

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTEETH DAY OF SEPTEMBER 1986

Present : Hon'ble Shri Justice K.S. Puttaswamy .. Vice-Chairman
Hon'ble Shri P. Srinivasan .. Member(A)
Application No. 520/86(T)

Shri K. Mariyappa,
S/o Shri L. Krishnappa,
Lower Division Clerk,
Training Battalion II,
M.E.G. & Centre,
Bangalore- 42
... Applicant
(Shri M. Ananda Ramu ... Advocate)

V.

Union of India repre-
sented by the Secretary,
Ministry of Defence,
New Delhi - 110 011.

The Brigadier Commandant,
Madras Engineering Group
and Centre,
Post Box No.4200,
Bangalore-560 042.

... Respondents

(Shri M.S. Padmarajaiah .. Advocate)

The application came up for hearing before Court on
5th September, 1986, Hon'ble Member (A) made the following :

ORDER

In this application received on transfer from the High Court of Karnataka the applicant challenges an order by which his services have been terminated.

2. The applicant is a civilian employee of the Army. He joined service as a temporary Lower Division Clerk (LDC) on probation in the Madras Engineering Group (MEG) and Centre on 13.12.1983. It is stated that he fell ill with Typhoid on 18.4.1985 and had to proceed on leave from 18.4.1985 to 19.5.1985. The leave was granted to him after availment, by order dated 21.5.1985 passed by the Adjutant, Trg Bn II MEG & Centre (Annexure B). Meanwhile, the Commanding Officer (CO) Trg Bn II

D. S. [Signature]

MEG & Centre, Bangalore (Respondent 2) addressed a letter dated 14.5.1985 to the HQ MEG & Centre, Bangalore, complaining about the applicant's habit of absenting himself from duty frequently without permission and sufficient reason. This letter which is material for deciding the present controversy reads thus:

"Tele: 561226

Training Battalion II
Madras Engr. Gp & Centre
Bangalore - 560 033

4046/A/136/TB II

14 May 85.

Headquarters (EIC)
MEG & Centre
Bangalore-42.

IRREGULAR ATTENDANCE : TY : LDC K. MARIYAPPA

1. Ref. your HQ letters Nos. C-2090/1386552-LDC/
DIC dt. 27 Dec. 84, C-2090/1386552-LDC/EIC dt. 02
Mar 85 and further to our letter No.4046/A/106/TB II
dt. 14 May 85 & 4046/A/115/TB II dt. 16 Apr 85.

2. No. 1386552 LDC Shri K. Mariyappa is still in habit of frequently absenting himself without permission and sufficient reason. Now the individual is absent without leave from 18 Apr 85 till date. In spite of warning issued to him there is no improvement in his punctuality of working.

3. In view of the above the individual is not fit for retention in service and recommended for discharge from service.

Sd/- xxx
(UC Pathok)
Lt Col
Commanding Officer

N.O.O.

QM BRANCH - for info wrt to your letter No.5206/
Q1/56/TB II dated 09 May 85"

Soon after, by a simple letter dated 31.5.1985 (Annexure D) addressed to the applicant, the Commandant, HQ MEG & Centre, Bangalore, terminated the services of the applicant. As the applicant is challenging the termination of his services by this letter, we reproduce it also in full below:-

P. S. *Ver*

"Tele : 565666/352

2046/Adm/77/EIC

Headquarters

Madras Engineer Group & Centre
Post Bag 4200, Bangalore-42

31 May 85.

Shri K. Mariyappa
Lower Division Clerk NO.1386552
Trg Bn II
MEG & Centre, Bangalore-42.

TERMINATION OF SERVICE

1. You were appointed as Temporary Lower Division Clerk with effect from 13 Dec 83, on probation for a period of 2 years from 13 Dec 83.

2. Since your conduct during the probationary period is found not satisfactory, your services are hereby terminated with immediate effect, in accordance with the specific condition regarding termination of service in the appointment form.

