

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 350 OF 1992
~~TXXXXXX~~

DATE OF DECISION 22nd September, 1994.

Shri Pratapbhai Magalbhai Chauhan **Petitioner**

Mr. K.C. Bhatt

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

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The Hon'ble Mr. K. Ramamoorthy, Member (A)

The Hon'ble Mr. Dr. R.K. Saxena, Member (J)

JUDGMENT

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

No

Shri Pratapbhai Mangalbhai Chauhan,
C/o A.R. Amaliar,
P.O. Limkheda - 389 140.

..... Applicant

(Advocate : Mr.K.C. Bhatt)

Versus

1. Union of India through
The Director General,
Department of Posts,
Ministry of Communication,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.

2. The Postmaster General,
Vadodara Region,
Vadodara - 390 002.

3. The Supdt. of Post Offices,
Panch Mahal Division,
Godhra - 389 001.

4. The Postmaster,
Dahod - 389 151.

..... Respondents

(Advocate : Mr.Akil Kureishi)

JUDGMENT

O.A. NO. 350 OF 1992

Date : 22.09.1994.

Per : Hon'ble Mr. Ramamoorthy.K., Member (A)

In this application dated 19-8-1992, the applicant has sought relief by way of quashing of the impugned order of Postmaster Dahod dated 30-11-90 whereby the applicant's services were terminated. This order of termination was also upheld in the order of Postmaster General vide his order dated 23-1-1992. The applicant has also sought relief



by way of reinstatement consequent to the quashing of the impugned order.

2. The facts of the case are as under. The applicant was working as EDA from 1-2-1971 to 31-7-1988. Thereafter he was promoted to Group 'D' with effect from 1-8-1988. However, he had to proceed on leave on medical grounds and on medical certificate he proceeded on leave with effect from 26-3-1990 to 12-5-1990. However, thereafter he did not choose to either extend his medical leave nor did he send any formal communication for such an extension. According to the contention of the applicant, since he was sick and bed-ridden, he could not resume duty on the expiry of leave from 12-5-1990 and had to continue on leave. However, during this period, a notice was served on him for terminating his service at the expiry of one month's period and this notice was issued on 30-11-90 which he has received on 4-12-1990. Thus, his services were stood terminated on 4-1-1991. According to the applicant, he approached the authorities on 19-2-1991 along with leave application and medical certificate ~~and~~ of fitness. However, he has not been allowed to resume stating that his services already stood terminated as on 4-1-1991. He had made representations to the Chief Postmaster General on 2-4-1991 and again on 3-6-1991. In their reply, the respondents have stated that the applicant had continuously remained absent from 13-5-1990. He

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had not applied for any extension of leave nor had he filed any medical certificate for extension upto 30-11-1990. Even after the issue of the termination notice on 30-11-1990, the applicant had not chosen to make any submissions specially when this notice has been received by him on 4-12-1990. In fact, he had been even issued letters by way of registered post asking him to resume duty. He had been issued as many as four letters during this period to resume duty. Even then, he had not chosen to take any action of such letters. It is ^{the} a contention of the respondents that on his promotion to Group 'D' he is covered by the C.C.S. (T.S.) Rules and ^{his case} therefore, it was dealt within the powers of the disciplinary authority to terminate his services under Rule 5(1) with a simple one month's termination notice.

3. The fact of the applicant having remained absent from duty is not a disputed fact nor it is disputed that the applicant had failed to formally extend the period of leave or submit a fitness certificate in time. It is also on record that the applicant had chosen to get reverted as an E.D.A., a position which he held earlier prior to his promotion which request could not be acceded to by the department since there was no such provision other than through resignation and application afresh for an E.D.A. job.

