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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT BOMBAY, BOMBAY

O. Application No.1 of 1985

Jayant Sudhakar Chiplunkar,
aged 23 years, residing at Petitioner
P.C.Banerjee Quarters,
Room No.2, Khot Road,
Bhandup(West),
Bombay-400 078.

Versus

The Joint Chief Controller
of Imports & Exports, Bombay,
Government of India, Ministry
of Commerce, having his office
at New C.G.O.Building,New
Marine Lines, Churchgate,
Bombay-400 020. Respondent

Coram: Vice-Chairman B.C.GADGIL
Member J.G.RAJADHYAKSHA
2nd January,1986

Oral Judgement (per Vice-Chairman)

1. Before considering the controversy, we will mention a few facts. The Petitioner was appointed as Clerk. Before that appointment, an offer for such temporary appointment was given on 29th/ 30th June,1983 vide page 12 of the Petition. The offer states that the appointment would be temporary and would not confer any title for permanent employment. Clause 2(iii)provides that the appointment is terminable at any time by giving one month's notice on either side. The Petitioner accepted this offer and started working as a Lower Division Clerk from 11.7.1983. A formal order of appointment was issued subsequently i.e. on 13.7.1983 vide page 15 of the application.

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2. On 8th/9th of October,1985, the Respondent(the appointing authority) gave notice to the Petitioner terminating his services with effect from the expiry of one month's period. It is this termination that is being challenged before us. The main contention of the Petitioner is that the above mentioned simple termination of service by giving notice is really an inflicting of punishment and that such punishment could not have been awarded without holding an enquiry as contemplated by Article 311(2) of the Constitution It is true that in view of this article, a dismissal or removal of a Government Servant is not permissible unless necessary enquiry contemplated by that article is held. However, the main question is as to whether the termination of such service by giving notice was really a dismissal or removal from service or is a simple termination without imposing any penalty on the Petitioner.

3. The Petitioner has averred in paragraphs 4 and 5 that on 30th of September,1985 he was asked by his Superior Officer to attend to the work of another L.D.C. Shri J.S. Tulaskar, who was on leave. The Petitioner's grievance is that he was so much overburdened with the work on his own table and, therefore, he informed his superiors that he would look after the work of Shri Tulaskar after completing his own work. In this way, he was not able to attend the work on the table of Shri Tulaskar. The Petitioner contends that on account of this position, his services were terminated by way of punishment.

4. The respondent has filed an affidavit, in reply, stating therein that the Petitioner was asked to carry out the duties of Shri Tulaskar. The respondent denied that the Petitioner was to attend 100 or 120 applications every day.

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Such a statement was made with a view to indicate that the Petitioner was not overburdened with his own work. The reply then states that the termination of service was effected after taking into consideration the overall performance of the Petitioner.

5. Law on this subject of termination of services is now well settled by the various decisions of the Supreme Court. It is not necessary to discuss all those cases, Suffice it to refer to the decision in the case of State of Maharashtra versus V.R.Saboji reported in AIR 1980, Supreme Court, 42, in which separate but concurring judgements have been given by the Supreme Court. Untwalia J. has discussed the matter in paragraph 10 of the judgement in the following words:

> "One should not forget a practical and reasonable approach to the problem in such cases. Ordinarily and generally, and there may be a few exceptions, any of the three courses indicated above is taken a recourse to only if there are some valid reasons for taking the action against the Government Servant. If a probe in the matter is allowed to be made in all such cases then curious results are likely to follow. In a given case, there may be valid reasons, may be of a serious kind, which led the authorities concerned to adopt one course or the other as the facts of a particular case demanded. If one were to say in all such cases that the action has been taken by way of punishment then the natural corollary to this would be that such action could be taken if there was no such reason in the background of the action. Then the argument advanced is that the action was wholly arbitrary,

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mala fide and capricious and, therefore, it was violative of Article 16 of the Constitution. Where to draw the line in such cases ? Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether it casts any stigma on the Government Servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government Servant who challenges such an order. The Government is on the horns of the dilemma in such a situation. If the reasons are disclosed, then it is said that the order of the Government was passed by way of punishment. If it does not disclose the reasons, then the argument is that it is arbitrary and violative of Article 16. What the Government is to do in such a situation ? In my opinion, therefore the correct and normal principle which can be culled out from the earlier decisions of this Court is the one which I have indicated above".

Thus, Untwalia,J. has held that the order of termination should ordinarily be read and interpreted on its face value unless a contrary position is proved to have existed. Similar view has been taken by Pathak, J. in paragraph 13.

6. We have to read the order as it is,unless the employee shows that the foundation for the order is a misconduct. We may add that the unsuitability of the employee would be a good ground for terminating the services.Similarly, existence of some other grounds can be a motive for terminating the services and in such a case, the termination cannot be interpreted as being by way of punishment.

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7. It is true that the Petitioner alleged that he was over-burdened with the work on his own table and, therefore, he could not attend to the work on the table of Shri Tulaskar. However, the Petitioner had not made any grievance about it when he was asked to look after the duties of Shri Tulaskar. It is only for the first time that he has made an allegation of such burden of work in the petition that is filed before us. The Respondent has denied this position and in that background, we are not inclined to accept the contention of the Petitioner that he was punished, though a simple termination of service was effected by a notice. It was lastly urged that the respondent in his affidavit has given certain grounds for termination of service and that the existence of such grounds would mean that the petitioner was punished for his mis-conduct. In our opinion, the Respondent in his affidavit has given reasons for finding the petitioner not suitable for being continued in service. Giving of such reasons is desirable when the Tribunal has to find out the real nature of the order. We are therefore satisfied that the Petitioner's services have been terminated without inflicting any stigma. There is no question of the respondent intending to inflict any punishment and consequently the petition fails and is liable to be dismissed.

8. The petition is dismissed. Interim order passed in this application stands automatically vacated. No orders as to costs.

B.C.G.