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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
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O.A. No. 11
T.A. No. 1987

DATE OF DECISION 20.3.90

I. B. Chandra Petitioner

Mr. P. H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr. J. D. Yadav for Mr. J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, V.C.

The Hon'ble Mr. M. M. Singh, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes.

(G. Sreedharan Nair)
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AHMEDABAD

Registration No.O.A.11 of 1987

Date of order 203.1990

Ishwarbhai Bhavanbhai Chandra .. Applicant

- versus-

Union of India and others .. Respondents

CORAM:

Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri M.M. Singh, Member (Administrative)

Counsel for the applicant : Mr. P.H. Pathak

Counsel for the respondents : Mr. J.B. Yadav for

Mr. J.D. Ajmera.

ORDER

PER: Hon'ble Shri G.Sreedharan Nair, Vice-Chairman:-

The services of the applicant, who was employed as unskilled labour under the second respondent with effect from 20.12.1983, were terminated with effect from 11.1.1986 pursuant to the notice dated 11.12.1985. The applicant has prayed for declaring that the termination is void and for a direction to the respondents to reinstate him in service with back wages.

2. It is ~~ad~~ urged that the order is bad as being violative of the guarantee under clause (2) of Article 311 of the Constitution of India since the order is penal. There is also the plea that there is violation of section 25-F of the Industrial Disputes Act.

3. In the reply filed by the respondents, it is contended that the termination was on account of unsatisfactory

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work, was not punitive as alleged by the applicant and hence there is no question of affording opportunity of being heard. There is also the contention that since the applicant was working as civilian in Defence Department, he was not holding a civil post and he is not entitled to the protection of Article 311 of the Constitution of India. As regards the alleged violation of section 25-F of the Industrial Disputes Act, the plea is not met in the reply.

That the applicant is the holder of a civil post was not disputed at the time of hearing.
4. After hearing counsel on either side and on perusal of the records, we are of the view that the termination of service of the applicant has to be quashed as it is clearly punitive. It is on record that on 22.2.1985, the second respondent called upon the applicant to explain the reason for non-acceptance of certain letters addressed to him. By way of reply, the applicant pointed out that he did not refuse the letters at all. Besides, the applicant also stated that the allegation has been levelled against him since he refused to work at the residence of the second respondent. On 23.11.1985, the second respondent called upon the applicant as to why a suitable disciplinary action should not be taken against him. Four imputations were made in that letter of which one related to "making baseless allegations" against the second respondent himself. The applicant is seen to have submitted his explanation by way of reply on 2.12.1985. The notice of termination has been issued immediately thereafter.

5. Though there is a plea in the reply filed by the respondents that the termination was on account

of the unsatisfactory nature of work of the applicant, there is no suggestion to that effect in the notice of termination. No doubt, the respondents are not bound to indicate the reason in the notice. But in view of the facts stated earlier, though the notice of termination on the face of it appears to be innocuous, it behoves the respondents to establish that the termination was for unsatisfactory work and was not intended as a penalty. No material has been placed before us to hold that the work of the applicant was unsatisfactory, as is stated in the reply. Of course, counsel of the respondents invited our attention to the allegations contained in the show-cause notice dated 22.2.1985 and 23.11.1985. What emerges from the records is that in view of the alleged misconduct, the respondents decided to initiate disciplinary proceedings against the applicant and when the explanation was submitted by him denying the imputations, straightaway the notice of termination has been issued. We are conscious that in case of a temporary civil servant even where disciplinary proceedings are intended to be initiated, without resort to the same, termination of service can be made under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, by a termination simpliciter. But in such a case if the civil servant approaches the Tribunal with the specific averment that the termination is actually punitive and that it will be so revealed on lifting the veil, it is open to the Tribunal to lift the veil and find out whether the termination was based on the alleged misconduct and, if so, to ^{strike} ~~struck~~ it down. We are satisfied that the case before us is of that nature.

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6. In the result, we quash the termination of service of the applicant and direct the respondents to reinstate him in service forthwith.

7. Though counsel of the applicant pleaded for the grant of back wages, we are not satisfied that this is a case where the applicant is to be allowed the wages during the period while he was out of service.

8. The applicant shall be allowed consequential benefits, except the wages during the period he was out of service.

9. The application is disposed of as above.

M. M. Singh

(M.M. Singh)
Member (A)

G. Sreedharan Nair
20-3-1990
Vice-Chairman