

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

9

O.A. No. 143/2001
~~X.A. No.~~

199

DATE OF DECISION 1.10.02

Mohd. Masoom _____ Petitioner

rep by Mr. S.D. Shama _____ Advocate for the Petitioner (s)

Versus

U.O.I. and four others _____ Respondent

Mr. Bhanwar Bagri _____ Advocate for the Respondent (s)

May 11/11
In
30/5

14/1/02 / J 20/5

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

In

Central Administrative Tribunal
Jaipur Bench : Jaipur

(10)

Original Application No. 143/2001

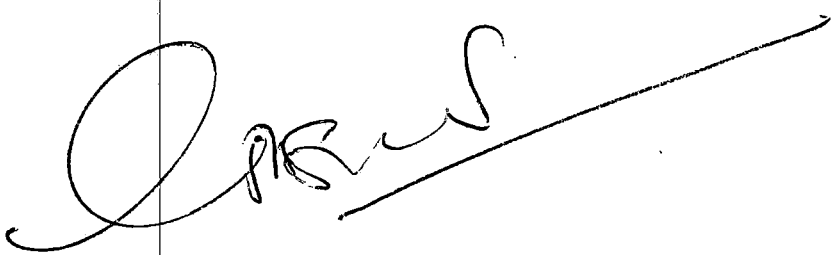
Mohd. Masoom,
S/o Shri Abdul Subhan
R/o H-408, Azad Marg,
C- Scheme
Jaipur. : Applicant.

rep. by Mr. S.D. Shama : Counsel for the applicant.

-verses-

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 (Rajasthan)
3. Superintendent (Administration & Inquiry)
officer
Passport Office,
SB 107 (B)
University Marg,
Tonk Road,
Jaipur (Rajasthan)
4. Smt. R.G. Das,
the then Passport Officer,
Presently First Secretary Cultural
House No. 120, Dhamondi Residential Area
Dhaka (Bangladesh)
5. Central Passport Officer,
Patiala House,
New Delhi. : Respondents.

rep. by Mr. Bhanwar Bagri : Counsel for the respondents.



(11)

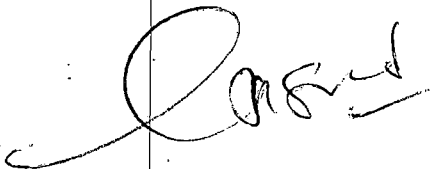
CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member

Date of the Order: 1.10.07 ✓

Per Mr. Justice G.L. Gupta,

ORDER

1. The case has got chequered history.
2. (i) The applicant was engaged as casual worker in June 1989, in the office of the Passport Officer, Jaipur. It is stated that he worked in the said office in different periods till 16.11.95. Ten Casual Workmen including the applicant were not regularised and therefore they filed O.A. No. 83/93 claiming regularisation in Group 'D'. The said O.A was disposed of vide order dated 13.5.95, whereby the respondents were directed to consider the case for regularisation in accordance with the Scheme (Annex. A.6) therein. Since action was not taken by the respondents, the applicant and others filed Contempt Petition No. 164/95, which came to be dismissed vide order dated 17.11.2000.
(ii) When the Contempt Petition No. 164/95 was pending, the services of the applicant were terminated vide order dated 17.11.95 (Annex. A.2). The applicant challenged the said order of termination by filing O.A. No. 586/95 which was disposed of vide order dated 13.5.98 (Annex A.3) directing the respondents to issue show cause notice to the applicant giving him an opportunity as to why he should not be disengaged in view of the report of the Superintendent of Police. The respondents were further directed



to pass appropriate order for the period falling between the date of disengagement and the date of issuance of show cause notice within a period of two months. Thereafter, the respondents issued show cause notice Annex. A.4 to the applicant on 29.7.98. The applicant filed reply on 6.8.98 to the show cause notice.

