

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

(8)

ORIGINAL APPLICATION No. 222 OF 1987

Date of decision .. June 23, 1988.

Sri Radha Mohan Nanda, aged about 28 years,
s/o- Sri Banchhanidhi Nanda, Vill/P.O-Kholakhali.
Via: Buguda, Dist- Ganjam. ... Applicant.

Versus

1. Union of India, represented by the Postmaster General, Orissa Circle, Bhubaneswar- 751001, Dist- Puri.
2. Director of Postal Services (H.Q), now re-designated as Additional Postmaster General, Orissa Circle, Bhubaneswar- 751 001, Dist- Puri.
3. Superintendent of Post Offices, Berhampur (Gm) West Division Berhampur -760 004, Dist- Ganjam.
4. Sub-Divisional Inspector (Postal), Aska East Sub- Division, Aska- 761 110, Dist- Ganjam.

.... Respondents.

5. Sri Trilochan Tripathy, s/o- Maheswar Tripathy, vill- Laxmanpur, P.O. Kholakholi, P.S. Buguda, Dist- Ganjam. Intervener.

M/s P.V. Ramdas & B.K. Panda, Advocates ... For Petitioner.

Mr. A.B. Misra, Sr. Standing Counsel
(Central) ... For Respondents.

M/s Deepak Misra, R.N. Naik, S.S. Hota,
A. Deo & R.N. Hota, Advocates ... For Intervener

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN
A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment ? Yes .
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

JUDGMENT

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner challenges the order passed by the competent authority contained in Annexure-2 terminating the services of the petitioner with immediate effect under Rule 6 of the Posts & Telegraphs E.D. Agents (Conduct & Service) Rules, 1964.

2. Shortly stated, the case of the petitioner is that he was appointed as Extra Departmental Delivery Agent on 22.1.1982 and was attached to the Post Office situated in village Kholakholi (Buguda) within the district of Ganjam. On receipt of certain complaint, the petitioner was put off from duty on 29.7.1984 as an inquiry was started against him on the basis of the allegations contained in the complaint that the petitioner had made short payment to a particular payee after the money-order was received in his Post Office. The petitioner was removed from service on 30.10.1984, vide Annexure-2. Being aggrieved by this adverse order, the petitioner has filed this application.

3. In their counter, the Opposite Parties maintained that the competent authority was well within his right to terminate the services of the petitioner under Rule 6 as the petitioner had not admittedly completed three years of service in the Postal Department. It is further maintained by the respondents -Opp. Parties that no illegality having been committed in the matter of termination of the services of the petitioner, the application is devoid of merit and is liable to be dismissed.

4. Before we deal with the contentions raised at the Bar on either side, it is important to note that one Trilochan Tripathy who is now functioning as Post-Master in the said Post Office filed an application for intervenor and vide order dated 5.4.1988 passed in M.A.No. 72 of 1988 this Bench allowed the application and hence allowed Sri Tripathy to intervene in the matter. Mr. Deepak Misra appears for the intervenor.

5. We have heard Mr. P.V. Ramdas, learned counsel for the petitioner, learned Sr. Standing Counsel Mr. Mishra and Mr. Deepak Mishra for the intervenor. Mr. Ramdas submitted relying on certain judge made laws that the termination of the services of the petitioner does not amount to a termination simplicitor. Mr. Ramdas further submitted that on consideration of all the materials available before this Bench it could be safely concluded that the termination is due to certain alleged mis-conduct committed by the petitioner and therefore, according to Mr. Ramdas, the petitioner could seek protection under Article 311 (2) of the Constitution and demand the authorities for effecting a full fledged inquiry and without which the impugned order of termination is bound to be set aside. In this connection Mr. Ramdas relied upon the judgment of the Hon'ble Supreme Court reported in A.I.R. 1986 S.C. 1626 (Jarnail Singh and others vrs. State of Punjab and others). He also relied upon two other judgments of the Hon'ble Supreme Court reported in 1968(3) Supreme Court Reporter 828 (State of Punjab and

others vrs. Shri Sukh Raj Bahadur). The other case is reported in 1971 (2) S.C.R. 191 (State of Bihar & others vrs. Shiva Bhikshuk Misra) and another case is reported in A.I.R. 1984 S.C. 636 (Anoop Jaiswal vrs. Government of India and another) . There are several other judgments of the Supreme Court on this point urged by Mr. Ramdas and we are of opinion that all those cases ^{dealt in} neetnot be / detail because all those cases follow the principles laid down by Their Lordships in Jarnail Singh's case . Before we deal with the contention put forth by the learned Sr. Standing Counsel, it is worth-while to quote the observations of Their Lordships in the case of Jarnail Singh and others vrs. State of Punjab (supra). Their Lordships were pleased to observe as follows :-

" The crucial question required to be decided in the instant appeals is whether the impugned order of termination of services of the petitioners can be deemed to be an innocuous order of termination simplicitor according to the terms and conditions of the services without attaching any stigma to any of the petitioners or it is one in substance and in fact an order of termination by way of punishment based on misconduct and made in violation of the procedure prescribed by Article 311 (2) of the Constitution of India. In other words when the order of termination is challenged as casting stigma on the service career, the Court can lift the veil in order to find out the real basis of the impugned order even though on the face of it the order in question appears to be innocuous ".

