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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 09.07.2002

O.A. No. 24/2001

Bheek Singh Rathore son of late Shiv Dan Singh aged about 57 years resident of 244, Laxmi Nagar, Paota 'B' Road, Jodhpur, last employed on the post of Manager, in the office of Battle Axe Canteen, Hqrs. 12 Infantry Division C/o. 56 APO.

... Applicant.

versus

1. Union of India through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. G O C, Hqrs. 12 Infantry Division, C/o. 56 APO.
3. Dy. G O C, Chairman, Battle Axe Canteen, Hqrs. 12 Infantry Division, C/o. 56 APO.
4. Shri H. Sharma, Major, Establishment Officer (Ex-Canteen Officer, Battle Axe Canteen), Hqrs. 12 Infantry Division, C/o. 56 APO.

... Respondents.

Mr. J.K. Mishra, Adv., Brief holder for Mr. B. Khan, Counsel for the applicant.

Mr. Dalip Singh Rajvi, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)

Applicant, Bheek Singh Rathore, has filed this application under Section 19 of the Administrative Tribunals Act, 1985,

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challenging the impugned order dated 3rd June, 2000 (Annexure A/1), by which his services have been ordered to be terminated and for quashing the same as tainted with mala fides of respondent No. 4 and for seeking all consequential benefits.

2. The case of the applicant is that he was initially appointed to the post of Accountant on 26th June, 1991, in Battle Axe Canteen. He was further selected and posted on the post of Manager by the third respondent vide letter dated 21st December, 1992 (Annexure A/2). He is an Ex-serviceman and has rendered about 28 years service in uniform. After his redeployment in the Battle Axe Canteen, he has served as a civilian for about nine years. He never faced any unusuality except from March, 2000, when the respondent No.4 took over as Canteen Officer. It has also been mentioned that the employees of the Unit Run Canteens have been declared as Government servants by Hon'ble the Supreme Court in the case of Union of India and Ors. vs. Mohd. Aslam & Ors., 2001 SCC (L&S) page 302.



3. The respondent No. 4 started issuing letters, warnings, explanations etc. and originated all the correspondences himself but while signing, it has been indicated as 'for Chairman'. It has been said that the whole exercise was to oust the applicant at any cost. The applicant submitted explanation to all the letters issued to him, but the 4th respondent always threatened him for disciplinary action. One of the major reasons for the unusual action was that the applicant filed a case before this Tribunal for grant of regular pay scale treating him as a Central Government employee and the same has been allowed and also has been upheld by Hon'ble the Supreme Court.

4. The 4th respondents himself has committed number of irregularities, for e.g., purchasing a container without quotation

for wrongful gain, purchasing items only from a particular shop, getting sold his personal old radio through canteen and that too, on a higher rate. He also victimised one lady saleswoman. All these matters were brought to the notice of the 3rd respondent.

5. Certain vague allegations have been made against the applicant on the basis of finding of a Court of Inquiry vide letter dated 25th May, 2002 (Annexure A/15) and he was asked to reply the same. Neither any details nor a copy of the representation of the alleged Court of Inquiry was supplied to him. However, he clearly apprised that there was no failure in his duties. Still the 4th respondent issued termination order dated 3rd June, 2000 (Annexure A/1). It is also averred that the applicant is a civilian Government servant and was not subject to Army Act; the provisions of Court of Inquiry do not apply to his case; he has not given any reasonable opportunity to defend his case; no charge sheet was given and also, no oral inquiry was conducted against him. Further, the Court of Inquiry is only a preliminary enquiry or a fact finding inquiry. No opportunity like cross examining the prosecution witnesses, producing defence witnesses or documents, proving the documents etc. is there in such enquiry and it is no substitution for regular disciplinary proceedings, even in a case of military person.

6. The termination order has been said to be issued in accordance with Para 61 (a) of Standing Operating Procedure (SOP, for short) of Battle Axe Canteen, which provides as under:-

"61. Discipline.

(a) Any civilian employee of the canteen can be removed/ discharged immediately from service at any time by the appointing authority on grounds of misconduct, dishonesty, breach of trust and inefficiency.

(b) Any loss caused by the employee due to negligence will be

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made good by the employee before leaving the job of adjusted against his surety, salary etc."

7. It has been further mentioned that no rule has been framed regarding the procedure for imposing penalty for the misconduct. The applicant is a civilian Government servant and termination of his services on the ground of misconduct, tantamounts to removal from service which could be done only after following the principles of natural justice, but nothing as such, was done in this case.