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4. On going through the facts of this case, the main issue that arises for consideration is the issue as to whether the department can invoke ~~the~~ Rule 5 of the Temporary Services Rules and terminates services with an order simplicitor. It is true that the applicant had been informed, of his promotion in Group 'D', that he will be governed by C.C.S.(T.S.) Rules and he would also be liable for termination under the CCS (T.S.) Rules. Nevertheless, the fact cannot be overlooked that the present applicant ~~had~~ been an E.D.A. for a period of 17 years and according to E.D.A. rules, the provision for the kind of discharge simplicitor ceases after the period of three years. It is true that on his promotion to Group 'D' he will get governed by CCS (T.S.) Rules but even in the case of CCS (T.S.) Rules, the provision for discharge simplicitor would have ceased operating from 1-3-1991 so far as the present applicant is concerned. ~~It is in~~ ^{from} the averments of the department ~~that~~ it also more than makes clear that the action has been taken by the department basically due to the fact of the applicant not reporting for duty at the expiry of the first period of leave on ^{the} medical grounds and it is ~~a~~ continuous absence which has invited the impugned order. The reference to the fact of four registered letters getting no response etc. only further reinforces this point. The issue, therefore, finally hinges on the determination of the point as to whether the services ^{could} of the present applicant ~~should~~ be terminated by ^{for this reason} an order simplicitor. After going through the

averments made and the narration of the events as has been brought out in the above order, it is clear that the impugned order is a direct result as 'suitable action' taken due to non-resumption of duty and non-application for extension of leave. The postal department itself has vide its provision Rule 63, 64 & 65 of the Postal Manual Vol. IV under ~~see~~ have clearly stipulated that if an action is proposed to be taken either for remaining on unauthorised leave or absconding for duty, it will be a punitive point of action and procedure should be adopted as in the case of a disciplinary action for a major punishment. The Tribunal is aware of the fact that Supreme Court has laid down the law that in case of termination under Temporary Govt. Servants Rules, the position of law is as under:

"The court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. If misconduct is the foundation to pass the order then the enquiry into misconduct should be conducted and an action according to law should follow. But if it is motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated, in terms of the order of appointment or rules giving one month's notice or pay/salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment. In the circumstances of the case, the termination is for the respondent's unsuitability or unfitness but not by way of punishment as a punitive measure and is one in terms of the order of appointment and also the Rules."

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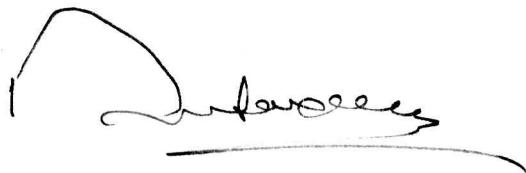
The above ruling has been given by the Supreme Court in the State of U.P. & Another Vs. Prem Lata Misra (Km.) & Others where the Supreme Court has reiterated the ratio of its judgment in State of U.P. Vs. Kaushal Kishore Shukla. However, in this particular case, the employee cannot be termed as a temporary or ad-hoc employee. On the other hand, this temporary status has been acquired by him after 17 years of service and after passing an examination. It is also clear that it is the misconduct of continuous absence which is a foundation to pass the order and therefore, any enquiry into this context should have been held specially since these specific acts of misconduct had been specifically cited as ones which call for a regular enquiry.

5. A minor point raised in the application could also be disposed off at this stage. It is seen from the papers that after the issue of a termination notice on 30-11-1990, a specific order of termination of service consequent to that is also passed on 4-1-1991 which was subsequently cancelled by the department. The applicant has drawn our attention to the legal position that the Government has no power for cancelling the order on 4-1-1991 and the issue of the order on 4-1-1991 itself negatived the earlier show-cause notice since the order of 4-1-1991 again contained order to pay further one month's notice of pay. The Tribunal does not find much merit in this argument as clearly the order of 30-11-1990 is a self-contained notice-cum-termination order and the department can always correct



the subsequent error if it had taken place.

6. However, as stated earlier, the Tribunal has come to the conclusion that in this particular case, the order of termination is in effect a punitive action and such action should not have been taken without due process of law specially when the applicant had become a full fledged civil servant to whom C.C.S. Conduct and Disciplinary Action Rules apply. The impugned order of punishment is, therefore, set-aside. In this particular case, since the applicant has chosen ~~not~~ to abstain himself from duty almost for a year prior to the issue of the impugned order, the question of sanctioning any back wages does not arise. It is, therefore, open to the department to issue a formal enquiry into any acts of misbehaviour or misconduct and take suitable action after due process of law.



(Dr. R.K. Saxena)
Member (J)



(K. Ramamoorthy)
Member (A)