

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

NO

Termination

O.A. No. / 494/88
T.A. No.

DATE OF DECISION

7-3-1993

Shri Vinubhai S.Vanker Petitioner

Shri D.F.Amin Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Shri Akil Kureishi for respondent no.2 and 3 Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : 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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Shri Vinubhai S. Vankar
At & P.O. Jitpura
Tal. Godhra,
Dist. Panchmahals.

Applicant.

Advocate

Shri D.F. Amin

Versus

1. Union of India
Representing to the
Post & Telegraph Deptt.
Sachivalaya, Delhi.

2. Post Master General, Gujarat
Circle, Ahmedabad.

3. Sub-Divisional Inspector
of Post Offices, Godhra
Sub-Dm. Godhra.

Respondents.

JUDGEMENT

In

O.A. 494 of 1988

Date: 6-3-1993-

Per Hon'ble

Shri N.V. Krishnan

Vice Chairman.

The applicant's grievance is that his service
has been terminated by the order dated 13th November 1985,
of the third respondents the - - -

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Sub-Divisional Inspector of Post Offices, Godhra,
Sub Division Godhra, in exercise of powers under sub Rule 1 of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 without assigning any reasons and without giving him an opportunity of being heard before this punishment was imposed on him.

2. This grievance has arisen in the following manner:-

2.1 By the Annexure A-1 memorandum dated 21-1-1983 of the Superintendent of Post Offices Panchmahal Division Godhra, the applicant, along with others was declared successful in the examination for appointment to Class IV Cadre, held on 28-11-1992. The applicant contends that this is his appointment order and that he has been thus appointed by the Superintendent of Post offices.

2.2 The applicant availed himself of leave for five days from 19-5-1985 to 23-5-1985 because of his mother's illness. As the illness continued, he had to extend his leave. His application for extension had not reached the third respondent. Hence, he was treated as unauthorisedly absent from 24-9-85 to 6-11-1985.

2.3 The applicant states that later on, he joined duty on 7-11-1985. Thereafter, the impugned Annexure A-2 which is a notice of termination was given to him by the third respondent on 13-11-1985. The notice reads as follows

"Notice of termination of services issued under Rule 5 (i)

Memo No. PF/VS Vankar Godhra the 13-11-1985.

In pursuance of sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules 1965, I hereby give notice to Shri V.S. Vankar L/R Class IV SDI (P) Godhra Sub-Dn. Godhra that his services shall stand terminate with effect from the date of expiry of a period of one month from the date on which this notice is on or as the case may be tendered to him."

2.4 An appeal was preferred to the Superintendent of Post Offices which was rejected by the Annexure A-3 order dated 16-12-1985.

2.5 A petition was preferred to the Post Master General Ahmedabad on 10-4-1986, which was rejected by him on 13-6-1986 (Annexure A-4).

2.6 The review petition filed by him met the same fate on 24-2-1987 at the hands of Member Personnel, Postal Services Board, (Annexure A-5) and finally the memorial submitted to the President was also rejected by the Annexure A-6 order dated 21-3-1988.

2.7 Hence this application has been filed on the following grounds.

- i) The applicant was appointed by the Superintendent of Post Offices and hence his services could not have been terminated by the third respondent, the Sub-Divisional Inspector.
- ii) No show cause notice was issued for alleged

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misconduct or unauthorised leave.

iii) No departmental inquiry was held.

2.8 The applicant has therefore prayed to set aside the impugned Annexure A-2 order of termination and for a declaration that he is in service from 15-12-1985.

3. The respondents have filed their reply resisting the application. It is contended that the applicant's record of service was bad. He was frequently absent and he did not correct himself despite opportunities given to him. He was only as temporary employee. The impugned order is not one of punishment. It is an order of termination simpliciter, without casting any stigma on the applicant. It is not a penalty and hence the question of show cause notice and inquiry does not arises.

4. Both the parties have filed written submissions. However, we have also heard the counsel for the parties.

5. On the last date of hearing on 6-1-1993, the learned Counsel for the applicant submitted that he does not press the ground alleging that the Sub-Divisional Inspector, the third respondent was not competent to pass the impugned order Annexure A-2 because he is subordinate to the Superintendent of Post Offices who allegedly appointed the applicant. In these circumstance, we are not considering this point.

6. The only question then is whether the impugned order can be said to be an order of termination simpliciter or whether it is one imposing penalty.

