a servant will not per se amount to dismissal, removal or reduction of service. It is true, temporary servants are also entitled to the protection of Article 311(2) in the same manner as permanent government servant, if the Government takes action against them by meeting out one of the three punishments i.e., dismissal, removal or reduction in rank. But this protection is only available where discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. It is equally true that the mere use of expressions like "terminate" or "discharge" is not conclusive and inspite of the use of such innocuous expressions the Court has to apply the two tests mentioned viz; (i) whether the servant had a right to the post or the rank or (ii) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the servant had been punished.

8. Now, admittedly in the instant case, the petitioner was on probation for 2 years w.e.f. 2.3.1985 and he had not completed his period of probation when the order of termination dated 28.2.1986 was passed against him. Accordingly, the petitioner had no right to the post or rank and accordingly first requirement is not satisfied. With regard to the second requirement, it was contended by the petitioner that the respondents have not assigned any reasons for terminating his services and attendant circumstances warrant the inference that the misconduct was the foundation for

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termination and that being so the petitioner was visited with the evil consequences and as such, the action was violative of the Article 311 of the Constitution. In this regard, reliance was sought on the Memo No. DKF/11(3)/RRP/SG/85/367 dated 21st June, 1985 issued by the Station Engineer which reads as under :-

M E M O

"Shri R.R.Pathak, Security Guard was absent from duties for 29 days from 21st April to 19th May,85 without sanction of any leave or permission. On the evening of 20th April, 85, whom he insisted on preceeding on leave irrespective of sanction, he was clearly warned that if he were to do so, he will expose himself to disciplinary action.

Further Shri Pathak had left the head quarters during the above period without permission from the competent authority.

Shri Pathak, may explain why his above absence should not be treated as 'wilful unauthorised absence' resulting in loss of pay and allowance and break in service under FR 17(1) and disciplinary action taken against him.

This reply should reach the undersigned within 72 hrs. of receipt of this memo.

STATION ENGINEER "

9. The stand of the respondents is that in view of the records appearing at page 40 to 49 (of P.B.), filed along with the further reply, the competent authority found that the petitioner was not suitable and his work was not satisfactory and therefore, his discharge from the service is simpliciter. The respondents in para 3 and 4 of their further reply have indicated the facts leading to their decision regarding unsuitability of the petitioner.

10. It is true the petitioner, under memo dated 21st June, 1985, was called up on to explain why his absence should not be treated as 'wilful unauthorised

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absence', to which the petitioner had submitted his reply. It is significant to note that it is not this single act which has resulted in termination of the services of the petitioner. Even after the reply received from the petitioner, he was retained and no formal departmental enquiry as contemplated under Article 311(2) read with the relevant Central Services Rules, was ever held after the memorandum. As held in the case of Champaklal Chimanlal Shah V/s. The Union of India (supra), the mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific service Rule (e.g. R.5 in this case) would not mean that the termination of service amounted to infliction of punishment of dismissal or removal within the meaning of Article 311(2). It can not be said that once government issues a memorandum, but later decides not to hold a departmental enquiry for taking punitive action, it can never thereafter proceed to take action against a temporary Government servant in the terms of Rule 5 even though it is satisfied otherwise that his conduct and work are unsatisfactory.

11. It was contended by the petitioner that when his services were regularised and appointed on probation for a period of 2 years w.e.f. 2.3.1985, his services can not be terminated under Rule 5 of the C.C.S.(T.S.) Rules, 1965. It is pertinent to note that the appointment either on probation or on officiating basis, is from the very nature of such employment itself of a very transitory character and in the absence of any special contract or specific

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rule regulating the conditions of service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time - (State of Assam V/s. Biraja Mohan Deb, (1969) II S.C.W.R. 583(S.C.). It is borne out that the Central Civil Services (Temporary Service) Rules, 1965, - apply to all persons :-

(i) who hold a civil post including all civilians paid from the Defence Services Estimates under the Government of India and who are under the rule-making control of the President, but who do not hold a lien or a suspend lien on any post under the Government of India or any State Government.

(ii) who are employed temporarily in work-charged establishments and who have opted for pensionary benefits.

Thus the contentions of the petitioner that his services are not covered under Rule 5 of the C.C.S.(T.S.) Rules, 1965, and that the impugned order is bad, as no reasons are assigned therein, are devoid of merits whatsoever. The Government can terminate the service of a temporary servant by giving him one month's notice without assigning any reasons (see Jagdish Chand Pant V/s. State of U.P., 1973 S.L.J. 451: 1974(2) S.L.R. 208). We therefore, do not accept the contentions of the counsel of the petitioner that the impugned order is penal in nature or visits him with any stigma.

12. In this view of the matter, it can not be said that the order by which the petitioner's services were terminated under Rule 5 was an order inflicting the punishment of dismissal or removal of which Article 311 applied. In our opinion the petitioner was not entitled for

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protection of Article 311 (2). In the circumstances, we therefore, hold that the impugned order passed under Rule 5 of the C.C.S.(T.S.) Rules, 1965 was quite legal and valid. The application therefore, fails and is dismissed. In the circumstances we pass no order as to costs.

(P.S. CHAUDHURI)
ADMINISTRATIVE MEMBER.

(P.M. JOSHI)
JUDICIAL MEMBER.