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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 172/93

DATE OF JUDGEMENT: 28-2- 1994

Between

J. Thirupathy

.. Applicant

and

Officer-in-Charge,
Military Farm,
Bownepally
SECUNDERABAD 500 011

.. Respondent

Counsel for the Applicant :: Mr PV Ravindra Kumar

Counsel for the Respondents :: Mr NV Raghava Reddy
CGSC

CORAM:

HON'BLE SHRI A.R. GORTHY, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT

(As per Hon'ble Shri T. Chandrasekhara Reddy, Member (J))

This is an application filed under Section 19 of the Administrative Tribunals Act, to direct the respondents to continue the applicant in service, treating the intervening period from 24.12.1992 and till the date of disposal of this application/also to direct the respondents to pay backwages for the said period.

2. Facts giving rise to this OA in brief, are as follows:

3. The applicant was engaged as a casual worker at the Military Farm, Bownepally, Secunderabad, in June, 1986. The services of the applicant were

terminated w.e.f. 24.12.1992 by the respondent vide its order dated 8.1.93. At the time of termination, the applicant was drawing a salary of Rs.1373/- p.m. The applicant's services have been terminated without any enquiry. The applicant had been denied reasonable opportunity which amounts to violation of the provisions of Art.311 of the Constitution. As the applicant had worked for nearly 5 years and ten months, he should have been deemed to have become permanent.

The present OA is filed by the applicant to set aside the termination order dated 8.1.93 and for other relief(s) as already indicated above.

4. Counter is filed by the respondents opposing this OA.

5. The respondent, in his counter affidavit had maintained, that before the applicant was engaged as casual worker in the month of June, 1986, the applicant had been convicted in two criminal cases in the month of March, 1986 of the offences under/section 411 of IPC and had been fined Rs.200/- in each case, and that the respondents were not aware of the said convictions at the time of ~~engaging~~ engaging the applicant as casual worker and so the respondents terminated his services in view of the said convictions and conduct of the applicant, prior to his engagement in the Military Farm as casual worker. It is the case of the respondents as the

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applicants was engaged as a casual worker only and as his services are of temporary nature, the respondents had every right to terminate the services and accordingly terminated the services of the applicant.

6. We have heard counsel for the both the parties.

7. To appreciate the controversy in this OA, a few admitted facts have got to be stated.

8. For alleged offences under section 394 IPC Crime No.22/86 and 23/86 were registered by the Sultanabad Police. The applicant had been charge sheeted in both the crimes, in CC No.52, 53/86 on the file of the Judicial Magistrate of First Class, Sultanabad. Sultanabad is in Karimnagar District of AP. The learned Judicial Magistrate of First Class, Sultanabad, acquitted the applicant of the charge of 394 IPC in both the cases, but convicted the applicant for the offences under section 411 of IPC and in each of the cases and sentenced the applicant to pay a fine of Rs.200/- and in default, to undergo R.I. for two months. Accordingly, the applicant had paid the fine.

9. As already pointed out, the case of the respondent is that the respondent was not aware of the conviction of the applicant under Sec.411 of IPC and that the respondent came to know of the conviction of the applicant in those two cases on a police report sent to the respondent, and soon after the police report had been received that the applicant's services had been terminated and that the said termination was not as a measure of punishment, but the applicant had been

terminated of his service, as he was found to be unsuitable to the post of casual worker in view of his earlier convictions under Section 411 of IPC. Section 411 of IPC deals with cases, where a person had received and was in possession of stolen goods with the knowledge that, they were stolen. The conviction of a person under Sec. 411 of IPC certainly involves moral aptitude. Admittedly, the respondent ~~was~~ not aware of the said convictions ~~when~~ ~~he~~ engaged the applicant as a casual worker. By working continuously for a period of five years and ten months, the applicant might have obtained temporary status. But, it is significant to note that the applicant's services had not been regularised, and the applicant had not been appointed as a regular casual worker. For all purposes, the applicant has got to be treated as temporary employee of the respondent. But, as the applicant is a temporary employee of the respondents, whether the respondent had a right to terminate the services of the applicant in view of the facts and circumstances of the case, needs to be looked into.

