

I/8

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

O.A. No. 126/2002

DATE OF DECISION :

Naveen Mehra : Petitioner
Mr. S. K. Malik : Advocate for the Petitioner

Versus

Union of India & Ors. : Respondent (s)
Mr. Vinit Mathur : Advocate for the Respondents

**Coram : Hon'ble Mr. Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr. S. K. Malhotra, Member (A).**

1. Whether Reporters of local papers may be allowed to see the Judgment?
- ✓ 2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal?

Amars
(S. K. MALHOTRA)
MEMBER (A)

in
(G.L.GUPTA)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No.126/2002

Date of decision: 8.9.03

Naveen mehra , S/o Shri Gauri Shankar Mehra, aged about 26 years, R/o Gole Mehro Ka Chowk, Jaswant Thada Ki Ghat, Jodhpur (Raj) Ex-Chowkidar, Income Tax Office, Sumerpur (Raj)

: Applicant

versus

1. Union of India through the Secretary, Ministry of Finance, Department, of Income Taxes, North Block, New Delhi.
2. Chief Commissioner of Income Tax, Department of Income Tax, Revenue Building, Statue Circle Jaipur (Rajasthan)
3. Commissioner of Income Tax -I Lal Maidan, Jodhpur (Rajasthan)
4. Additional Commissioner of Income Tax -I Lal Maidan Jodhpur (Rajasthan)

: Respondents.

Mr. S.K Malik

: Counsel for the applicant.

Mr. Vinit Mathur

: Counsel for the respondents.

CORAM

**The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman,
The Hon'ble Mr. S.K. Malhotra, Administrative Member.**

ORDER

Per Mr. Justice G.L.GUPTA:

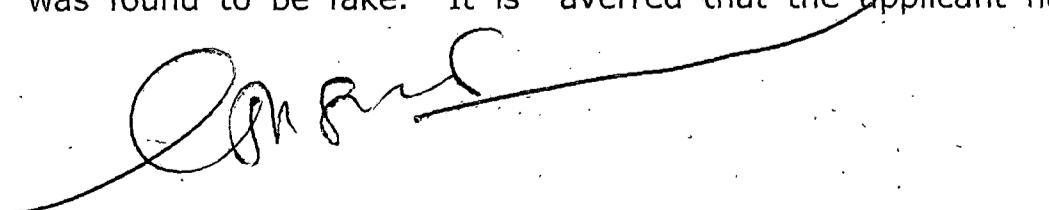
The applicant was offered appointment on the post of Chowkidar by the Dy. Commissioner of Income Tax. Range – Jodhpur, vide order dated 16.3.94. (Annex. A.5) He gave his



joining report on 21.3.94. Vide Annex. A.2. the applicant was given notice of termination of his services under rule 5 (1) of the Central Civil Services(Temporary Service) Rules, 1965 (herein after referred to as the Rules). It was informed that his services would stand terminated with effect from the date of expiry of period of one month notice from the date of receipt of the said notice. The applicant made petition for review/re-opening of the case, which was rejected vide order dated 12.5.97 (Annex. A.3). It is stated that the applicant preferred appeal to the Chief Commissioner of Income Tax against the order but when that was not considered, he had to approach this Tribunal by filing O.A. No. 321/2001 and the said O.A was disposed of vide order dated 20.12.2001, directing the Chief Commissioner of Income Tax, Jaipur to dispose of the appeal, if any, filed by the applicant, within three months. The Chief Commissioner of Income Tax, Jaipur thereafter passed the order Annex. A.1 on 28.3.2002. This O.A. has been preferred challenging that order as also the notice Annex. A.2 and the rejection of petition order Annex. A.3.

2. The grounds taken in the O.A are that the applicant had never submitted a certificate of Shiv Om Shakti Upper Primary School, Bhagat Ki Kothi, Jodhpur in support of his date of birth and that on the basis of alleged certificate his services could not be terminated.