Sd/-
(VN KAPUR)
Brigadier
Commandant"

3. Shri M. Ananda Ramu learned counsel for the applicant has contended that the action of Respondent 2, terminating the service of the applicant, was bad because the applicant had not been given an opportunity of being heard before such termination. The applicant had been denied the protection available to him under Article 311(2) of the Constitution. No doubt the applicant was a temporary Government servant but his services had been terminated not in a routine manner but by way of punishment for alleged misconduct thus casting a stigma on him. It was not an order of termination of service simpliciter in accordance with the conditions of service of a temporary Government servant but an order of punishment visiting civil consequences on the applicant and such an order should not have been passed without following the procedure set out in Article 311(2).

Shri Ananda Ramu cited a number of rulings of the Supreme Court in support of his contention, particularly in Jagdish Mittar's case AIR 1964 SC 449.

P. S. (Signature)

4. Shri M.S. Padmarajaiah, learned counsel for the respondents stoutly defended the order of termination and opposed Shri Ananda Ramu's contentions. He urged that general propositions laid down in the various rulings of the Supreme Court should not be blindly applied without reference to the facts and circumstances of each case. He referred to the judgment of the Supreme Court in AIR 1986 SC 617 (Shivaji Atmaji Sawant V. State of Maharashtra and others). Though the order of termination of service in this case stated that the applicant's conduct "was not found satisfactory", no inference should be drawn that a stigma was cast on the applicant. The authorities concerned, being military officers, could not be expected to be aware of the strict legal requirements of an order of termination simpliciter. Therefore, the actual words used in the order should not be relied upon to determine the character of the order. The applicant was a temporary Govt. servant whose services could be terminated under his conditions of service without giving him any opportunity of being heard or without assigning any reasons. It was in pursuance of the conditions of service of the applicant as a temporary Government servant that the order of termination was passed and no more. In fact the applicant's explanation had been called for as to why he had absented himself from duty without leave and this itself constituted an opportunity given to him of being heard. A military establishment cannot tolerate the slightest indiscipline in its employees and the service of any temporary official found wanting in this respect have to be terminated immediately. In short, the applicant was not considered suitable to be continued in service and so an order of termination simpliciter was served on him and this did not offend Article 311(2) of the Constitution. He also pointed out that in Jagdish Mittar's case relied upon by learned counsel for the applicant, the language used in the order of termination was that the official concerned had been "found

P. S. [Signature]

undesirable to be retained in Government service" and this was held to cast a stigma on the official. In the present case these were not the words used and so the ruling in Jagdish Mittar's case cannot be applied.

5. We have given the matter very careful thought. The doctrine of pleasure as it is known, namely, that a servant of the Crown works at the pleasure of the Crown has been incorporated in our Constitution in Article 310(1) which reads "Except as expressly provided by this Constitution, every person who is a member of a defence or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a Civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor ... of the State". In Article 311 some restrictions have been placed on the otherwise unfettered exercise of the President's pleasure. One such restriction is in clause (2) of the said Article, according to which no Government servant "shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges". It has been held by the Supreme Court that the provisions of Article 311 make no distinction between a permanent and a temporary servant both of whom are entitled to the protection of that Article. But such protection is available only against dismissal or removal from service or reduction in rank. Termination simpliciter of the services of a temporary Government servant where the conditions of such temporary service provide for such termination would not amount to dismissal, removal from service or reduction in rank as contemplated in Article 311(2). If on the other hand, the services of a temporary Government servant are to be terminated as a punishment for his misconduct thus casting a

