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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 471, 472, 473 & 474 of 1989.

Date of decision : January 2, 1991.

In O.A. 471/89	Kailash Chandra Panigrahi	...	Applicant.
		Vrs.	
	Union of India and others ...		Respondents.
In O.A. 472/89	Arakhita Moharana	...	Applicant.
		Versus	
	Union of India and others ...		Respondents.
In O.A. 473/89	Bopal Krishna Behera	...	Applicant.
		Versus	
	Union of India and others ...		Respondents.
In O.A. 474 of 1989.	Rajendra Kumar Sahu	...	Applicant.
		Versus	
	Union of India and others ...		Respondents.
In all the cases	For the applicants ...	Ms./.S.Kr.Mohanty, S.P.Mohanty, Advocates.	
	For the respondents ...	Mr.Ganeswar Rath, Standing Counsel(Central)	

C O R A M:

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. K.P. ACHARYA, VICE-CHAIRMAN

1. Whether reporters of local papers may be allowed 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, NICE-CHAIRMAN, All the above mentioned cases were heard one after other and since all the cases involve common questions of fact and law, we direct that this common judgment would govern all the cases mentioned above.

2. In O.A.471 of 1989 the applicant was appointed as Plumber on probation for a period of two years in the semi-skilled grade by the Major Garrison Engineer, Gopalpur vide Annexure-1 dated 26.3.1987 and the applicant joined the post. Vide Annexure-2 dated 31st October, 1988, the applicant's services were terminated and he was removed from service with immediate effect.

3. In O.A.472 of 1989 the applicant was appointed as Carpenter on probation for a period of two years in the semi-skilled grade by the Major Garrison Engineer, Gopalpur vide Annexure-1 dated 26.3.1987 and the applicant joined the post and after working for some time vide Annexure-2 dated 31.10.1988 the applicant was removed from service with immediate effect.

4. In O.A.473 of 1989 the applicant was appointed as Cable Jointer on probation for a period of two years in the semi-skilled grade by the Major Garrison Engineer, Gopalpur vide Annexure-1 dated 26.3.1987 and the applicant joined the said post and after working for some time vide Annexure-2 dated 31.10.1988 the services of the applicant were terminated and the applicant was removed from service with immediate effect.

5. In O.A. 474 of 1989 the applicant was appointed as Pipe-Fitter on probation for a period of two years in the semi-skilled grade by the Major Garrison Engineer, Gopalpur vide Annexure-1 dated 26.3.1987 and the applicant joined the said post and worked for some time and vide Annexure-2 dated 31.10.1988 the services of the applicant were terminated and the applicant was removed from service with immediate effect.

6. In all these applications the case of the applicants is that the applicants have discharged their duties satisfactorily. The order of termination of their services is bad on the question of fact and law and therefore, liable to be set aside.

7. In their counter the respondents maintained that the applicants have managed to obtain the order of appointment without requisite qualification and such appointment could be issued only after the approval of the Board and such procedure not having been followed and especially the applicants not having gained requisite qualification i.e. the certificate from the Industrial Training Institute, they did not gain the eligibility criteria for appointment and therefore, rightly their services were terminated which should be sustained.

8. In all the above mentioned cases we have heard Mr. S. Kr. Mohanty, learned counsel for the applicants and Mr. Ganeswar Rath, learned Standing Counsel (Central) for the respondents at a considerable length.

9. It was vehemently contended by Mr.S.Kr.Mohanty, learned counsel for the applicants that requisite qualification for appointment to such posts is either Matriculate or the candidate should have passed the Middle English standard. The applicants having obtained the said qualification which has been noted by the concerned officer in paragraph 9 of Annexure-1, it is no longer open to the respondents to contend that the educational applicants did not gain requisite/qualification for appointment and therefore the orders of termination should be quashed. On the other hand, it was contended by Mr.Rath that the above mentioned irregularities/illegalities having occurred in the matter of issuance of appointment orders in favour of the applicants and all the applicants not having gained the eligibility criteria so far as the qualification is concerned their services were rightly terminated and therefore, the order of termination of the services of the applicants should be sustained especially when no stigma is attached in the termination orders. It was also contended by Mr.Mohanty that even if there is no stigma attached to the impugned orders yet Article 311(2) of the Constitution is attracted and therefore without a regular enquiry the order of termination of service is bad in law.