8. The O.A. has been filed on multiple grounds e.g., the impugned order has been passed as a measure of penalty without following the principles of natural justice, no charge sheet was issued, the Court of inquiry has no application in this case, the Court of inquiry is just like a preliminary inquiry or at the most a fact finding inquiry, no regular inquiry was conducted and there has been total denial of opportunity to defend the case, he has been held guilty on the basis of conjectures and surmises and he was not supplied with the copy of report of the so called Court of inquiry. He was also not given any opportunity to peruse any of the relied upon documents nor allowed to cross examine any of the witnesses and the impugned termination order has been passed by the 4th respondent, who has usurped the power of the competent authority. There is no application of mind by the competent authority and the termination is without jurisdiction and tainted with the malice of the 4th respondent. Another ground is that the punishment imposed is ex-facie disproportionate and unconscionable to the alleged misconduct. The right to livelihood has been held to be a fundamental right to life and liberty as enshrined under Article 21 of the Constitution of India and the livelihood has been adversely affected without following the procedure established by law.

9. A show cause notice for admission was issued on 14th



February, 2001. The respondents have filed a detailed reply to the O.A. and have controverted the facts and grounds mentioned in the O.A. An affidavit of respondent No. 4 has also been filed denying the contents of the paras relating to the mala fide alleged in the O.A. It has been mentioned that all the orders were passed on the directions of the Chairman, Battle Axe Canteen. The annual Confidential Report of the applicant for the year 1999 reflects that his work was not satisfactory and he was not granted increment. The applicant was served number of warrants. As per the standing orders of the Battle Axe Canteen, the applicant was removed from service because he was found guilty in the Court of Inquiry which was conducted on the orders of Patron. The applicant is making false allegation against the respondent No. 4 just to get sympathy of the Court. The applicant was blamed in the Court of Inquiry held in June, 1996, when he was warned. He was not found working satisfactorily. The termination order has been passed in accordance with Para 61 of SOP as ordered by the Chairman and the 4th respondent only signed for Chairman. Ample opportunities were given but there was no improvement. It is also said that there is no rule except the 'Standing Operating Procedure' in respect of canteen employees and it is admitted that the applicant's service was terminated on the ground of Court of Inquiry which has found him guilty. He was given chance and an explanation was called vide letter dated 24th May, 2000. It has been said that all the orders and letters are passed by the Chairman and the respondent No. 4 is just signing on behalf of the Chairman as per para 59 of SOP and a letter of dismissal when necessary, will also be issued and signed by the Canteen Officer with the approval of the Chairman. No allegation of mala fide has been proved by the applicant against the respondent No. 4, so the order of termination vide Annexure A/1 is legal and according to law and the applicant should be dismissed with costs.



10. The applicant has also filed a rejoinder to the reply of the respondents. Alongwith his rejoinder, Annexure A/17, an extract of the instructions regarding the position of Court of Inquiry, has been filed. It has also been mentioned that the applicant was never communicated with any adverse entries mentioned in Annexure R/4. Another letter has been submitted as Annexure A/18, wherein it has been indicated that the Court of Inquiry is not applicable in the case of Unit Run Canteen employees and a Board of Inquiry is to be conducted.

11. We have heard the learned counsel for the parties and have perused the records.

12. The respondents have also submitted a file containing the findings of the Court of Inquiry.

13. In this case, mainly there are two questions which are required to be examined and determined. The first question is as to whether the impugned order has been issued by the competent authority and if not, what is the consequences and sencondly, as to whether the Court of Inquiry is a fact finding inquiry and whether any penalty can be imposed on the basis of the findings of the Court of Inquiry conducted by the respondent No. 4 in the present case and if not, what is the effect on the impugned order.

14. As regards the first question, the applicant has specifically stated in the application as well as has taken a ground that the impugned termination order has not been signed by the competent authority. It has been signed by the 4th respondent for 3rd respondent. It is not in dispute that the appointing authority of the applicant is the Chairman (respondent No.3) and the Chairman has not signed the order of termination. The learned

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counsel for the applicant has argued that the impugned order Annexure A/1 cannot be said to be the order passed by the competent authority, i.e., the respondent No. 3.

On the other hand, the learned counsel for the respondents has invited our attention to para 4(3) of the O.A., wherein it has been said that at the time of Court of Inquiry, the competent authority after going through his explanation, charges and standing orders mentioned in the SOP of Battle Axe Canteen and after applying its mind, the termination orders in accordance with para 69 of SOP were ordered by the Chairman which were only signed by the respondent No.4 for the Chairman. Further, our attention was drawn to para 5(D) of the application, wherein it has been mentioned that the letters and orders are passed by the Chairman and the respondent No.4 is just signing on behalf of the Chairman as per para 59 of the SOP. In view of this position, it has been argued by the learned counsel for the respondents that the termination order has been actually passed by the competent authority, i.e., the respondent No.3, and signing of the order by the respondent No.4, does not make any difference. Further, it has been reiterated that all orders and letters have been issued under the signatures of the 4th respondent as per the directions of respondent No. 3 and there is no illegality or incompetence of authority in passing of the impugned orders.

