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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

O.A. No.586/95

Date of order: 18.5.1998

Mohd. Masoom S/o Shri Abdul Subhan, aged around 24 years, resident of H-408, Asad Marg, C-Scheme, Jaipur. Presently working as Casual Worker, Passport Office, Jaipur.

: Applicant

Versus

1. Union of India through Secretary, Ministry of External Affairs, Government of India, New Delhi.
2. Passport Officer, Passport Office, Lalkothi, University Marg, Tonk Road, Jaipur.
3. Superintendent, Passport Office, Lal Kothi, University Marg, Tonk Road, Jaipur.

: Respondents

Mr. R.N.Mathur, counsel for the applicant
Mr. V.S.Gurjar, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R
(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein, Mohd. Masoom has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to set-aside and quash the impugned order dated 17.11.1995 (Annx.A/1) issued by respondent No.3, Superintendent, Passport Office, Jaipur, disengaging the applicant from the service while working as Casual Worker in the respondent Passport Office, Jaipur.

2. Facts in brief, relevant for the disposal of this original application are that the applicant was initially engaged as a casual worker in the office of Passport Officer, Jaipur in the month of June 1989 and he worked for the different periods as indicated in the statement dated 7,10,1994 (Annx. A/2) prepared by the acting Assistant Passport Officer, Passport Office, Jaipur. It is the grievance of the applicant that his services have been terminated by the respondents on the ground

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that the Superintendent of Police, Jaipur City, has pointed out certain undesirable activities of the applicant. It has been urged by the applicant that since he has not been given any opportunity of hearing before the issuance of the impugned order and to explain the genuineness of alleged undesirable activities based on an alleged complaint of one Mariyamma Kunju Kunju to respondent No.2, Passport Officer, Passport Office, Jaipur. It is also the case of the applicant that he has been made a scapegoat since in a direction issued by this Tribunal in OA No.83/93 filed by the applicant and nine other persons, he has insisted for implementation of the order given by the Tribunal.

3. Respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that on the alleged complaint of Smt. Mariyamma Kunju Kunju and on enquiry by the police, the Superintendent of Police Jaipur City has pointed out that the applicant has been visiting the said Smt. Mariyamma Kunju Kunju informing her that a letter has been issued by the Passport Office regarding her police verification, though, in fact no such letter has been issued by the respondent department. It has, therefore, been urged that since the Passport Department is a sensitive department and looking to the nature of the complaint involving fabrication of documents retaining the applicant in service was not at all in the interest of justice and, therefore, the impugned order as at Annexure A/1 dated 17.11.1995 is legal, valid and in consonance with service jurisprudence. It has, therefore, been urged that the OA deserves rejection.

4. In the rejoinder, the applicant has submitted that in the alleged police complaint being FIF No.169/96 the police has



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ultimately submitted a Final Report (F.R.) in the Court and that after the submission of the F.R. there does not exist any reason justifying termination of the services of the applicant.

5. I heard the learned counsel for the applicant Shri R.H.Mathur and Shri V.S.Gurjar for the respondents and have examined the record in great detail.

6. The only point for determination in this OA is whether the impugned order dated 17.11.1995 is stigmatic in nature and hence it is liable to be set-aside?

7. Though there has been a direction in the earlier OA No.83/93 filed by the applicant and nine other persons for consideration of the cases of these individuals for regularisation in Group 'D' and consequential reliefs in accordance with the scheme framed in the year 1993; yet apparently there is no reference to these directions in the impugned order dated 17.11.1995 (Annx.A/1). The impugned order dated 17.11.1995 (Annx.A/1) is reproduced as under:-

"It has been decided to disengage you from your services with effect from 16.12.1995, as you have been found involved in undesirable activities as pointed out by the Superintendent of Police, Jaipur City, Jaipur."

It is on the basis of this order that it has been vehemently urged by the learned counsel for the applicant that even if the fact of an F.R. having been given in the criminal case, is not taken into consideration; it was incumbent upon the respondents to give the applicant an opportunity of showing cause before they decided to disengage his services w.e.f. 16.12.1995.

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8. Before examining the matter, it may be pertinent at the outset to state that though the applicant has filed an affidavit of Smt. Mariyamma Kunju Kunju denying the allegations made against the applicant by the respondents; yet its veracity cannot be examined here and that too in the presence of an F.R. given and submitted by the Police in the Court of ACJM No.2, Jaipur City in FIE Case No:169/96 being initiated on the complaint forwarded by Shri P.C. Dass of the respondent department.