10. The initial question that needs determination is whether the provisions contained in Article 311(2) of the Constitution of India is applicable to the facts of the present case. Mr.Mohanty relied upon the judgment of the Hon'ble Supreme Court reported in A.T.R.1983(1)S.C.211

(Shesh Narain Awasthy v. State of U.P. and others). Their Lordships were pleased to hold as follows:

" Where the services of the appellant working as a temporary police constable were terminated for taking active part in the activities of unrecognised Police Karamchari Parishad without following the prescribed procedure by Article 311 of the Constitution, the appellant was ordered to be reinstated. "

The other judgment on which reliance was placed is reported in A.T.R.1983(1)S.C.77 which is exactly on the same line. In this connection, another judgment of the Hon'ble Supreme Court should be noticed which is reported in A.T.R.1986(2)S.C.193 (Jarnail Singh and others etc. v. State of Punjab and others). Their Lordships were pleased to observe as follows:

" 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. Mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In otherwords, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. The court, in such cases, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not. "

Their Lordships further observed as follows:

" There is no room for any doubt that the impugned orders of termination of services of the petitioners had been made by way of punishment as the allegations of embezzlement of funds as well as adverse remarks in the service records of the petitioners were the

basis and the foundation for not considering them to be fit for being regularised in their services in accordance with the Government Circular dated October 28, 1980. In the context of these facts and circumstances of the case, it is clear that the impugned order of termination though couched in the innocuous terms as being made in accordance with the terms and conditions of the appointment, yet the impugned order of termination of services of the petitioners were in fact made by way of punishment being based on the misconduct. Thus the impugned orders terminating the services of the petitioners-appellants on the ground that "the posts are no longer required" are made by way of punishment. "

11. Applying the above quoted principles laid down by Their Lordships to the facts of the present case it is clear that the orders of termination have been couched in the innocuous terms but on lifting the veil it is found that the services of the applicants were terminated due to lack of requisite qualifications and therefore, we are of opinion that even though the termination orders are couched in the innocuous terms but termination of the services of the applicants is by way of punishment and therefore, not only the principles laid down by Their Lordships apply with full force to the facts and circumstances of the case but the provisions of Article 311(2) of the Constitution is also attracted.

12. Mr. Ganeswar Rath, learned Standing Counsel (Central) appearing for the respondents urged that the administrative authorities have always the right of correcting the administrative errors committed while passing a particular order. In the present case, administrative errors having been corrected, the grievance of the applicants is not acceptable. In this connection, it is worth while to quote

the observations of Their Lordships of the Supreme Court in a case which is reported in 1983 (Vol.27) (Part II) All India Services Law Journal 105 (K.I. Sephard & others etc. etc. v. Union of India and others). Hon'ble Mr. Justice R.N. Misra (as my Lord the Chief Justice of India then was) at the end of paragraph 10, speaking for the Court was pleased to observe as follows:

" On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet. "

In the present case, before issuance of the termination orders no notice was given to any of the applicants calling upon them to submit their explanation and without any notice termination orders have been passed thereby violating the principles of natural justice, as has been laid down by Their Lordships in the above quoted judgment which apply in full force to the facts of the present case. In the circumstances stated above, orders passed by the competent authority in all the above mentioned cases terminating the services of the applicants are not sustainable and hence they are accordingly quashed with a direction to the disciplinary authority to take appropriate action according to law, if he chooses to further proceed in the matter.

13. It was urged by Mr. Ganeswar Rath that if the Court quashes the orders of termination the applicants may demand

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reinstatement. We direct that the applicants shall not be reinstated with retrospective effect and so far as the reinstatement in future is concerned, the competent authority may pass orders according to law, placing the applicants under suspension, if rules permit.

14. Before we part with this case, it was submitted by Mr. Mohanty that according to the terms of appointment, the applicants are entitled to either one month's notice or one month's pay in lieu thereof as mentioned in paragraph (e) of Annexure-1 which runs thus :

" the temporary appointment may be terminated at any time on one Month's notice given by the other side viz. the appointee or appointing authority, without assigning any reasons. The appointment, authority, however, reserves the right of terminating your service forthwith or before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allce for the period of notice or the ~~is~~ unexpired portion thereof. "

Admittedly, one month's notice has not been given or in lieu thereof one month's pay has also not been given to the applicants. We are of opinion that one month's notice not having been given to the applicants, they are entitled to one month's pay in lieu thereof which should be paid within a period of three months from the date of receipt of a copy of the judgment.

15. Thus, these applications are accordingly disposed of leaving the parties to bear their own costs.

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Vice-Chairman

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
January 2, 1991/Sarangi.



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Vice-Chairman