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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 156 OF 1986
~~30X100~~

DATE OF DECISION 26-11-1986

YOGESHKUMAR RASIKLAL VERMA Petitioner

N.J. MEHTA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

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

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI, JUDICIAL 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 ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

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JUDGMENT

Date: 26.11.1986

O.A.No. 156 OF 1986

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

The petitioner Shri Y.R. Varma, who was serving as a Lineman in the Office of the Assistant Garrison Engineer, Sub-Division Gandhinagar has challenged the order dated 25th April, 1984 (Annexure 'A'); whereby he is removed from the service. The petitioner was informed about the said order by the Garrison Engineer, Mr. Rabindersing, under his letter dated 27th April, 1984 informing him that he was removed from service with effect from 28th April, 1984 (A.N.). The impugned order reads as under :

*1. Reference GE Gandhinagar letter Nos.

- (a) 130/175/EIC dated 13 Jul 83.
- (b) 100-C-38/EM dated 24 Aug 83.
- (c) 100-C/42/EM dated 05 Oct 83.
- (d) 130/141/EIC dated 14 Oct 83.
- (e) 130/151/EIC dated 19 Nov 83.

2. On a careful consideration of above quoted letters, the undersigned has finally come to the conclusion that the charges of continued absence from duty without permission against MES-117044 Shri Yogeshkumar Rasiklal Verma, Lineman Ty (on prob) stands proved and I therefore find him guilty of misconduct prejudicial to good order and discipline. He is not fit person to be retained in service and so the undersigned impose on him the penalty of "REMOVAL FROM SERVICE" which shall not be a disqualification for future employment under the Government. This will have effect from the date of service on the individual, failing which the date of issue."

2. It is prayed by the petitioner that the impugned order be quashed and set aside, as he has been removed from the service without following the procedure prescribed under Rules and without following elementary principles of natural justice. According to him, the impugned order of removal from service is a penalty

and no order of penalty, much less than the order of penalty of economic dealth can be passed by an employer without affording reasonable opportunity of being heard to the employee concerned. The respondents have opposed the application. Major J.D'Souza (Respondent No.4) and the Lt. Col. Sarjit Sainik (Respondent No. 3) in their affidavit-in-reply have submitted that the petitioner being a probationer, his services were terminated, as he was found unsuitable and as the order was not passed by way of imposing penalty, there was no question of holding any inquiry.

3. Mr. N.J. Mehta, the learned counsel for the petitioner contended that the order of removal was in fact founded on allegation of misconduct and such misconduct can not form, the basis of an order of termination simpliciter unless the petitioner was given a reasonable opportunity of being heard. While relying on the case of Mafatlal Narandas Barot Vs. J.D. Rathod (A.I.R. 1966 S.C. 1364) and the case of Deokinandan Prasad Vs. State of Bihar (A.I.R. 1971 S.C. 1409), it was contended by Mr. Mehta that since the petitioner was denied the opportunity of being heard the provisions of Article 311 of the Constitution of India, were clearly attracted and the order of removal of the petitioner from service was illegal and ultravires the Constitution. It was however submitted by Mr.J.D.Ajmera, the learned counsel for the respondents that the petitioner was working as a temporary employee and therefore his services were terminated in accordance with the provisions of civil service (classification, control and appeal) Rules 1965. While taking us

through the facts stated in para 3 of the Affidavit-in-reply of Major J.D'Souza, it was strenuously urged by Mr. Ajmera that the petitioner remained absent from time and again for which several memos were given to the petitioner and hence his services were terminated, as he was found unsuitable to be retained in public service. In support of his submission, he has relied on the case of Smt. Charulataben (24(i) G.L.R. 93). We have not been able to persuade ourselves to agree with his submission in this regard.

4. In case of Smt. Charulataben (Supra) cited by Mr. Ajmera it was not disputed that the termination of service was by innocent order as per the terms of her service conditions. In the present case, it cannot be said that the impugned order was in the nature of "termination simpliciter" and there was no stigma made against the petitioner. On perusal of the impugned order referred to above it is ex-facie penal. It is clearly borne out from the evidence brought on record that the work and conduct of the petitioner was not found satisfactory as he continued to remain absent from duty without permission. His such conduct has been regarded as misconduct, on his part. On several occasions the memos were issued calling upon the petitioner to explain why the disciplinary action should not be taken against him. Such memos are found at Annexure 'D', 'E', 'F' and 'G'. However, it is undisputed that the authorities have not preferred to serve the petitioner with any charge sheet. It is conceded that no regular departmental inquiry is held against the petitioner under the Rules.

5. It is well established that once the services

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of the Government employee whether permanent or temporary are sought to be terminated on charges of misconduct or inefficiency or corruption, the provisions of Article 311 of the Constitution of India have to be followed. It is true, if the inquiry conducted and notice given were intended only to arrive at a finding, in regard to his suitability to be continued in service, then it cannot be said to be a measure of punishment. The case of Smt. Charulataben (Supra) relied on by Mr. Ajmera is clearly distinguishable and has no applicability to the facts of this case.

6. On the plain reading of the impugned order, it can be said without any difficulty that the same carries positive stigma against the petitioner and invites penal consequences. He has been removed from the service on the ground that the authority found him guilty of misconduct prejudicial to good order and discipline on the charge of continued absence from duty without permission. Thus it cannot be said that the impugned order is "discharge simpliciter".

7. It is not the case of the respondent that a regular disciplinary inquiry was held against the petitioner by serving him with any notice of charges of misconduct. In view of the facts as discussed earlier, the petitioner is obviously entitled to claim protection of the provision of article 311 (2) of the Constitution of India and when his services are terminated without following the same, the impugned order passed qua the petitioner is bad in law and deserves to be quashed.

3. In the result, the orders of removal of the petitioner from services are set aside. The petitioner Shri Yogeshkumar Rasiklal Verma is declared to be in the service of the Defence Department of the Union of India in the office of the Assistant Garrison Engineer, Gandhinagar. Petition is allowed. It is, therefore, directed that the petitioner will be re-instituted by the respondent on the same post which he was holding prior to the impugned order dated 25th April, 1984 with all back salary and other monetary benefits within two months. The parties are left to bear their own cost of this application.

R. H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN

J. M. Joshi
(P. M. JOSHI)
JUDICIAL MEMBER