(iii) On 3.12.98, the respondents issued another show cause notice calling upon him as to why he should not be 'kept off' the duty. The applicant filed reply to the said show cause notice on 8.12.98. The competent authority appointed an Enquiry Officer (respondent No. 3) to hold an inquiry into the matter vide order dated 16.12.98. The applicant filed O.A. No. 49/99, challenging the notice dated 3.12.98. In the said O.A. notices were issued to the respondents on 28.1.99. The applicant was taken on duty vide order dated 9.2.99 and the applicant joined duty on 15.2.99. The said O.A. was disposed of on 22.1.2001, directing the respondents to conclude the pending inquiry within a period of two months.

(iv) Thereafter notice was served on the applicant along with a copy of the Inquiry Report on 15.2.2001. The applicant filed O.A. No. 86/2001 challenging the inquiry. Notices were directed to be issued to the respondents on 23.2.2001, returnable by 5.3.2001. However, on 1.3.2001 order Annex. A.1 was issued by the respondents holding that the charges levelled against the applicant were established and he was not entitled to be re-engaged and that he was not entitled to wages from the date of

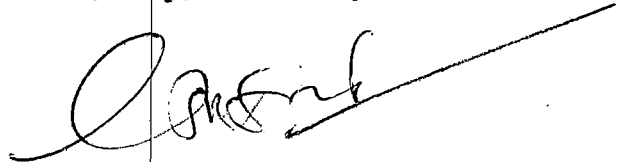


(B)

previous disengagement till the date of issuance of show cause notice to him. The applicant chose to withdraw O.A. No. 86/2001 on 15.3.2001 with liberty to file fresh O.A.

(v) Thereafter, the instant O.A has been filed on 29.3.2001, challenging the order dated 1.3.2001 (Annex. A.1) on the grounds that the order is illegal, without jurisdiction, against principles of natural justice and it suffers from administrative obstinacy and administrative bias. It is averred that the respondents had no authority to issue show cause notice to the applicant or to hold an enquiry against him on fresh grounds.

3. In the reply, the respondents have opposed the application stating that the application is not maintainable because the applicant has not approached this Tribunal with clean hands and he is guilty of playing fraud. It is further averred that the respondents have concluded the enquiry as per the orders of this Tribunal dated 22.1.2001 in O.A No. 49/99, within the stipulated period. It is stated that the applicant has been found guilty of indulging into undesirable activity, unworthy of a casual employee. It is also averred that the applicant has been agitating the same issue in successive OAs and the application should be rejected on this ground alone. It is further stated that the applicant was afforded ample opportunity to defend himself and thereafter the order impugned in this O.A has been passed on the basis of the material on record collected during the course of inquiry. It is pointed out that the Contempt Petition



(14)

No. 164/95 preferred by the applicant was dismissed by this Tribunal vide order dated 17.11.2000. It is also pointed out that the applicant had filed an affidavit of Smt. Marriyamma before the investigating officer, but the said Mariyamma did not appear before the investigating officer to substantiate the facts stated in the affidavit.

4. The applicant has filed rejoinder stating that the Police has filed Final Report in the case registered against him and therefore there is no basis for saying that the applicant was involved in any act alleged in the FIR.

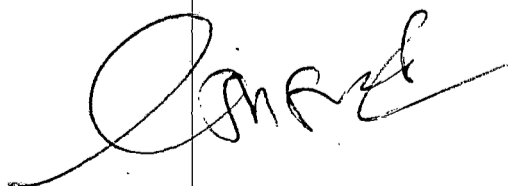
5. Reply to the rejoinder has been filed by the respondents reiterating the facts stated in the reply.

6. We have heard the learned counsel for the parties and perused the various documents placed on record.

7. The contention of the learned counsel for the applicant can be summarised as follows:

(i) Principles of natural justice have not been followed while holding the inquiry against the applicant. He relied on the case of State Bank of Patiala and others vs. S.K. Shama (AIR 1996 SC 1669).

