

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 234/2016
MA 229/2016

New Delhi, this the 8th day of November, 2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Shri Sumit Kumar
S/o Shri Raj Pal
Aged 34 years
R/o B-647/2, Gali No.8
Bhajanpura, Delhi-110053 ... Applicant

(Through Mr.Anuj Aggarwal with Mr.Tenzing Thinlay Lepcha, Advocates)

Versus

1. Department of Training & Technical Education
Govt. of NCT of Delhi
Through its Principal Secretary-cum-Director
Muni Maya Ram Marg,
Pitam Pura, Delhi-110088
2. Sir C.V. Raman Industrial Training Institute
Govt. of NCT of Delhi
Through its Principal
Dheerpur, Delhi-110009
3. The Chief Secretary
Govt. of NCT of Delhi
Delhi Secretariat, I.P. Estate
Delhi-110002

... Respondents

(Through Mr. Amit Anand, Advocate)

ORDER (Oral)Mr. P.K. Basu, Member (A)

The applicant was working in Sir C.V. Raman Industrial Training Institute, Dheerpur as Contractual Craft Instructor (Mech. Motor Vehicle) on full time contract basis.

2. The allegations against the applicant are that during a routine visit by Principal, ITI Dheerpur on 9.07.2014, he was found smoking in his classroom in front of trainees. This was not only in violation of Government of India instructions of not smoking in public places and educational institutions but also dangerous as in the workshop of motor mechanics, there are inflammatory items viz. petrol, diesel and grease etc., which can cause a major fire and destroy the workshop and adjoining buildings. A memorandum dated 11.07.2014 was issued to the applicant directing him to deposit Rs.200/- to the Cashier of the Institute for the offence of smoking in the class before the trainees. Further, he was asked to explain why disciplinary action should not be initiated against him for this offence.

3. The applicant, instead of depositing the amount of Rs.200/- and giving his explanation, vide letter dated 13.07.2014 made a counter allegation that, in fact, the Principal had demanded a bribe, and when the applicant refused to comply with this demand, false allegation of smoking in class before the trainees was made against him.

4. The Department of Training and Technical Education, Government of National Capital Territory of Delhi constituted a Committee of three independent persons with Principal, ITI, Jahangir Puri as the Chairman, vide office order dated 21.07.2014. The Committee gave its report on 23.07.2014 in which after examining the witnesses, it gave the following findings:

“3. The Committee after observing all the contents of the reports and statement given by the staff, the allegations made by Sh. Sumit Kumar is an afterthought of receipt of the memo dated 11.07.2014 narrating his position of smoking in the class. The Committee has also observed that he is habitual smoker and allegations made by him are concocted and false and an afterthought story only after the receipt of the memo to save him from the instance of 9.07.2014 when he was caught red handed smoking in the class by the Principal.

4. The Committee is of the opinion that such type of officials must be punished under the rules like termination or any other suitable action so that it may become an example for others. However the Committee is also of the opinion that since majority of the staff is CCIs i.e., more than 45 CCIs in ITI Dheerpur which also a matter of concern that they may grouped together get indulged in indiscipline activities which may affect the decorum of the Institute. To stop such type of activities, the Committee also recommended to segregate them with regular CIs.”

5. Based on the report of the Inquiry Committee, the respondents issued the impugned order dated 31.07.2014, terminating the services of the applicant with effect from 1.08.2014, which has been challenged by him in the present OA. The specific prayers are as follows:

- (i) Set aside the impugned Memorandum bearing File No.F5(8)/SCVR ITI/ PPL/ Miscellaneous/ 2014-15/1136 dated 31.07.2014 issued by respondent no. 2 whereby the services of the applicant was terminated w.e.f. 1.08.2014;
- (ii) Set aside the impugned Memorandum bearing File No.F5(8)/SCVR ITI/ PPL/ Miscellaneous/ 2014-15/906-08 dated 11.07.2014;
- (iii) Quash the impugned inquiry proceedings conducted against the applicant by the committee constituted vide office order dated 21.07.2014;
- (iv) Issue an appropriate order or direction thereby directing the respondents to reinstate the applicant in service, with continuity of service, full back wages/ salary and with all consequential benefits (monetary as well as non-monetary) thereof; and
- (v) Allow the present Application with cost, in favour of the applicants.

6. The learned counsel for the applicant has raised the following grounds in support of his case:

- (i) Neither any charge sheet was issued nor any domestic inquiry was conducted against the applicant in complete violation of principles of natural justice read with Article 311 of the Constitution of India;
- (ii) The memorandum dated 31.07.2014 amounts to double jeopardy as it imposed a fine of Rs.200/-

and later on punishment of termination was also inflicted;

(iii) The termination order was passed due to bias against the applicant in as much as he had made a complaint of corruption against the Principal, which complaint, in fact, was not considered at all by the respondents;

(iv) That the applicant was never supplied with the copy of the report of the purported inquiry though this was procured by him through an Application under RTI Act 2005;

(v) That the statement of five persons was recorded by the Inquiry Committee, including the applicant herein and none of them stated that they have seen the applicant smoking in the class room and, therefore, there is no evidence against the applicant with respect to the alleged charge against him;

(vi) The inquiry committee did not record the statement of students, who were present in the class room;

(vii) The punishment of termination is shockingly disproportionate to the alleged misconduct;

(viii) The termination of services of the applicant is in violation of Section 25 of the Industrial Disputes Act, 1947; and

(ix) It is asserted that there was no inflammable substance in the classroom.

