
(1977) 01 DEL CK 0003
In the Delhi High Court

Nand Kishore Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-01-1977

Acts Referred:

Citation : (1977) 1 LLJ 430

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Judgement

D.K. Kapur, J.—The petitioner's services as Airport ticket clerk in the Civil Aviation Department, Government of India were terminated by means of an order dated 3rd June, 1971, issued by the Deputy Director General of Civil Aviation, at (hat time the petitioner was serving at the Palam Airport.

2. The order in question ran as follows:

In pursuance of the proviso to Sub-rule (I) of Rule 5 of the Central Civil Service (Temporary Service) Rules 1965, I hereby terminate forthwith the service of Shri N K Sharma. Airport ticket clerk and direct that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing then immediately before the date on which this order is served on or, as the case be, may tendered to him.

Sd/-

(S. RAMAMRIHAM)

Deputy Director General of Civil

Aviation

This order led to the services of the petitioner being terminated on 15th June. 1971, forenoon On the same day, he tiled an appeal under Rule 5(2) of the Central Civil Services (Temporary Service) Rules, 1965, to the Secretary to the

Government of India, Ministry of Civil Aviation and Tourism. He was informed on 28th February, 1972, that this appeal had been rejected.

3. On 9th May, 1972, he filed the present writ petition under Articles 226 and 227 of the Constitution of India.

4. The case of the petitioner is that he was formerly employed as a lower division clerk in the Ministry of Home Affairs. Copy of the letter dated 31st December, 1974, offering that appointment is Annexure "A" to the petition. About five years later, he was offered an appointment to the post of Airport ticket clerk, Palam Airport. The letter containing that offer is dated 24th June, 1969, and its copy in Annexure "B". Both those appointments were temporary. The letter of appointment as Airport ticket clerk, is Annexure "C", it sets out the terms and conditions OR which the appointment was made. On taking the new appointment the petitioner received some advantage by reason of his previous service, as his initial salary was fixed at Rs. 122 per month, appears from Annexure "D" issued by "the Administrative Officer, Delhi Airport on 29th April, 1970. Thereafter, the petitioner continued to serve as Airport ticket clerk till his services were terminated by the impugned order dated 3rd June 1970. The petitioner has also annexed a copy of a show cause notice issued to him on 8th June, 1971, by the Aerodrome Officer, Delhi Airport, calling upon the petitioner to explain why disciplinary action should not be taken against him for gross dereliction of duty. The irregularity complained of is that the petitioner was found to be not at his duty post at the Exit Gate at 02-10 hours on 7th June, 1971. He was, however, found to be at the gate about ten Minutes later.

5. The points raised by the petitioner are: (a) that his services have not been properly terminated because he did not receive salary in lieu of notice at the same time as his services were terminated; (b) it is claimed that the services of the petitioner have been terminated by way of punishment. For this purpose, reliance is placed on the show cause notice issued on 8th June 1971. and (c) it is claimed that the petitioner has been discriminated against inasmuch as persons who joined service later have been retained in service in spite of adverse entries in their service records whereas the petitioner's services were satisfactory. The termination is thus claimed to be ultra vires and in violation of Rule 7 of the Central Civil Services (Temporary Services) Rules, 1965.

6. In the counter-affidavit filed on behalf of the respondents, which is the affidavit of Shri M G. Thomas, Director of Administration, it is stated that the appointment of the petitioner in the Civil Aviation Department was to be treated as a fresh appointment on an ad hoc basis. However, benefit of the part service of the petitioner in the Home Ministry was given to him in the matter of fixation of pay only. It is admitted that the petitioner has not been paid his pay and allowances in lieu of notice but this is because he had not produced a clearance certificate to the effect that no Government dues were outstanding against him. He was asked to collect his dues by a letter dated 4th June, 1971, after surrendering his identity card, identity badge, CG.HS. Card and all items of