9. Coming to the merits of the matter now, a perusal of photostat copy of the Final Report produced by the learned counsel for the applicant, it is made out that the FIE number of the alleged police case has been 169/96 and not 115/96. It is the FR number which is 115/96 in FIE No.169/96. However, as the things stand, it is made out that when according to the respondents themselves, applicant has worked as casual worker for a period of 269 days in 1991-92, 304 days in 1992-93 and 261 days in 1993-94, it was imperative for the respondents to ask and show cause why he should not be disengaged. It was all the more necessary to ask for the explanation of the applicant as there has been a direction by this Tribunal in OA No.83/93 filed by the applicant and 9 others; the relevant operative portion of which as reproduced in para 5(a) of the OA reads as under:-

"5. The learned counsel for the applicants stated during the arguments that the applicants were at present interested in only one relief namely consideration for regularisation in accordance with the Scheme Annx.A/6 filed alongwith the rejoinder of the applicants and to which reference has also been made by the Principal Bench in its judgment Annx.A/5. After hearing the counsel for the parties, we direct that the cases of the applicants shall be considered for regularisation in Group D and consequential reliefs in accordance with the scheme laid down under

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Annex.A/6 shall be granted to them in accordance with their eligibility. Claim for any other reliefs has not been pressed by the learned counsel for the applicants at this stage. The O.A. stands disposed of accordingly with no order to costs."

The respondents having failed to provide an opportunity to the applicant in the matter their inaction has given a cause of complaint to him as being violative of the principles of natural justice and resultant prejudice to his vested right to continue in service of the respondent department. Besides, a perusal of the impugned order Annexure A/1 exhibits it to be a stigmatic order capable of jeopardising his future career.

10. It is now to be seen what relief can be granted to the applicant in this matter. A clue for such matters is indicated by Hon'ble the Supreme Court in the case of State of Haryana and another Vs. Jagdish Chander (1995) 2 SCC 567, whereby it has been settled that the courts cannot issue straightaway any direction to reinstate the aggrieved employees; instead to follow the course laid down therein. In this case respondent Jagdish Chander was a Constable who was discharged under Rule 12.21 of the Punjab Police Rules on the ground of habitual absence, negligence to his duties and also being indisciplined. On challenge, the High Court had set-aside the order and directed reinstatement. Hon'ble the Supreme Court while the order of the High Court and allowing setting-aside/the appeal filed by the State of Haryana observed at page 568 that:

"For recording the finding that the officer is unlikely to prove an efficient police officer, there must be anterior record and the Superintendent of Police must objectively consider that record and record the conclusion in that behalf. But if he records a finding, after considering the record, which would be a stigma on the career of the discharged police officer, it is settled law that the principles of natural justice require that an opportunity be given

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to him before recording any finding adverse to the officer's conduct which disentitles the officer for any future employment or would be a blot on his career."

Hon'ble the Supreme Court has further held that:-

"in view of the judgment of this Court by a Constitution Bench in Managing Director, ECIL v. E.Karunakar, the appropriate course for the State would be to direct an enquiry if they intend to hold one and to give an opportunity to the officer concerned to defend himself and then pass appropriate orders. On the basis of the result of the enquiry necessary reliefs need to be moulded."

11. The principle of law, therefore, as propounded above by Hon'ble the Supreme Court in the case of Jagdish Chander's case applies with full force in this matter also. Accordingly, for all the aforesaid reasons, the issue raised hereinabove is answered in the 'affirmative' and the impugned order as at Annexure A/1 being not sustainable in the eye of law is hereby set-aside and quashed.

12. The respondents are directed to issue a show cause notice to the applicant to give him an opportunity as to why he should not be disengaged in view of the report of the Superintendent of Police furnished to the department and also the F.R given in the matter subsequent to it being FR No.115/96 in FIR NO.169/96. The respondents shall also issue appropriate orders for the period falling between the date of disengagement till issuance of a show cause notice to the applicant. The respondents should comply with these directions within two months from the date of communication of this order.

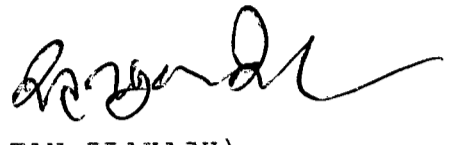
13. A copy of the report of the Superintendent of Police produced by the learned counsel for the respondents and a copy of the FR No.115/96 produced by the learned counsel for the

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applicant be kept on record.

14. The OA is disposed of accordingly with no order as to costs.



(FATAN FARFASH)

JUDICIAL MEMBER