(ii) The enquiry was initiated on account of bias against the applicant and the respondents are guilty of obstinacy. He cited the case of Ranjit Thakur vs. Union of India (AIR 1987 SC 2386);



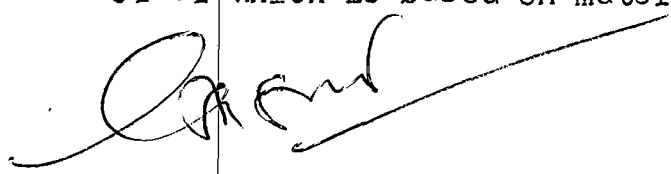
State of West Bengal vs. Shivananda Pathak and others

(AIR 1998 SC 2050)

(iii) The Criminal Court has already acquitted the applicant and therefore the Disciplinary proceedings could not be continued against him. In this connection he relied on the case of Capt. M. Paul Anthony vs. Bharat Gold Mines and another (1999 SCC (L&S) 810).

(iv) Even in the matter of domestic enquiry there should be convincing evidence against the delinquent employee and the charges cannot be held to be proved on surmises. He cited the case of Nand Kishore Prasad vs. State of Bihar and others (AIR 1978 SC 1277)

8. On the other hand, the learned counsel for the respondents contended that the applicant was only a casual labour and no enquiry whatsoever was required to be held against him. His contention was that the applicant was not holding any civil post and therefore protection of Article 311 of the Constitution of India is not available to him and the CCS(CGA) Rules, 1965 are also not applicable in the enquiry held against him. His further contention was that there is no evidence of malafides or bias against the respondents and only vague allegations have been made in this regard. Pointing out that the applicant was afforded ample opportunity to defend himself and there was material on record to substantiate the charges, it was canvassed that the scope of judicial review in such matters is very limited and Court cannot be justified in interfering with the administrative order which is based on material on record.



9. We have given the matter our thoughtful consideration.

10. It is noticed that the show cause notice was issued by the respondents pursuant to the directions given by this Tribunal in its order dated 18.5.98 in O.A. No. 586/95. The applicant filed reply to the said show cause notice. Thereafter the respondents again issued show cause notice on 3.12.98 and the applicant filed reply to the said show cause notice also. The competent authority after holding an enquiry, has held vide order dated 1.3.2001(Annex. A.1) that the applicant is not entitled to be re-engaged and he is also not entitled to wages from the date of previous disengagement till the date of issuance of the show cause notice.

11. It is evident that the applicant had submitted his reply to the show cause notice. The Annex A.1 order has been passed after considering the reply and the material on record. In such circumstances it cannot be said that the principles of natural justice have been violated.

Needless to state that the applicant was not holding civil post and therefore protection of Art. 311 of the Constitution of India was not available to him. The provisions of CCS(CCA) Rules were also not applicable for the enquiry conducted by the competent authority.

[Handwritten signature]

The Supreme Court in the case of Himanshu Kumar Vidyarthi and others vs. State of Bihar and others (1997 (76) ELR 237) held that a daily wager has no right to hold a post and his disengagement cannot be construed as retrenchment under the Industrial Disputes Act, 1947.

This Tribunal in the case of Bhajni Ram Meena vs. Union of India (O.A. No. 506/99 decided on 16.10.2001) has held that casual labourer has no right to a particular post as he is neither a temporary government servant nor a permanent government servant and therefore the protection of Art. 311 of the Constitution of India is not available to him.

In the case of Nand Kishore Prasad (supra) relied on by the learned counsel for the applicant it was laid down that disciplinary proceedings before domestic tribunal are of a quasi judicial character therefore, the minimum requirement of the rules of natural justice should be followed. That was the case of an employee who was holding a civil post. The applicant, as already stated was not holding a civil post.