uniforms, etc. This letter was received back undelivered with the remarks "intentionally avoids to take delivery," It is claimed that the petitioner had intentionally not collected the final payment and did not surrender Government articles due from him. The petitioner's claim that his services could not be terminated without disbursing forthwith a sum equivalent to the amount of salary for the period of notice was refuted and it was claimed that he could not be paid his notice salary till he produced the aforementioned clearance certificate, etc. It was stated that the petitioner's work was not wholly satisfactory as it had been adversely commented upon on more than one occasion. As regards the points raised by the petitioner, it was claimed (a) that it was not necessary to pay and allowances in lieu of the period of notice till the clearance certificate about Government dues had been produced and till the identity card, etc., had been returned. It was also stated that the petitioner was not quasi-permanent and, Therefore, his services, could be terminated under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965, (b) Article 311(2) of the Constitution of India had no application to the petitioner as his termination of service was not by way of removal or dismissal, and (c) it was claimed that no discrimination had been shown against the petitioner as his services were terminated under Rule 5(1) of the said Rules. It was denied that the termination was ultra vires and Rule 7 was not applicable because he was not quasi-permanent.

7. The first question for decision in this case is whether the petitioner's services have been rightly terminated by the order in question. It is not worthy that the petitioner's services have been terminated forthwith and in lieu of the period of notice, pay and allowances for a period of one month had to be paid to the petitioner. It was held in *Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, ,* by the Supreme Court that the proviso to Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 required the salary in lieu of notice to be paid at the same time as the order of termination was served.

8. Later, the terms of the proviso were amended retrospectively with effect from 1st May, 1965, and the amended rule was interpreted again by the Supreme Court in *Hari Singh Mann Vs. State of Punjab and Others, .* It was held, that the effect of the amendment was that it was no longer necessary to pay the salary for the notice period at the same time when the termination order was served. The changed proviso read:

The Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates, etc...

Instead of getting the salary paid, the Government servant concerned could only claim salary in lieu of notice. If this rule is applicable to the petitioner, clearly, no relief can be granted merely because of delay in paying salary for the notice period.

9. There is, however, another question arising in this case concerning the manner

in which the petitioner's services can be terminated. The petitioner was appointed as per Annexure "C" on certain terms and conditions which are set out in that letter. They are somewhat different from normal. This appointment was preceded by an offer of the post of certain terms and conditions which are set out in Annexure "B". Thus, the appointment of the petitioner was made by first making him an offer and then setting out the terms on which he had been appointed in his letter of appointment.

10. I now deal with those terms, which are as follows: (1) The appointment is temporary and there is a trial period of one year, continuance in the post is subject to the work and conduct being satisfactory (2) The appointment may be terminated at any time by a month's notice given by either the appointee or the Appointing Authority without assigning any reason. Then comes the important words as far as this case is concerned:

The appointing authority reserve the right of terminating the services of the appointee forthwith, or before the expiry of the stipulated period of notice by making payment, to him of a sum equivalent to the pay and allowances for the period of notice of unexpired portion thereof.

11. Then there are other terms regarding transfer to any place in India, the necessity of having a medical examination and undergoing training and producing a character certificate and giving a declaration regarding his marital status. Finally, there is a term that the petitioner had to furnish a cash security or security bond for Rs:300. Thus, the petitioner's terms of service were contractual in nature in the sense that he could only terminate his services by giving a month's notice and the appointing authority could also terminate the services by giving him a month's notice. The important clause, as far as this case is concerned, is that the period of notice could be shortened as far as the appointing authority was concerned by paying him salary in lieu of one month's notice. This term is the same as was found in the unamended Rule 5(1) of the Central Civil Service (Temporary Services) Rules, 1965. Thus, the earlier judgment of the Supreme Court given in *Senior Superintendent, R.M.S., Cochin and Anr. v. K.V. Gopinath, Sorter* [1972] 1 L.L.J. 486: (1072) S.C.R. 530, would seem to apply with full force to the petitioner's case.

