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**(1999) 08 AHC CK 0196**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 39548 of 1998**

Hiyat Khan

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision :** 23-08-1999

**Acts Referred:**

Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules, 1979 — Rule 9(1)

Road Transport Corporations Act, 1950 — Regulation 9, 53

**Citation :** (1999) 4 AWC 2972 : (1999) AWC 2972

**Hon'ble Judges :** V.M. Sahai, J

**Bench :** Single Bench

**Advocate :** Hiyat Khan In person, for the Appellant; S.C. and Dinesh Kakkar, for the Respondent

**Final Decision :** Allowed

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## Judgement

V.M. Sahai, J.—Heard Sri Hiyat Khan, the petitioner in person and Sri Dinesh Kakkar, learned counsel appearing for respondent No. 2. The petitioner states that he does not press his claim against respondent Nos. 3 and 4 and respondent No. 1 is a formal party. In view of this statement, this writ petition is taken up for final disposal.

2. The petitioner was a trained Machinist and he joined two year's training with respondent No. 2. He completed one year's training and thereafter, his training was terminated by the respondents. The petitioner filed Writ Petition No. 39148 of 1987 wherein this Court set aside the termination order dated 19.9.1997 and permitted the respondents to pass a fresh order after affording opportunity of hearing to the petitioner. The petitioner has completed one year's training and if he is permitted by respondents, then he shall undergo one year's further training excluding the period from 19.5.1997 till the date of passing of fresh order. The judgment of this Court dated 21.5.1998 is quoted below :

"The petitioner seeks writ of certiorari quashing the order dated 19th September.

1997 whereby the Director of Indian Institute of Technology, Kanpur. respondent No. 1, informed him that his training has been terminated.

"The facts, in brief, are that respondent No. 1 invited, the applications for two years" course in mechanic. The petitioner applied for such training course. The Indian Institute of Technology, Kanpur (hereinafter referred to as the Institute) conducted the practical test and interview. The petitioner was selected for the training course. He was issued a letter dated 19th September, 1996 intimating him that he has been enrolled as trainee mechanic and he is permitted to join the training course on the conditions mentioned therein. He was also required to execute an agreement. Some of the relevant conditions mentioned in the letter are as follows :

1. Stipend : Rs. 800 p.m. in the first year. Enhancement in the stipendary amount to Rs. 950 p.m. could be considered on satisfactory completion of first year of training. You will not be entitled to any other allowances or facility.

2. Duration : The training period will be for a period of two years with effect from the date of your joining.

The training can be terminated at any time without any notice and without assigning any reason. You will be required to work day and/or night as per directions of the authorities of the Institute.

Please note that the above is not a Job position. You are being enrolled only as a trainee.

If the above terms and conditions are acceptable to you, you should report for training immediately along with the original certificates about your date of birth, educational/ technical qualifications and experience etc. and a photostat copy each thereof for verification by the Institute Authority, latest by 7th October, 1996 failing which the offer so made will stand cancelled automatically."

The petitioner executed an agreement on 7th October 1996. a copy of which has been annexed as Annexure-C.A. 4 to the counter-affidavit. The training period has been terminated by respondent No. 1 vide impugned order dated 19th September 1997. This order has been challenged on the ground that his training has been terminated without assigning any reason and justification.

I have heard the petitioner in person and Sri Dinesh Kakkar, learned counsel for the respondents.

It is not denied that the petitioner was not afforded any opportunity by respondent No. 1 before terminating his training in the Institute. Sri Dinesh Kakkar, learned counsel for the respondents, contended that the conditions of training itself provided that the training can be terminated any time. He has also referred to the similar condition mentioned in the agreement executed by the petitioner which reads as under :

The training of the party of the first part may be terminated at any time without

assigning any reason and without any previous notice."

In the counter-affidavit it has been stated that the conduct of the petitioner was not proper as he remained absent without any sanctioned leave. He was further given warning on different occasions. He has referred to a letter dated 3.9.1997 wherein it was stated that the petitioner is not entitled for absorption in service. He has disobeyed the orders of the supervisor. The office in-charge again wrote letters on 6.2.1997 and 8.7.1997 whereby similar warnings were given.