10. In AIR 1967 Patna 404 Dhanajai Singh Vs State of Bihar, the facts are as follows:

11. The petitioner before the High Court was appointed to the post of Kalyan Graingola Sewak, otherwise, known as Thana Welfare Officer on temporary basis, and he joined the post at Arrah on 23.11.1956. After some time, he was transferred to Chanari Block in

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Sasaram Sub-division. It appears that on 22nd March, 1959, one Smt ~~Balla~~ made a complaint against the petitioner therein, that he had committed rape on her. The matter was investigated by the police who found the allegation to be false and the said petitioner who was made an accused was consequently discharged by the order of Sub-divisional Officer dated 24.11.1959. In October, 1960, the petitioner was transferred in the same sub-division of Sasaram to one Kargahar block. In view of the allegation that the petitioner had committed rape, the respondents did not want to continue the petitioner therein in the said post, as it was felt that he was not a suitable to be continued in that post. In May 1964, the petitioner therein received the following order of discharge passed by the Collector of Shahabad.

"Memo No.1180/W

Shahabad Collectorate

Dated, Arrah, the 19th May, 1964

To

Shri Dhanajai Singh
Kalyan Graingola Sewak, Kargahar

You are hereby informed that your services will be terminated on the expiry of one month from the date of issue of this notice and that, you should treat yourself discharged with effect from the said date i.e. from 19.6.1964."

The petitioner before the High Court, after exhausting alternative remedies ultimately approached the High Court, questioning the order of discharge. In the said writ petition, it was contended that the writ petitioner was discharged from service ^{not} purely as termination, from service, but as a measure of punishment, as such, he was entitled to the protection of Article 311(2) of the Constitution and that the petitioner

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(before the High Court) had an excellent service record and the order of discharge must therefore be held ~~as~~ malafide. The High Court dealing on both the points together, ultimately held as follows:

"The motive behind the order of termination from service is immaterial and it is now well settled the the Court is not concerned with the motive behind the order. There can be no doubt that the Government may take the allegations against the petitioner into consideration and may have rightly thought that the petitioner being a Welfare officer, was not a proper person to be retained in service any further, and, as such, he was appointed on a temporary basis, should be given one month's ~~xxx~~ notice, before he was discharged. In my opinion, the protection afforded to a servant under Art.311 of the Constitution is not available to the petitioner on the facts of this case." Further at Para 9, the High Court held as follows:

".....In my opinion, the submission of learned counsel is without substance, because, the motive appearing in the minds of the authority in terminating the services of the temporary servant like the petitioner, does not alter the character of the termination and it is not material whether Art.311(2) is attracted to such termination."

As could be seen, the order of termination ^{with regard to the case on Aana} simply states that the applicant's services had been terminated with effect from 24.12.1992, based upon the Police report to which a reference has already been made. The order of termination casts no aspersion against the petitioner and no stigma ~~attaches~~ involved to his character. So, the above observations of the Patna High Court reported in AIR 1967 PATNA 404 ~~are~~ applicable to the facts of this case. So, as the

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applicant was working purely on temporary basis and as the order of termination passed as against the applicant does not cast any stigma, in our opinion, the respondent had every right to terminate the services of the applicant.

11. We may also cite a decision of the Supreme Court reported in AIR 1981 SC 965 *Commodore Commanding,*

Southern Naval Command, Cochin Vs MN Rajan, Respondent wherein the Supreme Court had dealt with regard to the termination of services of a temporary Govt. servant and wherein it is laid down as follows:

"Even a temporary Govt. servant is entitled to the Protection of Art.311(2) where termination involves a Stigma or amounts to Punishment."

"Where the decision to terminate the services of the servant had been taken at the highest level on the ground of unsuitability of the servant in relation to the post held by him, and it was not by way of any punishment and not stigma was attached to him by reason of the termination of his services, termination could not be said to be vitiated for non-observance of Art.311(2)."

12. As already pointed out, the applicant was only a temporary Government servant. We have looked into the termination order available on the file relating to the applicant. We are satisfied that the decision to terminate the services of the applicant, had been taken purely on the ground of unsuitability of the applicant, in relation to the post held by him, in view of his earlier convictions. Absolutely, we see no stigma having been attached to the respondent, by terminating the applicant's services. So, in view of this position, the termination orders of the respondent are liable to be upheld. But, the termination order suffers from one lacuna. One month's notice as required under Law, had not been given to the applicant. So, in view of this position, the applicant is liable to be compensated by one month's salary.

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13. The learned counsel for the applicant relied on a decision reported in 1993 Cri.L.J. 544 Susil Kumar Parida Vs State wherein it is observed as follows: at Para 11.