15. We have given our considerable thought in the matter and are of the opinion that quasi-judicial authorities while passing the orders in disciplinary matters, are required to apply their mind. This is the maximum statutory requirement. The statutory powers, specially in the matters of disciplinary cases, cannot be delegated to any subordinate authority. It is also unconscionable on respondents' part as to once an authority applies its mind what

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could be the hitch in signing the order and where was the need to give a direction to a subordinate officer to pass termination order which tantamounts to penalty of removal from service. Such matters cannot be dealt with in a casual manner. Thus, the impugned order has not been signed by the competent authority, i.e., the respondent No.3 and the same is not sustainable in law and is without jurisdiction. The O.A. deserves to be allowed on this ground alone.

16. Now, we proceed to deal with the next question. The position regarding the Court of Inquiry has been mentioned in Annexure A/17 of the paper book. The purpose of the Court of Inquiry has been mentioned in para 6 of the said annexure and the contents thereof are extrated as under:-

"6. A Court of Inquiry is assembled to help a CO or superior authority to reach a correct conclusion on any matter upon which it may be expedient for him to be informed. It is an administrative procedure by which any unusual occurence is investigated. The purpose is merely to help the authorities to come to a definite conclusion regarding any matter requiring investigation. The Court is appointed merely to find out facts and make recommendations if so required to. The assembling authority may or may not accept the Court's conclusions. A Court of Inquiry is not a "Court of Law".

It has been in very clear terms mentioned that the Court of Inquiry is appointed merely to find out facts and making recommendations, if so required. Further, it has been mentioned that the assembling authority may or may not accept the Court's conclusion and a Court of Inquiry is not a Court of Law. The purpose is merely to help the authorities to come to a definite conclusion regarding any matter requiring investigation. This clearly indicates that it is only a fact finding enquiry and not a detailed oral inquiry, as is required in the disciplinary matters. The requisites of a detailed oral inquire are that a person is issued with a charge sheet containing article of charges, imputation of

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charges, list of relied upon documents and list of witnesses in support of the charges. Thereafter, the delinquent employee is required to submit his statement of defence. After considering the statement of defence, an oral enquiry may be ordered in which the prosecution witnesses are examined, documents are marked as exhibits, the delinquent employee is given an opportunity to cross examine the prosecution witnesses and also to produce his defence by submitting / calling defence documents and defence witnesses. Lastly, the inquiry officer is required to generally questioning on the points having general bearing with the case in case he has not produced himself as a defence witness and then, prosecution brief as well as defence brief are submitted. Thereafter, the inquiry is finalised. In the present case, it could be said that only a preliminary inquiry was held and no further exercise as enunciated above, has been undertaken. A perusal of the Court of Inquiry would reveal that it contains only simple statement of the individual, the findings of the Court of Inquiry and the recommendations of the Court of Inquiry. Thus, the procedure established by law for imposing a penalty has not been followed in the present case. We find support of this view as per judgement of Hon'ble Supreme Court in Nar Singh Pal vs. Union of India and Ors. reported in (2000) SCC (L&S) 362. It was a case of casual labour, who acquired the temporary status and his services were terminated after a preliminary enquiry, on the basis of assaulting a Gatekeeper for which he was prosecuted. It was held that the order was not a simple order of retrenchment but was punitive amounting to dismissal, the same having been passed on the basis of preliminary inquiry and not on the basis of a regular inquiry, was held as invalid. The same ratio applies to the present case as the service of the applicant has been terminated on the ground of misconduct and the order is punitive. There has been total denial of opportunity to defend the case least to say, the reasonable opportunity.

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17. It will not be out of place to mention here that the Court of Inquiry is provided as per the Army Rule corresponding to Air Force Rule 154 (1) which has also been provided under Section 107 of the Air Force Act and the corresponding Army Act. The civilians in Army are not subjected to Army Act as per Section 2 of the Army Act, 1950. Thus, the recommendations of the Court of Inquiry has no applicability to the case of the applicant, who is admittedly a civilian Government servant in Defence. Hence, the question No. 2 is answered accordingly. In view of the findings on the aforesaid issues, we do not find any necessity to examine other grounds raised by the applicant in O.A.

18. In view of this position, the impugned order is not sustainable in the eye of law.

19. In the premises, the Original Application turns out to be well merited and the same is allowed. The impugned order of termination dated 3rd June, 2000 (Annexure A/1) is quashed and set aside and the applicant shall be entitled to all consequential benefits, including pay and allowances for the period from the date of dismissal to the date of reinstatement in terms of this order on verification of the fact that the applicant has not engaged himself in gainful employment elsewhere. This will not preclude the competent disciplinary authority to initiate a fresh disciplinary action in accordance with law. Parties are, however, left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

O.P. Garg
(JUSTICE O.P. GARG)
Vice Chairman

Part II and III destroyed
in my presence on 24-7-02
under the supervision of
section officer () as per
order dated 24-7-02

Section officer (Record)

Recd
11/3/02

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Received
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