In the case of State Bank of Patiala and others vs. S.K. Shama (supra) their Lordships of the Supreme Court observed at para 31 of the report that where the inquiry is not governed by rules/regulations/statutory provisions, the only

[Handwritten signature]

obligation is to observe principles of natural justice. It was further observed that the Court should make a distinction between a total violation of principles of natural justice and violation of ~~the~~ facet of the said rule, i.e. a distinction must be drawn between 'no opportunity' and 'no adequate opportunity' and if it is found that opportunity was not given then only the order could be held as void and nullity. However, if it is found that adequate opportunity was not given then the Tribunal is required to see whether in the totality of the circumstances, the delinquent employee did or did not have fair opportunity of hearing and ensure that there is no failure of justice.

12. In this connection one of the contention of the learned counsel for the applicant was that the respondents have erred when they issued the second show cause notice by including some more items of mis-donduct. The contention is mis-conceived. It may be pointed out that in the order dated 18.5.98 it was directed ^{that} a show cause notice be issued to the applicant to give him opportunity as to why he should not be disengaged in view of the report of the Superintendent of Police. In the show cause notice dated 29.7.98 the applicant was asked to show cause as to why he should not be disengaged in view of the report of the Superintendent of Police furnished to the office of the respondents also a copy of the Final Report in the matter.

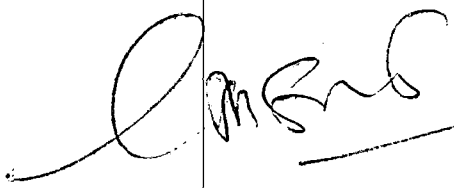


In the second show cause notice of 3.12.98 also the same mis-conduct was referred to. Of course some details were given. It cannot be accepted that the respondents included new items of mis-conduct in the second show cause notice dated 3.12.98. (Annex. A.6)

13. It is not understood as to how the inquiry is vitiated because of the alleged obstinacy of the respondents. There is no question of obstinacy in the instant case. The order of disengagement was challenged by way of O.A. No. 586/95. That order was quashed on the ground that principles of natural justice had not been followed. The respondents thereafter have passed the order Annex. A.1 after following the principles of natural justice.

True it is, the respondents had taken the applicant on duty vide order dated 9.2.99 after the applicant filed O.A. No. 49/99, challenging the notice dated 3.12.98 and notices were directed to be issued by this Tribunal. But on that ground it cannot be said that the respondents are guilty of obstinacy. The impugned order has been passed after holding an enquiry.

The case of State of West Bengal vs. Shivananda Pathak and others (supra) relied on by Mr. Sharma does not help the applicant. That was the case, where their Lordships noticed that though the directions given by a Judge in Writ Petition had been over ruled in appeal, yet the same Judge

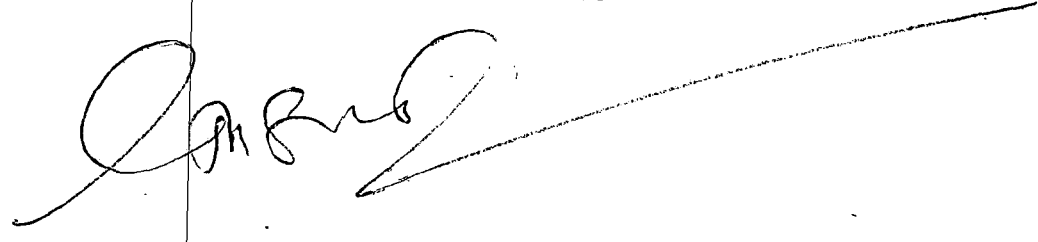


sitting in a subsequent proceeding between the same parties restated the directions given by him in earlier case. Their Lordships observed that it was exhibitve of his bias in his own favour to satisfy his egoistice judicial obstinacy. The above observations were made in very different context. On the basis of the above observations it cannot be found that the respondents are guilty of obstinacy, when they have passed the order Annex. A.1 disengaging the applicant.