2. *for life*

stigma and visiting civil consequences on him, the procedure set out in Article 311(2) will have to be followed before doing so. These are propositions so well settled that it is not necessary to cite authority. We, therefore, do not propose to refer to all the decisions cited by learned counsel for the applicant in this connection. The legal position so far as it relates to temporary Government servants has been summed up by the Supreme Court in AIR 1964 SC 449 in the following words (page 452 of the report): "It is thus clear that every order terminating the services of a public servant who is either a temporary servant, or a probationer, will not amount to dismissal or removal from service within the meaning of Article 311. It is only when the termination of the public servant's services is shown to have been ordered by way of punishment that it can be characterised either as dismissal or removal from service". Again on the same we find the following observations: "It is true that the tenure held by a temporary public servant or a probationer is of a precarious character. His services can be terminated by one month's notice without assigning any reasons either under the terms of contract which expressly provide for such termination or under the relevant statutory rules governing temporary appointments or appointments of probationers. Such a temporary servant can also be dismissed in a punitive way; that means that the appropriate authority possesses two powers to terminate the services of a temporary public servant, it can either discharge him purporting to exercise its power under the terms of contract or the relevant rules and in that case, it would be a straightforward and direct case of discharge and nothing more; in such a case Article 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straightforward way; in such a case Article 311 will apply." On the facts of that case, where the services of the temporary Government servant in question were terminated on the ground that he had been "found

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undesirable to be retained in Government service", the court held that "when the order refers to the fact that the appellant was found undesirable to be retained in Government service, it expressly casts a stigma on the appellant and in that sense must be held to be an order of dismissal and not a mere order of discharge," and so "must necessarily import an element of punishment which is the basis of the order and is its integral part". On page 457 of the report the Court laid down that: "the test in such cases must be: Does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal" and in such a case the Government servant is entitled to the protection guaranteed in Article 311(2) of the Constitution. As mentioned earlier, these observations have been acted upon in all subsequent decisions of the Supreme Court.

6. Bearing in mind the observation of Holmes J in *Lochner v. New York* 198 U.S. 45 74 that "general propositions do not decide concrete cases" and the contention of counsel for respondents that general principles enunciated by Supreme Court should not be applied blindly, we turn to the facts of this case. We have extracted above the letter addressed to the applicant by which his services were terminated. The letter says that the cause for the termination is that the applicant's conduct during the probationary period was found to be not satisfactory. Obviously this cast a stigma on his conduct and would adversely affect the chances of his getting fresh appointment elsewhere. Counsel for respondents urged that the language used in this order was due to the ignorance of the authorities concerned of the legal requirements of an order of termination simpliciter and that, therefore, it should not be taken as a determining

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factor. Now, we cannot agree with this because what has been set down in the order is a factual statement viz., that the applicant's conduct had not been found satisfactory and this had nothing to do with the writer's understanding of the legal requirements of an order of termination simpliciter. What is stated in the order is what the writer of the letter intended to say. Moreover, any other person reading that letter will be struck by the observation about the conduct of the applicant and would certainly demur before offering him employment.

7. Even if we accepted the stand of counsel for respondents that the language used in the letter terminating the applicant's services is not conclusive, the circumstances in which the order was passed leave no doubt that it was the result of the alleged mis-conduct of the applicant. The letter addressed by the Commanding Officer, Trg Bn. II dated 14.5.1985 to the Headquarters, MEG & Centre, which we have extracted in full earlier in this order, speaks of the applicant's frequent absence from duty without permission and sufficient reasons and there being no improvement in his punctuality in spite of warnings. The Commanding Officer recorded his opinion that the applicant was not fit for retention in service and should be discharged from service. The impugned letter dated 31.5.1985 - issued about a fortnight later - terminating the services of the applicant was clearly the result of this recommendation. The sequence of events thus clearly establishes that it was not a case of termination simpliciter of the services of a temporary Government servant, but a punishment for his alleged misconduct. Therefore, the applicant was entitled to the protection of Article 311(2) which was not given to him. Merely calling for his explanation for being absent from duty without leave is not sufficient. It should have been put to him that

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disciplinary action was being initiated against him for the alleged misconduct and he should have been given the opportunity of representing that there was no misconduct on his part and that, therefore, disciplinary action was not justified. That not having been done we have to hold that the order terminating his services was violative of Article 311(2) of the Constitution.