The question as to whether an agreement is arbitrary can be examined by the Court. In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , Rule 9 (1) of the Central Inland Water Transport, Corporation Ltd., Service Discipline and Appeal Rules, 1979, was examined by the Apex Court which provided that employment of a permanent employee can be terminated on three months' notice on either side, it was held that such rule was arbitrary and unreasonable which does not provide for giving opportunity to the employee. Similar view was taken in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , where the majority view was that Regulation 9 (b) of the Regulations framed u/s 53 of Delhi Road Transport Act, 1950 which provided for termination of services of the permanent employees on giving simple one month's notice or pay In lieu thereof without recording any reason therefore in order of termination, was held arbitrary. Illegal and discriminatory and violative of "audi alteram partem" rule. The term of the agreement that training of a party may be terminated any time without assigning any reason and without giving any opportunity to such party is arbitrary.

The petitioner was agitating the matter that he should be absorbed in service, his contention was not accepted. The petitioner was given a warning in respect of his conduct. The petitioner, under these circumstances, could have explained his position before the decision was taken that the training should be terminated. The petitioner was taken in training on 7.10.96 and he has completed almost one year in training.

Considering the facts and circumstances, the petitioner could have been given a notice before his training was terminated. It is true that the conditions of training and also the terms of the agreement provided that the training of the petitioner can be terminated at any time without assigning any reason but if the termination is on certain allegation, the petitioner should have been given an opportunity.

Considering the facts and circumstances of the case, the writ petition is allowed. The impugned order dated 19.9.1997 is hereby quashed. It is, however, made clear that the respondents can take appropriate action and pass a fresh order after affording opportunity to the petitioner. The petitioner has already completed almost one year of training and he shall be allowed for further period of one year to make it two year's training course excluding the period between 19.9.1997 to this date unless any fresh order is passed after affording opportunity to the

petitioner.

In the facts and circumstances of the case, the parties shall bear their own costs."

3. The respondents in pursuance of the order passed by this Court gave a show cause notice framing as many as five charges. In reply, the petitioner denied every charge and the allegation made against him. He was personally heard. The proceedings were recorded in shape of question and answers. The petitioner was no doubt asked what he wanted to say but no inquiry was made from him in respect of the charges framed against him nor any clarification was sought. By order dated 12.10.1998, the services of petitioner have again been terminated. The impugned order does not say that the petitioner was guilty of any of the charges. The only reason assigned in the order is that the respondents have come to the conclusion that the petitioner is not a fit person to be appointed or retained as trainee in the institute, therefore, the training of the petitioner in the institute be terminated with immediate effect. In the impugned order, no reason has been assigned by the respondents as to what was the fault of the petitioner due to which the training was cancelled.

There is no finding in the impugned order that the charges were proved.

4. This Court while quashing earlier order had held that the term of the agreement which permitted termination without assigning any reason and without giving any opportunity was arbitrary. The Court had referred to the decision in Delhi Transport Corporation and held that the termination order without giving reasons cannot be maintained. The impugned order instead of complying with the order of this Court has paid lip service to it by issuing a show cause notice and granting personal hearing. And it has been vehemently defended both in the counter-affidavit and the argument advanced by the learned counsel for the respondent as sufficient compliance of the order passed by this Court. The Apex Court has settled it in series of decisions including the one mentioned in earlier order that it was incumbent on the authority passing the termination order to discuss the evidence and give reasons in support of it. Once the charges were framed against the petitioner and he denied it, then the impugned order could not have been passed without recording finding on every charge and holding that it was proved. The Court has time and time again said that, it was not enough to state that the evidence on record proved that the employee was guilty of the charges framed against him. The legal requirement of discussing evidence and recording finding on every charge did not come to an end only because the petitioner was granted personal hearing. A perusal of Annexure-9 to the petition shows that the respondents only observed the formality of hearing, without complying with law or following the principles of natural justice. The impugned order thus being in violation of the earlier order passed by this Court and being otherwise bad cannot be maintained.

5. The petitioner has been harassed by the respondents from 1997 till date and he has been running from pillar to post for getting his grievances redressed but

the respondents in clear disregard of the order passed by this court passed the order arbitrarily. The petitioner has completed one year of training. There is no Justification to deny him training of one more year as none of the charges have been found to have been proved. Since the respondents despite the order of this Court continued to act arbitrarily, the petitioner is entitled to costs which is assessed to Rs. 5,000.

6. This writ petition succeeds and is allowed. The order dated 12.10.98 passed by respondent No. 2. Annexure-10 to the writ petition, is quashed. The respondents are directed to permit the petitioner to continue and complete his remaining training of one year to make its two years" training course excluding the period between 19.9.1997 till this date. The petitioner shall be entitled to its cost of Rs. 5,000 The aforesaid directions shall be complied with by the respondents within one month from today.