

6
11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 275 of 1988

Date of decision: 22nd February, 1990

1. Rabindra Kumar Mohanty, S/o Gajendra Nath Mohanty, aged about 30 years, Ex-Safaiwala, Aviation Research Centre, At/P.O. Charbatia, Dist. Cuttack.
At-Parakhana, P.O. Srichandanpur, Via-Tirtol, Dist. Cuttack (Orissa)

..... APPLICANT

-Versus-

1. Union of India,
represented by the Cabinet Secretary,
Cabinet Secretariate, Block V (East)
R.K. Puram, New Delhi-110066.

2. Director,
Aviation Research Centre, East Block-V,
R.K. Puram, New Delhi-110066.

3. Assistant Director (Admn)
Aviation Research Centre, At/P.O. Charbatia,
Dist. Cuttack.

..... RESPONDENTS

For the Applicant M/s. C. V. Murty,
C. M. K. Murty &
S. K. Rath, Advocates

For the Respondents. For Standing Counsel (Central)
Mr. T. Dalei, Addl. S.C.

C O R A M :

THE HON'BLE MR. P. S. HABEEB MOHD, MEMBER (ADMN)
A n d
THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgement ? Yes.

2. To referred to the Reporters or not ?

3. Whether Their Lordships wish to see the fair copy of the judgement ? Yes.

....

7
11
:- JUDGMENT :-

P.S.HABEEB MOHD., MEMBER (A) This application has been filed by Rabindra Kumar Mohanty, who has been appointed in the post of Safaiwala in the Office under the Directorate General of Security, Charbatia in Memorandum dated 22.4.31 (Annexure-1). The relevant portions of the appointment order No.VII/2160 dated 22.4.31 reads as follows:-

"The undersigned hereby offers Shri Rabindra Kumar Mohanty a temporary post of Safaiwala in the Directorate General of Security (Misc. Service) in this office, in scale of pay of Rs.196-3-226-EB-3-232/- with usual allowances under the rules and orders in force from time to time.

This appointment is purely temporary, but is likely to continue indefinitely. The appointment is liable to termination on one month Notice on either side without reasons being assigned. The appointment Authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

The appointee shall be on probation for a period of 3 years which may be extended or curtailed at the discretion of the competent authority but such extension or curtailment shall not exceed one year."

2. His services were terminated vide orders No.PF/85-5588-97 dated 16.3.35 (Notice giving him one month's time for termination of his services),

read with office order No.A/318/85 dated 27.3.85 (Annexure-A/4), the order terminating his services.

3. The applicant has challenged the order of termination of his service on the ground that since he has been placed on probation vide appointment order, he was holding the post in a regular capacity and his services could not be terminated as if he was on contract. The order of termination of services amounts to punishment, however innocuously, the wording of the order of termination of service, is worded. He has prayed for directions by the Tribunal, quashing the orders of termination of his services.

4. The Respondents on the other hand have taken their stand that as per offer of appointment the applicants' services were liable to be terminated with one month's notice from either side without assigning any reasons and since he accepted the appointment on this basis, the termination of his service was quite in accordance with the law. It is further stated by the Respondents, in the reply "the applicant's service records indicate unsatisfactory work, negligence in the performance of duty and improper manner of working". The applicant had made an appeal against the termination of his service which was examined by the Director, Aviation Research Centre and a reply was given to the applicant that the termination of his service was in order and rejecting his appeal (Annexure 4).

5. We have carefully gone through the documents on behalf of the parties and heard the learned Counsel on both sides. The Respondents were not able to explain clearly two conflicting statement about (1) termination of services with notice (2) placing him on probation. While the

offer of appointment dated 22.4.81 (Annexure-1) contains the provision placing him on probation for a period of 3 years as well as termination of services with ~~1~~ notice, Annexure-2 which is number A/30/81 dt. 1.5.81 contains orders of probation only. The latter order states the applicant was appointed in a temporary capacity to the post of Safaiwala and this order stated that he would be on probation for a period of 3 years. We have no doubt that Annexure-1 dated 24.2.81 is the offer of appointment and the second order in Annexure-2 without making any reference to the termination of service with one months notice is the appointment order which clearly states that he was appointed in a temporary capacity and was placed on probation.

6. It is clearly indicated in the reply of the Respondents that his services were terminated due to un-satisfactory nature of his work.

7. In the case of Anoop Jaiswal-Vs-Government of India, A.I.R.1984 S.C.636 it has been held by their Lordships the Supreme Court referring to the decision in ^{mbef} ~~Shastar~~ Singh's Case ^{that} the form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Art. 311(2). *in Anoop Jaiswal Case*

The decision stated "it is, therefore, now well settled ~~is~~ that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the

form and ascertain the true character of the order; if the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the right conferred by law upon the employee".

8. It was also a case of probation though the applicant belonged to the I.P.S.Cadre. Their Lordships further held in the above case as follows:-

"Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read alongwith the order for the purpose of determining its true character, if on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Art. 311(2) of the Constitution."

9. It is clear to us that the order of termination amounts to punishment and cannot be sustained. Accordingly, impugned orders contained in Annexure-3 and 4 are quashed. The applicant is reinstated in his service with effect from the date of termination of his services. He will be entitled to get the service benefits but he will not get back wages for the period till reinstatement.

9. The Respondents are directed accordingly. The

The order will be complied with within a period of one month from the date of receipt of the copy of this order.

There will be no order as to costs.

Member Encl 4
22.2.90.

..... MEMBER (JUDICIAL)

..... MEMBER (ADMINISTRATIVE)



PSH 22/2/1990