7. The applicant had also approached the Labour Department under the Industrial Disputes Act 1947 and since despite making several efforts the dispute could not be resolved, the Conciliation Officer directed that claim may be filed in the appropriate Labour Court or the Tribunal, vide order dated 16.03.2015. Thereafter, the applicant moved the Labour Court, which application was later withdrawn by him with liberty to file it afresh before the appropriate forum and the case was disposed of as withdrawn vide order dated 21.12.2015 by the Court. Thereafter, this OA has been filed.

8. The applicant, in support of his claim, has also relied on the following judgments:

(i) **Union of India and ors. Vs. Ankit Kumar, W.P (C) 8901/2014** – In this case, it was held as follows:

“Service – Appointment – Cancellation of – Principles of natural justice – Violation of – Writ Petition filed against quashing of order of termination of appointment of Respondent – Whether cancellation of appointment of Respondent was stigmatic – Held, prior to cancellation of appointment of Respondent no show cause notice was served upon him – Respondent was entitled to opportunity to explain his conduct before cancellation of his appointment and by not doing so petitioners have violated principles of natural justice.”

In the instant case, the applicant was issued a Show Cause Notice (SCN), which he refused to reply and instead made counter allegation. Moreover, order dated 31.07.2014 is not stigmatic.

(ii) **M.C.D. Vs. Praveen Kumar Jain and ors.**, AIR 1999 SC 1540 – In this case, services of an MCD employee who was on muster roll as daily wager, were terminated for alleged misconduct by an order simplicitor. However, in this case, from para 4 of the order, it becomes clear that there was no inquiry officer's report holding the applicant guilty of charge which, in fact, was never framed against him nor was there any acceptance of such a finding of the inquiry officer by the disciplinary authority. The facts are clearly different and hence would not apply in the present case;

(iii) **Haryana Roadways, Delhi Vs. Thana Ram**, LPA 587/2012 – This is a matter related to grant of back wages and also on totally different factual matrix;

(iv) **Roop Singh Negi Vs. Punjab National Bank and ors.**, Civil Appeal No.7431/2008 – Here also the facts are different as it was determined that the appellate authority did not apply his mind and no reasons had been assigned in support of his conclusion neither was it clear on what evidence

the appellant was found guilty, as stated. Here again the facts being completely different, this judgment cannot be quoted as a precedent;

(v) **Jasmer Singh Vs. State of Haryana**, 2015 (1) SCALE 360; **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors.**, Civil Appeal No.6767/2013 – In both these cases, the claim was for back wages on determination that termination was illegal. These judgments will apply only if we hold that termination was illegal.

9. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

10. The Inquiry Committee examined the witnesses and came to the following conclusions:

- (i) The applicant was a habitual smoker. He is also prone to consuming alcohol;
- (ii) The allegation against the Principal by the applicant was a clear afterthought;
- (iii) The applicant defied the authority by not only not depositing Rs.200/- as fine, as directed but also by not filing proper reply to the SCN;
- (iv) Due to final trade test the trainees could not be inquired; and

(v) When the Committee asked the applicant to produce any sort of evidence in support of his complaint against the Principal, the applicant did not produce any evidence before the Committee. Therefore, the Committee was of the opinion that such type of officials must be punished under the rules like termination so that it may become an example for others.

11. In our opinion, whether some students gave some letters to the applicant exonerating him from the alleged charge, is not relevant. Secondly, the applicant was given opportunity to be heard. He himself says that statement of five persons, including the applicant, was recorded during the inquiry and none of them stated that they had seen the applicant smoking in the class room. The applicant was issued a SCN, which he chose not to reply to in a proper manner and also failed to adduce evidence to show that he is not guilty of the misconduct that he has been charged with. Further the applicant now cannot raise the issue of violation of Industrial Disputes Act 1947 having himself withdrawn the case before the Labour Court and chosen to approach this Tribunal.

12. As regards the ground of double jeopardy, there is no substance in it. The Rs.200/- deposit is not in lieu of inquiry. It was for violation of Government of India instructions. The inquiry was for misconduct by him i.e. act of smoking before the students in a class room. The contention of the learned counsel

that proper departmental proceedings should have been held before termination is also not a valid argument as before the issuance of impugned order, the SCN was issued to him to ascertain whether he was fit to hold the post in an educational institution where he was to handle students. When the Inquiry Committee found that he was unfit for such assignment, his appointment being on contract basis, was terminated by a simplicitor order of termination. There was no need to hold a departmental inquiry in such circumstances. In case **State**

Bank of India and Others Vs. Palak Modi and Another (2013) 3 SCC 607 the Hon'ble Supreme Court has held as follows:-

"The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."

The order dated 31.07.2014 is not a stigmatic order.

13. In view of above discussion, we are of the opinion that the respondents have not committed any illegality or irregularity in terminating the services of the applicant. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

/dkm/

(Justice M.S. Sullar)
Member (J)