3. In the counter the respondents have come out with the case that the applicant had produced a certificate issued by the Shiv Om Shakti Upper Primary School, Jodhpur and the same was found to be fake. It is averred that the applicant had



studied in the Raj Mahal School, where his date of birth was recorded as 15.10.79 but after the notice Annex. A.2 was served on the applicant he got the date of birth changed to 01.07.75 by the District Education Officer, Jodhpur.

4. In the rejoinder, the applicant's case is that he had not submitted any certificate while joining service.

5. We have heard the learned counsel for the parities and perused the documents placed on record.

6. The contention of Mr. Malik was that the services of the applicant have been terminated without holding full fledged enquiry and the order of termination being stigmatic in nature, is liable to be quashed. He urged that the applicant had not submitted the certificate Annex. R.1 and that in the year 1978 the applicant's father, who is an employee in the respondents' department, had obtained medical re-imbursement of the applicant Naveen Mehra, showing his age as 4 years. Relying on the decision of the Apex Court in the case of **Radhey Shyam**

Gupta vs. U.P. State Agro Industries Corporation Ltd and another [1999 SCC (L&S) 439], Mr. Malik contended that the order of termination be quashed.

7. On the other hand Mr. Mathur, learned counsel for the respondents pointed out that the notice of termination did not contain any word as to render the same stigmatic. He submitted that the respondents did not want the services of the applicant any more and as the applicant was only a temporary employee, his services were terminated under Rule 5 of the Rules. According to him, on the ground that some facts have been stated in the order Annex. A.1, it should not be held that the



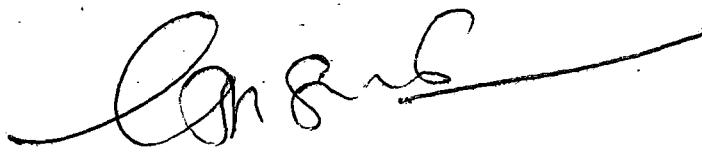
order of termination is stigmatic. He canvassed that the Court should not go in to the merits of the case and should decide the matter simply on the basis of the Order Annex. A.2.

8. We have given the matter our thoughtful consideration. It has to be accepted that in the notice Annex. A.2, it was not stated that the notice was being given to the applicant on account of his misconduct. Rule 5 of the Rules provides that the services of a temporary Government servant can be terminated at any time by giving notice in writing by the competent authority to the Government servant and the period of such notice shall be one month. It is also provided in the said rule that pay and allowances in lieu of notice can be given if the services are desired to be terminated forthwith.

9. In the instant case, clear cut one month notice was given to the applicant before terminating his services. Since in the notice Annex. A.2 no misconduct was shown, it has to be held that the termination is not stigmatic.

10. When the applicant approached the higher authorities for reviewing the order, the higher authority recorded reasons on the basis of available material on record. It was stated that the applicant had not studied in the Shiv Om Shakti School, Jodhpur, and he had filed the certificate of that school for his appointment as Chowkidar under the respondents.

11. Though there is no provision of appeal in the Rules of 1965, yet the respondents were directed to decide the appeal, if any, of the applicant pending with the respondents within three months. The Chief Commissioner of Income Tax has thereafter passed the impugned order Annex. A.1. In that order the Chief



Commissioner of Income-tax has stated that the services of the applicant were terminated for the reason that he had furnished a false certificate in proof of his age and qualifications. It is also stated in the order that a preliminary inquiry was held and it was found that the applicant had never studied in the Shiv Om Shakti Upper Primary School, but he had filed the false certificate in the Employment Exchange about his age to make himself eligible for entry into Govt. Service. It has already been stated that there is nothing in the notice (Annexure - A-2) to treat the same as stigmatic. The question for consideration is whether on the basis of grounds stated in Annexure A-1 and A-3 the termination can be held to be stigmatic.

12. In the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi Post Graduate Institute of Medical Sciences and Anr. [2001 (8) Supreme 409], their Lordships have held that an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order. In that case, the observations of a constitution Bench in the case of Mohinder Singh Gill Vs. The Chief Election Commissioner [1991 (1) SCC 691] were also relied on.