8. We may mention here that the decision cited by learned counsel for respondents, viz., Shivaji Atmaji Sawant V. State of Maharashtra, AIR 1986 SC 617, has no relevance to the present case because in that case the question for decision was whether the second proviso to Article 311(2) of the Constitution, setting out the circumstances in which the opportunity of being heard could be dispensed with, was rightly applied by Government. It is not the case of the respondents here that the opportunity of being heard was dispensed with in this case in pursuance of the said second proviso to Article 311(2) of the Constitution.

9. On the view we have taken in the matter, we do not consider it necessary to deal with the other contentions urged on behalf of the applicant.

10. In the result, we allow this application, quash the order No.2046/Adm/77/EIC dated 31.5.1985 (Annexure D) of respondent 2 and direct the respondents to reinstate the applicant to the post he held on 31.5.1985 with all consequential benefits. However, this order does not prevent the respondents or the competent authority from initiating and completing disciplinary proceedings against the applicant in accordance with law on the same grounds on which the order terminating the applicant's services which is

P. S. The

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 7-1-88

CONTEMPT OF COURT APPLICATION NO 48 /88()
IN APPLICATION NO. 520/86(T)
W.P. NO _____

Applicant

Shri K. Mariappa

Respondents

V/s The Secy, M/o Defence & another

To

1. Shri K. Mariappa
1152, I Main Road
Vijayanagar
Bangalore - 560 040
2. Shri M.S. Anandaramu
Advocate
128, Cubbonpet Main Road
Bangalore - 560 002
3. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011
4. The Brigadier Commandant
Madras Engineering Group & Centre (MEG)
Post Box No. 4200
Bangalore - 560 042
5. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~SECTION~~/
~~SECTION~~ passed by this Tribunal in the above said Contempt of Court
application on 5-1-88.

B. Venkateshwar
DEPUTY REGISTRAR
~~SECTION~~ OFFICER
(JUDICIAL)

Encl : as above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 5th day of January, 1988

Present

THE HON'BLE MR. JUSTICE K. S. PUTTASWAMY VICE CHAIRMAN

And

Shri L.H.A. REGO, HONOURABLE MEMBER (A)

CONTEMPT PETITION NO.48 OF 1987

Sri K. Mariyappa S/o L. Krishnappa,
29 years, L.D.C., No.1386552 -
Training Battalion II, MEG and Centre,
Bangalore-42. .. Petitioner

(By Shri M.S. Ananda Ramu, Adv. for the petr)

-vs.-

1. Secretary
Ministry of Defence,
New Delhi.
2. The Brigadier Commandant,
M.E.G. and Centre, P.B.4200
Bangalore-560 042. .. Respondents

(By Shri M.S. Padmarajaiah, Learned Senior Standing
Counsel for Central Government for respts.)

This petition coming on for hearing this day, HON'BLE
VICE CHAIRMAN made the following:

ORDER



ORDER

In this petition made under Sec.17 of the Administrative Tribunals Act, 1985, and the Contempt of Courts Act, 1971, the petitioner has moved this Tribunal to punish the contemnors for non-implementation of an order made in his favour on 30th September, 1986 in Application No.520 of 1986. In pursuance of the order made by this Tribunal, the petitioner had been earlier reinstated to service. Before this Tribunal, Shri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government, ^{of India}, appears for the contemnors, tenders a Cheque bearing No.B/A55/50-573705, dated 4-1-1988 for Rs.19,534/- to Shri M.S.Ananda Ramu, learned Counsel for the petitioner, towards the payment of the amounts due to the petitioner. Shri Anandaramu reports the receipt of the Cheque for Rs.19,534/- and also full compliance of the order made by this Tribunal.

2. In view of this, these contempt of Courts proceedings are liable to be dropped. We, therefore, drop the Contempt of Courts Proceedings. But, in the circumstances of the case, we direct the parties to bear their own costs.

Sd/-
(K.S.PUTTASWAMY)
VICE CHAIRMAN.

Sd/-

(L.H.A. REGO) ^{REGO}
MEMBER(A)

-True Copy-