

IV

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.47 of 1988

Date of decision : September 7, 1988

Jaya Prakash Lachman, (Driver) now peon,
son of Julious Lachaman, All India Radio, Cuttack
At/P.O- Cantonment Road, Cuttack

Applicant

Versus

1. Union of India, represented through its Secretary, Information & Broadcasting, New Delhi.
2. Director General, All India Radio, Akashvani Bhawan, New Delhi- 110 001.
3. Station Director, All India Radio, Cuttack.
4. Superintending Engineer, All India Radio, Cuttack. At/P.O- Cantonment Road, Dist- Cuttack.

..... Respondents.

M/s G.S.Sahu, P.K.Mishra,
P.N.Ray & B.Dash, Advocates

..... For Applicant.

Mr. Ashok Misra, Addl. Standing Counsel.
Mr. Ganeswar Rath, Addl. Standing Counsel.
Mr. Tahali Dalai, Addl. Standing Counsel
(Central)

For Respondents.

C O R A M :

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

A N D

THE HON'BLE MR. K.P.ACHARAYA, 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 ? *Yes*
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 contained in Annexure-5 reverting the petitioner to his substantive post of Peon with effect from 30.12.1986.

2. Shortly stated, the case of the petitioner is that he was originally appointed as a helper under Dandakaranya Development Authority and in course of time due to the fact that the petitioner was found to be surplus, he was sent to the All India Radio, Cuttack and he joined in that organisation as a Peon on 19.1.1984. In course of time, the petitioner was called for an interview for the post of Driver and ultimately the petitioner was appointed as such on 30.10.1984. On 4.12.86 the petitioner was charge-sheeted and was asked to face a disciplinary proceeding on an allegation that he was rash and negligent in driving of the Government vehicle of the A.I.R. On 20.12.1986 the disciplinary authority appointed an Inquiring Officer and on the same day the Inquiring Officer instructed the petitioner to file his written- statement and such written statement was filed on 30.12.1986. On the very same day the Superintending Engineer who happens to be the disciplinary authority vide Annexure-5 ordered reversion of the petitioner to his substantive post of Peon. Being aggrieved by this order contained in Annexure-5 dated 30.12.1986 the petitioner has come up before this Bench with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the petitioner being a probationer, his service not being satisfactory the disciplinary authority was well within his

right to revert the petitioner to his substantive post of Peon and no illegality having been committed by the disciplinary authority, the impugned order contained in Annexure-5 should not be unsettled.

4. We have heard Mr. G.S.Sahoo, learned counsel for the petitioner and Mr. Tahali Dalai, learned Additional Standing Counsel for the Central Government at some length. It was contended by the learned Addl. Standing Counsel that in no circumstance the order of reversion should be unsettled because during the probation period, the disciplinary authority was not satisfied about the performance of the petitioner and therefore reverted the petitioner to his substantive post of Peon irrespective of the fact that a disciplinary proceeding was pending against him. On the other hand, it was contended by Mr. Sahoo, learned counsel for the petitioner that the disciplinary authority took a short circuit method in order to deprive the petitioner of the driver's post without paying the due heed and attention to the fact that a disciplinary proceeding was pending against the petitioner and if the disciplinary proceeding would have ended against the petitioner, then only punishment could have been justified because Article 311 of the Constitution protects the rights of the petitioner. The initial question that needs determination as to whether Article 311 could be attracted in the case of a probationer ? The answer would be in the affirmative. In a case reported in A.I.R. 1984 S.C. 636 (Anoop Jaiswal vrs. Government of India and another), Their Lordships were pleased to observe ~~as~~ that a probationer is also entitled to the protection afforded under Article 311 of the Constitution.

Here in the present case admittedly the petitioner was appointed as a Driver and was discharging his duties as such and therefore he is also entitled to the protection under Article 311 (2). It was then urged by the learned Addl. Standing Counsel Mr. Dalai that there being no stigma in the order in question, it should not be unsettled. This is not the sole criteria. In a judgment reported in 1980 (50) C.L.T. 145 (Ananta Charan Mohapatra vrs. Inspector of Post Offices, Jajpur Sub-Division & others) Full Bench had considered this aspect in detail and Hon'ble Mr. Justice R.N. Misra (as My Lord then was) speaking for the Court was pleased to observe as follows :-

" The brief gap between the order putting the petitioner off duty and the order of termination and the stand taken in the counter affidavit in support of termination leaves no room for doubt that the order of termination has actually been founded upon misconduct though no clear reference has been made to misconduct and reliance has been placed in Rule 6 alone. Court is, therefore, inclined to accept the submission of the petitioner's counsel that the impugned order of termination virtually amounted to dismissal and could not have been made in the absence of an appropriate disciplinary proceeding. The petitioner admittedly was a temporary servant. It is settled position of law that even a temporary servant is entitled to the protection of Article 311 of the Constitution ".

Similar issue came up for consideration by the Supreme Court in the case of Anoop Jaiswal (supra) and Their Lordships were pleased to observe as follows :-

" 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). 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 rights conferred by law upon the employee ".

In another case reported in A.T.R. 1986 C.A.T. 193 (Jarnail Singh & others vrs. State of Punjab & others), Their Lordships observed 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 and conditions of the services without attaching any stigma to any of the petitioners or it is one of the 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 ".

Similar view has been taken in a plethora of judicial pronouncements by the highest court of the land. They are reported in 1968(2) Supreme Court Reporter 828 (State of Punjab vrs. Sri Sukh Raj Bahadur), 1971 Supreme

Court Reporter 191 (State of Bihar & others vrs. Shiv Bhikshuk Misra etc) . The ratio of all these cases is that the Court has a right to lift the veil and look into the circumstances existing behind the veil. In the present case, this Bench cannot lose sight of the fact that during the probationary period a disciplinary proceeding was initiated against the petitioner and on the very same day on which the written statement was filed, the impugned order reverting the petitioner to his former post was also passed . In such circumstances, we are of opinion that the impugned order is a cloak or camouflage to terminate the services of the petitioner to avoid the result of the disciplinary proceeding in which there was allegation of misconduct against the petitioner. Hence, we do hereby set aside the order of termination passed against the petitioner contained in Annexure-5 and we would further hold that the order passed by the disciplinary authority appointing the Inquiring Officer on 20.12.1986 before filing of the written statement is also illegal. We would therefore direct that the proceeding may commence right from the stage of calling upon the petitioner to file his written statement and after the written statement is filed and after it is considered by the disciplinary authority, if it is found that further inquiry is necessary, the disciplinary authority may appoint an Inquiring Officer to enquire into the allegations levelled against the petitioner.

5.

Thus, the application stands allowed

leaving the parties to bear their own costs.

Agreed 7.9.88.

.....
Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

I agree.

Rakesh 7.9.88
.....
Vice Chairman.



Central Administrative Tribunal,
Cuttack Bench.
September 7, 1988/Roy, Sr.P.A.