In the case of Ranjit Thakur vs. Union of India and others (supra) it was held that a judgement which was the result of the bias ^{for} want of impartiality is a nullity and the trial " coram non judice ". However in the instant case it is not bome out that the applicant has been disengaged because of biasness. Simply because the applicant along with others had earlier filed O.A. No. 83/93 for regularisation and he had also filed Contempt Petition No. 164/95 (which was later dismissed) it cannot be said that the order of disengagement has been passed because of biasness.

The order impugned in this O.A is a reasoned order and cannot be quashed on the alleged biasness.

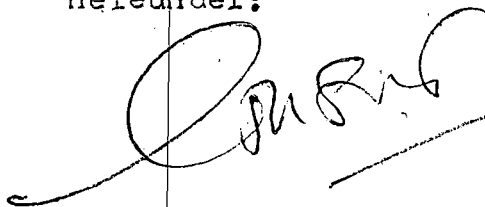
One of the contentions of the learned counsel for the applicant was that the criminal court has acquitted the applicant and therefore



disciplinary proceedings could not be continued against him. It may be pointed out that FIR No. 169/96 was lodged by Shri P.C. Das Superintendent of Passport Office on the basis of the report given by one Smt. Mariyamma Kunj. Of course in that matter, the police has given Final Report, but that does not mean that the applicant has been acquitted by the Criminal Court. There is no such legal position that if the cognisance is not taken by the Criminal Court, disciplinary enquiry cannot be held against a delinquent employee for misconduct.

In the case of Capt. M. Paul Anthony vs. Bharat Gold Mines (supra) relied on by Mr. Shama it was observed that Criminal proceedings and the Disciplinary proceedings are different in nature and they can be continued simultaneously. It was laid down where both proceedings are based on the same set of facts, disciplinary proceedings may not be sustainable.

The Apex Court in the case of Senior Superintendent of Post Offices, vs. A. Gopalan (1999 LAB I.C. 234), has observed that Criminal proceedings and Disciplinary proceedings can go side by side and on the basis of the acquittal in the Criminal case the disciplinary proceedings cannot be concluded. The relevant observations appearing at para 6 of the report are re-produced hereunder:



" The nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and the order of acquittal, therefore, cannot conclude the departmental proceedings. This is so because in a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities. "

The applicant was a daily wager. He has made himself unreliable by his conduct. The respondents cannot be compelled to keep the applicant in engagement when the respondents have lost confidence in him.

15. It is found that principles of natural justice have been followed and thereafter the applicant has been disengaged. In our opinion the applicant cannot successfully assail the order of disengagement Annex. A.1.

16. However, the impugned order cannot be sustained on the point of 'no work no pay.' The Tribunal vide order dated 18.5.98, had quashed the order of disengagement dated 17.11.95 holding that the order was not sustainable in the eye of law. The effect of the order is that the applicant shall be deemed to continue as daily wager till the date of issuance of the show cause notice. The date of show cause notice is 3.12.98. The applicant was re-engaged on 15.12.99 and he continued to be engaged till the order dated 1.3.2001.

There cannot be any valid justification for not giving wages to the applicant for the period

[Handwritten signature]

from the date of first disengagement i.e. 17.11.95 till the date of finalisation of the enquiry and the order dated 1.3.2001. The applicant, if did not work for certain period it was due to the order of the respondents which was later on quashed by this Tribunal. It is obvious that the applicant was prevented from doing his work by the act of the respondents, themselves. It is noticed that even after the quashing of the order of the disengagement, the applicant was not re-engaged and the re-engagement was ordered only after the respondents received notices in O.A. No. 49/99. In these circumstances, the applicant is entitled to get the entire wages for the interregnum period.

17. Consequently, the O.A is allowed in part. The respondents are directed to pay the wages to the applicant from the date of first disengagement i.e. 17.11.95 till 1.3.2001. The payment of wages if any, already made to the applicant for the above period may be deducted from the arrears to be paid to him. This exercise be completed within a period of two months from the date of communication of this order.

18. No order as to costs.

(A.P. Nagrath)
Administrative Member

(G.L.Gupta)
Vice Chairman.

jsv.