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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 2 OF 1986
~~T.A. No.~~

DATE OF DECISION 18 - 9 - 1986.

NITYA NAND BISHVANATH SINGH Petitioner

B.B. OZA Advocate for the Petitioner(s)

Versus

EXECUTIVE ENGINEER (ELECT.) & ANR. Respondent s

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 ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.



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J U D G E M E N T

OA/2 OF 1986.

Date of decision: 18-9-1986.

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

The petitioner, Shri Nitya Nand Bishvanath Singh, of Ahmedabad, holding the post of Khallasi, since 26th April 1981 with the Central P.W.D., challenges the Office order dated 12.6.1986 terminating his services, passed by the Executive Engineer (Elect.), Ahmedabad Central Electrical Division, by filing the present application, on the grounds that the said order is wrong, illegal and violative of the provisions contained under Article 311 of the Constitution of India and the principles of natural justice. It was alleged inter-alia, that it was neither his duty to guard the stores nor he was aware of any theft of tyres alongwith Iron reams having taken place on the night of 4.6.1986, that he obliged to sign one statement which was neither read out to him nor it was offered for reading, on the promise given by the Jr. Engineer Mr. Satpal Sharma that it would avoid termination of his services, that the impugned act, terminating his services without any show-cause notice, enquiry or particulars of the alleged theft, having been given to him, was bad in law.

The application was contested on behalf of the respondent on the ground that the petitioner was a casual employee (as NMR Khalasi on daily rated basis - unskilled employee) having no right to the post and his services were terminable without any notice and the order passed was perfectly legal and valid. According to the respondent,

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the petitioner was found unsuitable, as the applicant and two other persons who were put on night duty to watch and ward of the stores and machineries, slept during the duty hours when 8 numbers of 11 x 20 tyres of Millar Make Hot Mix Plant had been stolen and they had admitted accordingly in their statements.

Mr. B.B. Oza, the learned counsel of the petitioner contends that the impugned order is penal in its nature eventhough the word termination is used and the petitioner is considered as temporary servant, he was entitled to claim protection under Article 311(2) of the Constitution of India, as his services are terminated on charges of misconduct and inefficiency. In his submission the impugned order of termination of the services of the petitioner without holding a departmental enquiry and proceedings is quite unjust and invalid. In support of his submission he has relied on the case of " L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Anr. (AIR 1982 S.C. p. 854)" and "Samsher Singh V/s. State of Punjab & Anr. (AIR 1974 S.C. p. 2192)". While relying on the case of Smt. Charulataben N. Gohel Vs. Surendranagar Joint Municipality and Anr. (24 GLR p. 93), it is vehemently contended by Mr. J.D. Ajmera for the respondent that the impugned order is in the nature of "termination simpliciter" and there was no stigma made against the petitioner as his termination was on the ground of unsuitability. With respect, we do not find any merits in the submission made by Mr. Ajmera, in this regard.

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In order to appreciate the real controversy the very text of the impugned order has to be closely screened and scrutinised. The said order (Exh.D) reads as under :

" On persual of theft report received from AE,II vide letter No.10(30): CESD, I/86/830 dated 7-6-86 and the statements given by the three Khalasis (Sri Nitya Nand; Shri M.V. Vergees & Shri Iqbal Shaik). It is observed that theft was made possible largely due to gross negligence and carelessness on part of the three Khalasis. Though having been put on watch and ward duty; by their own admission all of them went off to sleep around 2-00 in night till they were waken up in morning by their relievers.

Services of all the three Khalasis are therefore terminated herewith immediately".

On perusal of the said order it is clearly borne out that the petitioner and two other persons are referred to as Khalasis's working under the control of Executive Engineer (Elect.) Ahmedabad Central Electrical Division at Ahmedabad. Further it is stated in the said order that the petitioner and two other persons were put on watch and ward duty on the relevant night. It is categorically alleged by the Executive Engineer that the petitioner and other two persons went off to sleep around 2-00 in night and due to gross negligence and carelessness on their part theft was made possible. Obviously, therefore, the services of the petitioner and other two persons are terminated, as they were found guilty of misconduct.

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Now once the services of the Government employee whether permanent or temporary are sought to be terminated on charges of misconduct or inefficiency or corruption the provision of Article 311(2) of the Constitution of India, has to be followed. It is well settled that if enquiry conducted and notices given were intended only to arrive at a finding, in regard to his (stability) to be continued in service, then it cannot be said to be a measure of punishment. It is also true that if his order of termination simpliciter terminating the services of a probationer, then it cannot be said to be an order by way of punishment merely because some inquiry is made earlier or some earlier observations are made which ultimately culminate into the order of termination simpliciter. The case of Charulataben (Supra) relied on by Mr. Ajmera is clearly distinguishable and has no applicability to the facts of this case.

On the plain reading of the impugned order it can be said without any difficulty that the same carries a positive stigma against the petitioner and invites penal consequences. Thus, it can not be said the impugned order is a discharge simpliciter.

Mr. Oza contends that as per the category No.40 enumerated in Appendix VIII of the C.P.W.D. Manual (page 54), as a Khallasi (Elect.) his duty is "unskilled work and general assistance to workmen on the electrical side" and as such it is doubtful whether the petitioner, while holding the post of Khallasi in Muster Roll, watch and ward duty can be assigned to him, under the Manual. No Chowkidar or Supervisory staff can be employed on Muster Roll. No record is forth coming to show that watch and ward duty was assigned to the petitioner

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on the material night. The statement of the petitioner, referred to by the respondent admitting that he had slept off during the duty hours, is alleged to have been obtained by the Jr. Engineer Mr. Satpal Sharma on promise and that to without being read over to him. The allegation in this regard has not been controverted by Mr. Satpal Sharma. Even apart from it, it is not the case of the respondent that they had held a regular disciplinary enquiry or served with any notice of charges of misconduct. In the present case, the petitioner is obviously entitled to claim protection of the provisions of Article 311(2) of 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.

In the result, the orders of termination of the services of the petitioner are set aside. The petitioner, Shri Nitya-Nand Bishvanath Singh is declared to be in the services in Ahmedabad Central Electrical Division, Central P.W.D., Ahmedabad. The petitioner succeeds. It is, therefore, directed that the petitioner will be re-instated by the respondents on the same post which he was holding prior to the impugned order dated 12.6.1986 with all back salary and other monetary benefits within two months. The respondents will pay Rs. 300/- to the petitioner being the cost of this application.



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

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