
(2014) 08 DEL CK 0124
In the Delhi High Court
Case No : Writ Petition (Civil) 1244/2014

Jai Bhagwan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0124

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sourabh Ahuja, Advocate for the Appellant; Archana Gaur, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by an order of the Central Administrative Tribunal (CAT) dated 06.08.2013 in O.A. No. 3246/2011. He had unsuccessfully challenged the order of termination issued by the respondents on 23.06.2010 by which his services were dispensed with in terms of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 (hereafter called the "Rules"). The petitioner was appointed to the Junior Intelligence Officer Grade-II on 12.01.2009. The termination order reads as follows:

"In pursuance of the Proviso to sub-rule (1) of rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, I Ravinder Singh, Assistant Director hereby terminate forthwith the services of Shri Jai Bhagwan, JIO-II/MI (PIS No. 130557) and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of one month."

2. The petitioner sought for reinstatement; his representation was rejected on 03.08.2010. His subsequent representations too were rejected. Consequently, he approached the CAT with the grievance that the termination order really amounted to one based upon misconduct and, therefore, the respondents acted

contrary to the rules in as much as they did not hold an enquiry. The CAT, after issuing notice, considered the effect of the order and directed the respondents to produce the official file. In this regard, the CAT recorded as follows:

"9..... As laid down by the Apex Court in the case of Chandra Prakash Shahi (supra), we did not base our judgment only on the language of the termination order and decided to see the original records of the department to ascertain the truth of the matter. In this connection, we saw departmental original file No. 6/PF-ASR/393 from which we find that reports regarding the behaviour of the applicant were received from time to time. Thus, it was mentioned that on 13.10.2009 the applicant could not attend the office due to excess consumption of liquor and because of this he was also hospitalized on 14.10.2009 causing interruption in office. Again on 03.11.2009 he had consumed liquor heavily and was not in a frame of mind to attend to his duty. Rather he did not attend office on 04.11.2009. It is also mentioned that he was bringing bad name to the department by taking eatables on credit from various vendors who were approaching the office for clearance of the dues. After these reports, the competent authority decided to warn him in writing and treated his period of absence as extra ordinary leave.

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10. On the basis of above, we come to the conclusion that the services of the applicant were terminated on account of his habit of consuming liquor extensively, loosing his senses and absenting himself from duty. This conduct of his was found to be unbecoming of a Government servant by the competent authority who felt that he was not fit for continuance in service. No departmental enquiry was conducted before arriving at this conclusion and it was based purely on the basis of reports received regarding the conduct of the applicant from his supervisory officers. In our opinion order passed under the above circumstances cannot be called punitive since the applicant has been terminated not for any specific misconduct but for his general behaviour which was found to have rendered him unfit for continuance in service. In view of these findings we also feel that grounds (vi) and (vii) taken by the applicant are also not tenable. Thus none of the grounds taken by the applicant deserves consideration. We, therefore, do not find any infirmity in the impugned orders."

3. It is contended that the order rustivating the petitioner from the course dated 11.05.2010 also contained a similar direction in respect of another trainee. Learned counsel submitted that where the petitioner's services were terminated, the services of the other trainee were not so terminated and that he was in fact let off with a lighter penalty. It was submitted that whilst the incident which led to his rustication on account of the allegations of consumption of liquor might have some bearing, yet the fact remains that no formal enquiry into the incident which took place. Likewise, other allegations such as his obtaining credit from vendors and shopkeepers in nearby areas and behaving in a disorderly and indisciplined manner were without foundation. Learned counsel emphasized that

the petitioner had complained against his superior, who used to hold a baseless grudge against him for not attending to his duties. Learned counsel submitted that all these were sufficient to indicate that the real basis or motive of the termination order was alleged misconduct which necessarily had to be established through departmental enquiry. In overlooking this aspect, learned counsel emphasized that the CAT erred in law.

4. This Court has considered the submissions and the circumstances of the case. The CAT -- as is clear from the above extracts - noted that the department took note of the departmental file which contains several reports regarding the unsatisfactory behaviour of the petitioner, which appear to have been indicated from time to time. Apart from the incident of 11.05.2010, the CAT also noted that on 13.10.2009, the petitioner appeared to have consumed excess liquor due to which he was hospitalized on 14.10.2009, causing interruption in the office and again he consumed liquor heavily on 03.11.2009 and was not in a frame of mind to attend duties. Indeed, he did not attend duties on the next day. Having regard to these, and the undisputed fact that on 11.05.2010, the petitioner was rusticated from the course which he was supposed to attend, this Court is of the opinion that no fault can be found with the CAT's conclusions. There indeed appears to have sufficient material for the executive government to conclude that it was not in public interest to continue with the petitioner's service. As far as the other allegations are concerned, the Court is of the opinion that these should have been substantiated by the petitioner, but were not so proved. There is also no question of any prior enquiry into alleged misconduct, which the respondents were bound in law to undertake, as is alleged. For these reasons, the Court is of the opinion that no interference with the CAT's order is called for. The writ petition is accordingly dismissed.