The very same view has been taken in the case of Shri Sukh Raj Bahadur and Shiva Bhikshuk Misra and in

the case of Anoop Jaiswal. All the judgments go to the extent of ~~say~~ ~~laying~~ laying down the law to the effect that if the impugned order is a termination simplicitor then Article 311 of the Constitution is not attracted but where on lifting of the veil it is found that the removal or termination of the services of the petitioner is due to certain misconduct, Article 311 is bound to be attracted. In order to repudiate the arguments advanced by Mr. Ramdas, learned Sr. Standing Counsel submitted with some amount of vehemence that the services of the petitioner was purely temporary in nature and the contract between the petitioner and the Government was that his services could be terminated at any time and it was further submitted that so far as Rule 6 is concerned as amended after 1982, Government has full authority and full discretion to terminate the services of a particular person without notice and such authority having vested with the Government under Rule 6, the concerned authority committed no illegality by terminating the services of the petitioner under Rule 6. Apart from the observations of Their Lordships made in the case of Jarnail Singh and also in other cases, suitable reply could be given to the arguments advanced by the learned Sr. Standing Counsel on the basis of the observations made by Their Lordships in the case of Parshotam Lal Dhingara v. Union of India, reported in 1958 SCR 828, Hon'ble the Chief Justice Sri S.R. Das speaking for the Court was pleased to observe as follows :-

" In short, if the termination of service is founded on the right

flowing from contract or the service rules then, *prima facie*, the termination is not a punishment and carried with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment or dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with

Their Lordships further observed :

" No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311 (2) of the Constitution ".

The ratio of all the cases mentioned above is that where the impugned order is a termination simplicitor, no inquiry is necessary because Article 311 is not attracted but once the termination is a cloak or camouflage or with certain allegation of misconduct, Article 311 is definitely attracted and an adverse order terminating the services of a particular employee without a regular inquiry is illegal, unjust and improper. Incidentally we may also

mention that Mr. Ramdas relied upon a Full Bench Decision of the High Court of Orissa, reported in 1980 C.L.T. 145 (Ananta Charan Mohapatra vrs. The Inspector of Post Offices, Jajpur Sub-Division, and others). In this case, the services of the petitioner before Their Lordships was terminated under Rule 6 as there was some allegation of misconduct. Hon'ble Mr. Justice R.N. Misra, (as my Lord then was), speaking for the Court observed to that Rule 6 cannot be attracted or taken recourse/where there is an allegation of misconduct because the person concerned is entitled to the protection under Article 311 (2). The very same view has also been taken by us in O.A. No. 49 of 1987 (Birendra Chandra Behera vrs. Union of India & others) disposed of on August 31, 1987 and so also in the case of Naranbandhu Sahu vrs. Union of India, T.A. 371/86, disposed of on September 25, 1987.

So far as the facts of the present case are concerned, the case of the Opposite Parties/that the services of the petitioner was terminated under Rule 6 because the petitioner had committed temporary mis-appropriation by making short payment to a particular payee who was to receive the money-order . This has been stated in the counter and it was not rightly and fairly disputed by the learned Sr. Standing Counsel . Therefore, we are of firm opinion that there is an allegation of misconduct against the petitioner and in such circumstances applying the principles laid down by Their Lordships of the Supreme Court in the judgments mentioned above, we are inclined to take the view that the termination of the petitioner under Rule 6 is illegal, unjust and improper and

(15)

therefore, we do hereby set aside the order of termination of service of the petitioner contained in Annexure-2 and we would direct that he should be reinstated to service within one month from the date of receipt of a copy of this judgment.

The petitioner will not be entitled to any back wages.

6. Thus, the application stands allowed leaving the parties to bear their own costs.

7. Before we part with this case, we may say the present incumbent is discharging his duties as the Post Master of Kholakholi Post Office i.e., Respondent No.5 (intervenor) is bound to vacate the said post. We hope and trust the Post Master General/ Addl. Post Master General, Orissa Circle- Opposite Party No.2 and the Superintendent of Post Offices, Berhampur (Ganjam)- Opposite Party No.3 respectively would try to adjust Opposite Party No.5 in some other equivalent post whenever vacancy arises.

Lalit D.P.
23.6.88
.....
Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

I agree.

Patel
23.6.88
.....
Vice Chairman.



Central Administrative Tribunal,
Cuttack Bench.
June 23, 1988/Roy, Sr.P.A.