BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 78/87

Mr. Subhash Chandra Pandeya,
214, Maruti Mandir, Two Tank,
Maulana Azad Road,
Bombay — APPLICANT

V/S.

Chief Staff Officer (B&A)
Western Naval Command,
Shahid Bhagatsingh Road,
Bombay 400 001. — RESPONDENTS

2. Chief Inspector of Naval Armament,
Naval Armament Inspectorate,
Naval Dockyard, Gun gate,
Bombay 400 023.

3. Commander,
Naval Dockyard, Gun gate,
Bombay 400 023.

4. Inspector of Naval Armaments,
Naval Armament Inspector's Office
Karanja Depot, at Karanja,
Post Uran, District Raigad,
Maharashtra

CORAM : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member (A) J G Rajadhyaksha

APPEARANCE :

Mr. S.M.Dange,
Advocate
for the Applicant

Mr.J.D.Desai (for Mr.S.I.Sethna)
Advocate
for the Respondents

JUDGMENT — Dated: 28.1.1988

(PER: Hon'ble Vice Chairman B C Gadgil)

The applicant who was working as a Senior Chargeman in the Western Naval Command, Bombay is challenging the termination of his service by a communication dated 7.2.1986.

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The termination is made effective after the notice period i.e. from 14.3.1986.

2. The applicant was initially appointed for three months from 19.12.1983. His appointment was extended from time to time and ultimately on 22.8.1985 (vide Annexure 2 to the application) the applicant, along with certain other persons, was absorbed in the regular vacancy. However the appointment was on probation for a period of two years. As stated earlier on 7th February, 1986, a communication (Ex.4 to the application) was sent informing the applicant that his services were no longer required and will stand terminated from 14th March, 1986.

3. The contention of Mr. Dange, the learned advocate for the applicant is that though the order of termination was innocuously worded still it was tantamount to imposing a penalty and that such penalty cannot be imposed without holding an enquiry as contemplated by Article 311 of the Constitution. It is true, that in any given case a simple termination order may or may not be imposed as a penalty. Everything will depend on the facts of each case. If the order constitutes a penalty, the termination will have to be set aside. In substance, the contention of Mr. Dange, is that here the penalty has been imposed by simple termination order while Mr. J.D.Desai argued that this simple termination was not by way of penalty, but that it was in exercise of powers vested in the department in terms of order of appointment.

4. Though a simple termination is permissible either under the contract or under the rules, still the department is not likely to exercise that power unless there is a ground for terminating the services. Thus, the existence .3/-

of adverse remarks and their consideration for terminating the services would not necessarily mean that the said remark was an allegation of misconduct and that the termination is bad. In the present case, the record shows that on 10.8.1985 a Senior Inspector of Naval Armament (Mr. Pant) has issued a letter to the applicant stating therein that it had been observed that the applicant's professional knowledge was very poor; and that his power of expression was also very poor. It is also stated that the applicant is in the habit of drinking excessively and getting into altercations with non-Naval personnel. The applicant was informed, in his own interest, to improve and overcome his shortcomings. (Ex.3 to the reply). On 26th December, 1985 (Ex.4 to the reply) that very Officer has warned the applicant that he should show a positive improvement in the performance of his duties. In that letter it is stated that the applicant was both orally and in writing warned on various occasions to improve his professional and technical knowledge and to be more serious about performance of his duties and that the applicant had not shown any improvement.

5. The Annual Confidential Reports for the year 1985 were written and on 27.1.1986, a letter was written to the applicant (Ex.3 to the application) communicating the adverse remarks. It is not necessary to reproduce all these remarks. Suffice it to say that the applicant's technical ability was found to be ~~inefficient~~ "insufficient" and that his intelligence was average. He was found lazy and was lacking interest. Similarly, his performance of duties was poor. It is also stated that the applicant had already been previously warned for poor professional knowledge, poor power of expression, and also for drinking. The letter states that the applicant could make a representation

against the letter within one month.

6. It was contended by Mr. Dange, that the above correspondence would show that there were allegations of misconduct and that termination of service is the result of the said misconduct. As against this, Mr. Desai contended that the above correspondence would only mean that the departmental authorities took into account various factors for the purpose of deciding the suitability or otherwise of the applicant for retention in service.

7. There cannot be any serious dispute that a simple termination based upon misconduct would be a penalty. Similarly, the order would be good if the conduct and working was the motive for termination of service. This aspect has been considered by the Supreme Court in the recent judgement in the case of Ravindra Kumar Misra V/s. U.P.State Handloom Corpn. Ltd. AIR 1987 S.C. 2408. Earlier decisions of the Supreme Court have been considered in Ravindra Kumar's case, for example, in Champaklal V/s. Union of India reported in AIR 1964 SC 1854. It is held that the Government may find it necessary to terminate the services of the temporary servant if he is not found suitable for job, and that this decision may arise on a complaint against him. The following are the relevant observations in paragraph 8 in Ravindra Kumar's case :

> "Counsel for the respondents pointed out that in the matter of ordering termination of service of a temporary employee, the order follows a review of his working. Unless the termination is ordered because there is no need for the post, in the absence of reasons for termination, the action is open to challenge as arbitrary, particularly when other similarly situated

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employees are continued in service. When reasons are given, they are bound to disclose adverse features of the employee and disclosure of such features become the ground of challenge of the order on the plea that termination is not innocuous. To meet this position, the distinction between 'motive' and 'foundation' has been adopted by the Courts. As long as the adverse feature of the employee remains the motive and does not become transformed as the foundation of the order of termination it is unexceptionable. No straitjacket test can be laid down to distinguish the two and whether 'motive' has become the foundation has to be decided by the Court with reference to the facts of a given case. The two are certainly two points of one line, ordinarily apart but when they come together 'motive' does get transformed and merges into foundation."

Taking into account all the attending circumstances, we are satisfied that the termination of service is not founded on any misconduct or improper conduct of the applicant, However the conduct and working of the applicant was a motive which led to the termination. In view of this position it will not be possible to hold that the impugned order was by way of penalty. He had been asked to improve himself, and that when he did not show any improvement his serviceswere terminated during probation. This is quite proper.

8. We may refer to vague allegations made by the applicant about the mala fides on the part of the officer of the respondents viz. Mr.U.N.Verma, Inspector of Naval Armaments. It was contended in paragraph 6 that Mr.Verma was envious about the applicant on account of the applicant's good qualifications and performance and there used to be quarrels between the two. It is alleged that Respondent No. 4 threatened the applicant

that he will spoil the confidential report. However, these are very vague allegations. Apart from the communication dated 10.8.1985 and 26.12.1985, namely, the warning etc. were written not by Mr.Verma, but by Mr. Pant. In our opinion, the plea of mala fides deserves to be rejected without any further discussion. It was lastly contended that the order of termination has been passed by the officiating Chief Staff Officer and that this is not permissible. Chief Staff Officer is the appointing authority and anybody officiating in that post would be equally competent to issue such orders of termination.

The net result is that the application is liable to be dismissed and accordingly it is dismissed. There will, however, be no orders as to costs.

(B.C.Gadgil)
Vice Chairman

(J.G.Rajadhyaksha)
Member (A)