

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEW DELHI~~

(16)

O.A. No. 304

1987

~~XXXX~~

DATE OF DECISION 16.4.1990

Shri J.V.Parmar

Petitioner

Shri J.J.Yajnik

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri J.D.Ajmera

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi

: Vice Chairman

The Hon'ble Mr. N.Dharmadan

: 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?

Shri J.V. Parmar,
C/o. Dr. Bhartiben Thakkar,
Duvasia Hospital, Mirjapur,
Bhuj-370001.

: Petitioner

(Adv. Mr. J.J. Yajnik)

Versus

1. Union of India
Through:
The Secretary, Ministry
of Finance, Vitti Bhavan,
New Delhi.
2. The Collector of Customs and
Central Excise, Rajkot having
his office opp. Karansinghji
School, Central Point Building,
Rajkot.
3. Shri Jayandranath
Deputy Collector of
Customs (P & D),
Opp. Karanjitsinghji School,
Central Point Building,
Rajkot.

: Respondents

(Adv.: Mr. J.D. Ajmera)

Coram : Hon'ble Mr. P.H. Trivedi
Hon'ble Mr. N. Dharmadan

: Vice Chairman
: Judicial Member

OA/304/87

O R A L O R D E R

Date: 16/4/1990

Per: Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Heard Mr. J.J. Yajnik and Mr. J.D. Ajmera, learned advocates for the applicant and the respondents respectively. In this petition under Section 19 of the Administrative Tribunals Act, the petitioner has impugned the order of the termination of his service dated 15.6.1987 and also the impugned order placing the petitioner under suspension and of transferring his headquarters during the suspension as illegal, and unjust and violative of article 311 (2) of the Constitution of India. The petitioner has alleged that on account of active participation in Union activities when a joint application was filed by him and two others, while two others were separately called and asked to withdraw the application, the petitioner was terminated from service. Shown of

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incidental details the main point which arise in this case is whether the termination on the ground of unsuitability is termination simplicitor or whether it is by way of penalty amounting to a short cut to avoid disciplinary proceedings. The respondents have admitted that the petitioner was suspended and that charges were framed against him, But have contended that the petitioner was judged to ^{> be f} not suitable ^{on the basis of f} in the report of administrative officer, Bhuj. Learned advocate for the respondents stated that this report is dated 27.4.87 although the date is not stated in the reply. However, in para 5.11 it is stated that this report found certain defaults of the petitioner on the basis of which memorandum of charges resulted. Since then according to the learned advocate for the respondent the inquiry was held and the charges were found not to have substance.

It is therefore all the more curious that when the charges were found to be without substance the report of the Administrative Officer, Bhuj which ^{is} laid to the charges should still have been relied upon to ^{being considered} being the petitioner as unsuitable and to result in a termination which is claimed to be termination simplicitor. Learned advocate for the respondent sought to show that the charges were quite distinguishable and different from ^{the} circumstances stated in the report of the Administrative Officer. We find no statement to the effect that the charges were regarding circumstances which are different from those referred to in the report of Administrative Officer as stated in para 5.11 of the report. We also do not find any basis for stating that there was independent material before the respondent authorities which do ^{es} not point coincide or overlap with the basis of the charges. Learned advocate for the respondent stated that he would like to file the original record for perusal of the Tribunal. We find however, that this amounts to an amendment of the reply without formerly seeking ^{amendment} adjournment at any prior stage and we cannot allow

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introduction of new material causing in effect the amendment of the reply or change of the ground taken therein. The original reply has been filed on 24.6.1987 and nothing therein shows any reference to any other material or that the circumstances referred to in the charges and in the report of the Administrative Officer are separately ^{and} distinguished. Accordingly, ⁱⁿ the plea of the respondent ^{has} no weight. We find that the impugned orders therefore are flawed ^{by} a reasonable inference in the circumstances regarding a clear nexus between the order of termination and the subject matter of the charges which were inquired into. We cannot agree with the respondents that the termination is termination simpliciter and not by way of penalty and without being ^{by a} proceeded proper inquiry for causing legal orders imposing penalty. Accordingly, there is merit in the petitioner's prayer that the impugned order be quashed and set aside. So ordered. The petitioner be reinstated in service with consequential benefits. No order as to costs.

(N.Dharmadan)
Judicial Member

(P.H.Trivedi)
Vice Chairman

a.a.bhatt