

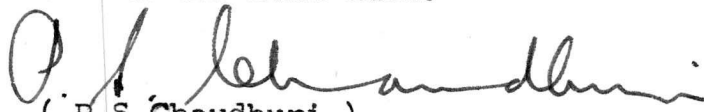
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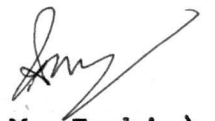
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Coram : Hon'ble Mr.P.M.Joshi : Judicial Member  
Hon'ble Mr.P.S.Chaudhuri : Administrative Member

26/4/1989

Miss, Sonal Vasavada and Mr.J.D.Ajmera the learned counsel for the petitioner and the respondents present. Mr.J.D.Ajmera requests for time. Time granted. Registry to fix the next date.

  
( P.S. Chaudhuri )  
Administrative Member

  
( P.M. Joshi )  
Judicial Member

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Shri Khan Samshiddin Khan Wakilkhan  
Vapi, G.I.D.C. (Gujarat) Exh.

Applicant

Versus

1. Sub-Divisional Officer,  
Phones, Vapi, Gujarat.
2. Director, Tele-communication,  
3rd Floor, Satyen Chambers,  
Pratap Road, Raopura, Baroda.
3. Secretary,  
Tele Communication Service Board,  
Department of Tele Communication,  
New Delhi.

: Respondents

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

: Vice Chairman

Hon'ble Mr. P.M. Joshi

: Judicial Member

ORAL ORDER

21/6/1989

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

: Vice Chairman

Heard Miss.Sonal Vasavada and Mr.Jagdish Yadav for  
Mr.J.D.Ajmera, the learned advocates for the applicant  
and the respondents respectively.

The petitioner has impugned the order of termination dated 31/12/1985 on the ground that is is violative of Article 311 (2) of the Constitution of India in so far as it is discriminatory against him as other persons who are also appointed along with the petitioner by an order dated 31.3.1983 are retained in service and that this order of termination cannot be regarded as termination simpliciter but is malafide and the motive behind it is for avoiding disciplinary proceedings for specific defaults and this should not be encouraged by allowing the impugned order to be upheld. As a result of the reply of the respondent, the petitioner basing thereon has futher brought out that the order dated 5/9/1983 black listing the petitioner for fraudulent practice for forged and bogus muster roll

and educational certificates further supports the learned advocate's contention that there is a definite nexus between such an order and the impugned order and that as persons named at Sr.No.1, 2 and 10 namely; M/s. Gulabsingh Ram Ratan, Baboosingh Shivnathsingh and Naimuddin Mohmad Ashik Ansari who also have been similarly black listed are still retained in service, the petitioner has been discriminated against as shown by the reply and the order annexed thereto of the respondent. In reply, learned advocate Mr.Jagdish Yadav strenuously urged that when called upon to reply to the averments of the petitioner he has merely shown the background for judging the petitioner to be unsuitable and for that limited purpose only he has referred to the order of 5/9/1983 and that there is no nexus between it and the impugned order. Further he argued that had there been such a nexus there would have been no reason why the order of termination were not passed immediately after 5/9/1983 and the fact that the impugned order has taken two years thereafter shows that the order dated 5/9/1983 has no direct bearing on the impugned order. So far as the plea of discrimination is concerned, he states in reply that the petitioner is in a different class from those who have been retained and that the respondent has the power to terminate the services provided the payment in lieu of notice or notice are given to the petitioner and it is not disputed that the condition regarding notice and payment in lieu thereto has not been fulfilled. Accordingly, the respondent has only exercised his powers within his competence and therefore he cannot be questioned for doing so while retaining the services for those whom he does not choose to termination.

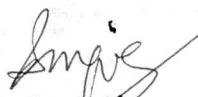
Learned advocate for the petitioner has cited AIR 1984 S.C. 636 Anoop Jaiswal vs. Govt. of India & Another, AIR(1983) 2 S.C.C. 217 Ajit Singh & Others vs. State of Punjab and another and AIR 1987 S.C.C. 111 O.P. Bhandari vs. Indian Tourism Development Corporation Ltd. & Others. in support of her plea that termination simpliciter cannot be allowed to be arbitrary or if it discloses any motive, behind the bare reading of the order in judging whether the order cannot be sustained, and that even in such orders the ground of discrimination has to be fully answered satisfactorily by the respondent. The law cited by the petitioner is familiar and we do not detain ourselves for discussing it.

The question has to be decided whether there is anything behind the impugned order which establishes any malafide or arbitrariness on the part of the respondent in passing it. The respondents' reply and their order dated 5/9/1983 on which they rely cannot be ignored because they themselves in their reply have relied upon explaining the background for terminating the services of the petitioner. It is true that there is a time lag between this order of 5/9/1983 and the impugned order dated 31.12.1985 but when the respondent themselves have stated that the petitioner was not regarded as suitable on this ground it is not possible to state as they have done during the hearing that there was no nexus between the said order and the impugned order. The question whether retention of persons named at Sr.No.1, 2 and 10 involved any discrimination against the petitioner also has not been satisfactorily answered by the respondent. During the hearing, it was stated by the learned advocate that it is possible that these persons might have been called upon to explain and on their satisfactory explanation they might have been retained. Admittedly, the petitioner was not similarly called upon to explain and accordingly there is no alternative except holding that if out of 11 persons

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appointed with the petitioner others have been retained in service and if the three persons named in the black list have been retained in service, there is no good ground to hold that there is an absence of discrimination so far as the petitioner is concerned. The respondents have taken the plea that the petitioner has not exhausted his remedy and no doubt representation in appeal has been filed at Annexure A3 which is not said to have been disposed of. However, it is noticed that this representation is in 1986 and even if it is regarded as a statutory remedy, the period for exhausting the remedy has been over. In any case against an order of termination under Rule-5, there is no statutory appeal provided and accordingly it cannot be said that as the plea of the respondent is that it is not a penal order, any appellate authority had to be approached before this Tribunal is resorted to. In the above background, the only reasonable to hold that the order dated 5/9/1983 is the basis for the impugned order and that has discriminated against the petitioner and accordingly the impugned order has to be quashed and set aside. The petitioner is reinstated from the date of the impugned order and the petitioner's wages, it is directed, be paid within three months of the date of this order subject to the petitioner's satisfying the respondent that the petitioner has not been employed in any alternative capacity.

  
(P.H. Trivedi)  
Vice Chairman

  
(P.M. Joshi)  
Judicial Member