12.1 In view of the observations made in that case it has to be held that the narration of the facts in the order Annexure A-1 or A-3 does not invalidate the termination of the applicant vide notice Annexure A-2. The counter filed by the respondents also



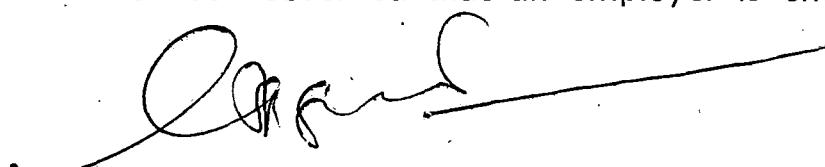
does not change the character and nature of the termination vide notice (Annexure – A-2):

13. It is significant to point out that no full fledged inquiry was held against the applicant before issuing the notice Annexure A-2. Only a preliminary inquiry was held. Holding a preliminary inquiry during the period of probation or during the period, an employee is under temporary service, does not make the order of termination, punitive.

13.1 In the case of Pavanendra Narayan Verma (supra) a preliminary inquiry had been held against the employee before issuing notice terminating his services. It was held by the Apex Court that the termination order was a termination simplicitor and not punitive.

13.2 In the case of Champak Lal Chimanlal Shah Vs. Union of India [AIR 1964 SC 1854] also a Constitution Bench held that services of a temporary govt. servant under Rule 5 of the Rules can be terminated without holding any inquiry. It was further held that holding of preliminary inquiry to determine whether *prima facie* case for formal departmental enquiry is made out, would not make the termination of services as dismissal or removal as to attract Article 311 (2) of the Constitution of India

13.3 So also in the case of Shailaja Shivajirao Patil vs. President Hon. Khasdar UGS Sanstha & ors [JT 20002 (1) SC 431], it was held that an enquiry held prior to the order of termination does not turn otherwise innocuous order into one of punishment. It was observed that an employer is entitled to satisfy itself

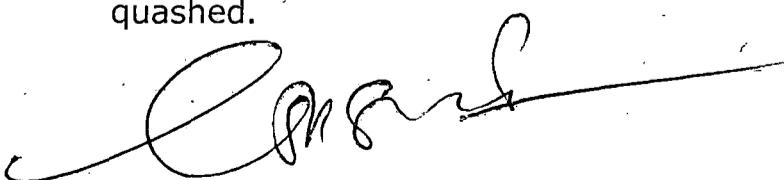


fairly as to the truth of any allegation that may have been made about the concerned employee.

13.4 In the case of Union of India & ors. Vs. A. P. Bajpai and Ors. (JT 2003 (1) SC 454), it was held that an order of termination passed under Rule 5 of the CCS Temporary Services Rules 1965 is not punitive.

14. The ratio of the aforesaid cases is that if the order of termination does not indicate any stigma, it cannot be assailed merely on the ground that a preliminary enquiry was held against the employee, and that subsequent conduct of the employer in making averments in the affidavit or making of averments in the reply does not render the innocuous order of termination as punitive.

15. As to the case of Radhey Shyam Gupta (Supra) relied on by Mr. Malik, it may be stated that that the allegations against that employee were that he had fraudulently taken Rs.2000/- from one J. C. Lal. The Tribunal held that the termination order though appeared to be innocuous, was punitive in nature as the same had been passed on the report based on an enquiry on the allegations that the employee had allegedly accepted the bribe. There being totally a different situation their Lordship's have held that the order was punitive in nature. Even in that case, the principle was reiterated that mere holding of preliminary enquiry or even unfinished departmental enquiry will not make the innocuous order of termination as punitive. As already stated in the instant case, the termination does not fall under that category and it being termination simplicitor, is not liable to be quashed.



I/16

16. In view of what we have stated above, it is not necessary on our part to enter into the genuineness or otherwise of the certificate (Annexure R-1) filed along with the reply.

17. The result is that we find no merit in the instant OA and it is liable to be dismissed. The same is hereby dismissed. No order as to costs.

Om May
(S. K. MALHOTRA)
MEMBER (A)

G. L. Gupta
(G. L. GUPTA)
VICE CHAIRMAN

Svs