"11. It was not disputed before me that the provisions of Ss.3 and 4 of the Act are applicable in the present case. No material was produced to show that there was any previous conviction against the petitioner. Having regard to the allegations made against the petitioner and the nature of offences, I am of the view that the petitioner should be admitted to the benefit of Sections 3 of the Act and should be released on probation of good conduct under S.4 after due admonition. I have been persuaded to take this decision on consideration of the contention of Shri Mohanty that if the order of conviction and sentence is allowed to stand, the petitioner will face dismissal from service, which in turn will entail further disqualification in getting service in any other govt. department or public sector undertaking."

Admittedly, in this case, the applicant had not been released under the provisions of Probationers' Act by the Learned Judicial Magistrate of First Class, Sultanabad in CC No.52,53/86 where the applicant herein figured as an accused. When a person involved in property offence is ^{convicted and} released under Probation of Offenders Act and ~~in~~ in view of the said conviction whether an employer can terminate the services of the convicted employee who is working on a temporary basis ^{when} and the said conviction involves moral aptitude of the said employee has not been dealt in the said Judgement. The said Judgement is delivered in a criminal case. ~~the~~ observations in the said judgement have no application to the facts of this case.

T - C - *[Signature]*

[Handwritten signature]

Admittedly, the applicant herein had not been released under Probation of Offenders' Act. Hence, it is not necessary to go into the question, whether the services of ~~the~~ a temporary employee who had been released on Probation of Offenders' Act in Property Offences, can be terminated. The applicant herein has been found guilty under Section 411 of IPC. This Tribunal does not have jurisdiction to express any opinion, about the applicability of the Provisions of Probation of Offenders' Act, or Section 360/361 of Cr.PC in the said two criminal cases.

14. It is also the contention of the learned counsel for the applicant, that the said order has been passed without application of mind, and as such, the order is liable to be set aside. In I (1991) CSJ (CAT)158 (Krishan Kumar Vs Union of India, the Central Administrative Tribunal, Principal Bench, New Delhi, had laid down that the Disciplinary authority should apply its mind and consider all the facts and circumstances of the case before a Government servant is removed from service. Conviction of a Government servant in a criminal case does not automatically entail his dismissal, removal or reduction in rank.

To

1. The Officer-in-Charge,
Military Farm, Bowenpally, Secunderabad-11.
2. One copy to Mr.P.v.Ravindra Kumar, Advocate, 1-1-261/18
Chikkadapally, Hyderabad.
3. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
4. One copy to Library, CAT.Hyd.
5. One spare copy.

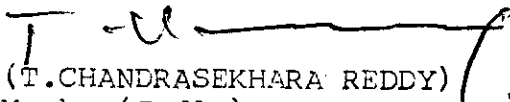
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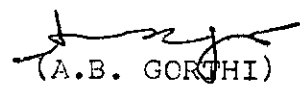
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The above said decision is not applicable to the facts of this case due to the fact, while terminating the services of the applicant, the respondent had already taken into consideration the convictions of the applicant under offences 411 of IPC which ~~are~~ the applicant had suffered in the month of March, 1986 before the applicant was engaged as casual worker. As a matter of fact, there is a reference to the said convictions in the order of termination itself which convictions have been brought to the notice of the respondent on police report. So, the order of termination does not suffer any infirmity of non application of mind by the respondent in terminating the services of the applicant.

15. As already pointed out, ~~the applicant herein is not entitled to the protection of Art. 311(2) of the Constitutions as the services of the applicant had not been terminated as a measure of punishment and such termination was due to his unsuitability for the post of casual worker which is of temporary nature. So, for the above reasons, the OA is liable to be dismissed and is accordingly dismissed. But, as one month's notice has not been given to the applicant before termination of his service as already indicated, the respondents are hereby directed to pay to the applicant a sum equivalent to the amount of his pay and allowances for the period of notice due to him which is one month in accordance with Rule (5) of CCS Temporary Service Rules, 1965.~~

15. Parties shall bear their own costs.


(T. CHANDRASEKHARA REDDY)
Member (Judl.)


(A.B. GORTHI)
Member (Admn)

Dated: 24-2- 1994

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER
(ADMN)

Dated: 28-2-1994.

~~ORDER~~/JUDGMENT:

M.A./R.A/C.A. No.

in

O.A.No.

T.A.No.

172/93

(W.F.No.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