7. In his written submission, the applicant states that as early as on 2-2-1985 ~~as~~ show cause notice was issued to the applicant in respect of his unauthorised absence, as to why disciplinary action should not be taken. The matter was closed when the applicant submitted his apology on 18-2-1985. The applicant further gave an assurance on 1-4-1985 to the third respondent, that if ~~the xxxxx~~ he went on leave without permission, the department could take any action against him. Further, a letter was written on 21-6-1985, by the third respondent to the Post Master, Godhra that the applicant had left without obtaining leave properly. Hence, his salary for the days of absence was not to be paid. From these attendant circumstances, the learned Counsel for the applicant alleges that his termination is really a punishment for alleged acts of omission and commission on his part.

8. The learned Counsel for the respondent submitted that the services would not have been terminated, but for the ~~xxx~~ applicant's bad record. In this regard it is stated as follows in the reply.

" It is submitted that the applicant had produced a medical certificate for 5 days from 19-9-1985 to 23-9-1985, in which the Doctor has certified that the applicant was suffering from dysentery. Thereafter, nothing was heard from the applicant and he resumed duty on 7-11-1985 ~~from~~ by producing sickness medical certificate in which the date was corrected as 7-11-1985 from 4-11-1985. The applicant's work was not found satisfactory and therefore the competent authority has given one month's notice and terminated his service under Rule 5 (1) of CCS (Temporary Service) Rules 1965. It is submitted that the applicant was served with adverse remarks on 31-3-1984 during the

year 1983-84 and on 25-5-1985 for the year 1984-85. It is submitted that as a whole, his work was unsuitable and therefore his services were terminated simpliciter".

9. The learned Counsel for the applicant relies on judgement of the Supreme Court in Omprakash Geel Vs. H.P. Tourism Development Corporation AIR 1991 SC 1490 to contend that the termination, by way of penalty even though the order was ^{appear to be} innocuous. That was a case where a regular charge sheet was served on the petitioner on 21-1-1981 to which a reply was submitted on 7th September 1981. Without reference to any of these documents, an order of termination was passed on 8-1-1982. It is on a special consideration ^{to} of the facts of that case that the Supreme Court came to the conclusion that though the order of termination appeared to be innocuous, it was, no doubt, intended to punish the petitioner for his misconduct. The claim is that the applicant's case is similar to that case because, though no charge sheet was issued ^{to} by the applicant, his service was terminated on account of unsatisfactory performance in service.

10. The learned Counsel for the respondents relied on the decisions of the Supreme Court, State of Maharashtra Vs. Sebji AIR 1990 SC 42, State of U.P. Vs. K.K. Shukla (1991) 1 SC 691 and Triveni Shankar Saxena Vs. State of UP AIR 1992 SC 496. The last case has incidentally been decided by the same Division Bench which also disposed of Omprakash Geel's case supra and that case is also distinguished.

11. We have considered these arguments. In Triveni Shankar Saxena's case (supra) the High Court found that the petitioner had several adverse entries and therefore it was wrong to say that the order of termination was baseless, arbitrary and whimsical. The Supreme Court also perused the record of service ---

which showed his performance was unsatisfactory. The court also distinguished Omprakash Goel's case by pointing out that the applicant therein did not alleges that juniors have been retained in service, while the petitioner was terminated. It followed the dictum laid down in K.K. Shukla's case Supra, following R.K. Mishra Vs. UP State Handloom Corporation (AIR 1987 SC 2408), which is as follows :

" Under the service jurisprudence a temporary employee has not right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If, on the perusal of the character poll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service, whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

A temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reasons, either under the terms of the contract providing for such termination or under the relevant statutory rules regarding the terms and conditions of temporary Government servants".

12. The facts of the present case are also similar. The applicant's appointment was in an officiating capacity as is evident from the orders dated 11-2-1983 (page 86 of the paper Book) produced with respondents second reply dated 2-12-1991. He does not have a right to hold the post.

His record is unsatisfactory as can be seen from the adverse remarks communicated to him on 31-3-1984 and 28-5-1985 (Page 79 and 80 of the paper Book). These coupled with the applicant's habit of remaining absent unauthorisedly, provides a reasonable ground for termination of service. The termination ordered under such circumstances cannot be treated as a punishment when the order (Annexure A-2) does not cast any stigma on him.

13. In these circumstance we do not find any merit in this application. It is dismissed. No order as to cost.

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(R.C. Bhatt)

Member (J)

N.V.Krishnan

(N.V.Krishnan)

Vice Chairman

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