12. In support of the view that the petitioner's services could not be terminated except by giving him one month's salary in lieu of notice, the learned Counsel for the petitioner has referred to an equivalent provision contained in 25F of the Industrial Disputes Act. Reliance has been placed on the judgment of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, in which case the services of certain persons employed in the J.J Group of Hospital had been terminated and the retrenchment compensation had not been paid at that time. It was held by the Court that the retrenchment was invalid without payment of the compensation. There is a similar provision in the Delhi Shops and Establishments Act regarding the termination of the services of a person employed in shops, etc. That Act also provides for the giving of

one month's notice or salary in lieu of notice, In view of the interpretation of the unamended Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 195, by the Supreme Court In Gapinath's case already referred to, I do not think that it is necessary to discuss this matter any further. The petitioner has particularly relied on the terms of the appointment letter in paragraph 3 of the writ petition and there is no specific Explanation in the reply to that paragraph in the counter affidavit to show why the term was not applicable to the petitioner.

13. It is also necessary to deal with one other aspect of (his matter arising out of the fact that the petitioner was certainly a temporary servant serving in a Government post. If this was so, it could be urged that in spite of the provision in the appointment letter regarding the termination of his services, the Central Civil Services (Temporary Services) Rules, 1965, would still be applicable. On this aspect of the matter, it becomes necessary to ascertain whether in spite of the terms and conditions the appointment letter the petitioner could be terminated by giving of a notice in accordance with Rule or not. On this aspect of the matter reference has been made to Rule 1(4)(d), which states that nothing in these Rules shall apply to Government servants engaged in contract, I have examined this rule very carefully. It is part of the provision to the effect that certain classes of Government servants are not to be governed by the Central Civil Services (Temporary Service) Rules, 1965. Those classes include railway servants, personnel paid from defense Service, Estimates and several other classes of Government servants. One of the excluded class is Government engaged on contract. Apparently, the petitioner received an offer of appointment which is Annexure "B1" and he accepted the same and was issued a letter of appointment in the form of the letter, Annexure "C". It is clear and quite plain from the appointment letter that the petitioner's appointment was on certain special terms and conditions which included him giving a security deposit, etc. and also, that contract could be terminated by giving one month's notice either way. Can it be said that it is not a contract? In the sense (that particular terms which are distinctive to the petitioner have been set out in the letter of appointment I cannot say that it is not a contract. If the petitioner was a contractual Government servant even though a temporary one, he would be deemed to be a person serving under a contract. There is nothing to show that the petitioner was to get any pension or any particular allowance or that he was to be governed by any letter of appointment. There is nothing to indicate that the petitioner was to be governed by the provisions of the Central Civil Services (Temporary Service) Rules, 1965. In view of the special terms contained in the letter of employment, I come to the conclusion that the Central Civil Services (Temporary Services) Rules, 1966 are not applicable to the petitioner, because of the provisions of Rule 1(4)(d) of the said Rules.

14. To clarify the position thus emerging it would seem that the petitioner's services can only be terminated either by giving him one month's notice or giving him pay and allowances, for a period of one month in lieu of notice. If such pay and allowances are paid to him, his services can be terminated

forthwith. If it is desired to terminate his services in this manner, the pay and allowances for the period of notice must also be paid forthwith. Otherwise a notice of one month has to be given. It is deed unfortunate that the petitioner's services were not terminated by giving Lira one month's notice which would certainly have facilitated the termination of his services without creating future complication. At the same time, the petitioner's salary was small one and, as explained by the Supreme case the amount of this salary could easily have been paid to him when the order was conveyed. If there were any other Government dues to be collected from him there was the security mentioned in terns of the letter of appointment available with the Appointing Authority for Realizing those dues, if any.

15. I must point out in fairness to the petitioner that he has filed a rejoinder in which he has refuted the claim of the respondents to the effect that Government dues were due from him or that he had not returned the identity card, etc. It was stated in the rejoinder that the petitioner was not issued a C.G.H.S card and there were no items of uniform to be returned, The identity card and the identity badge were handed over by the petitioners to the department on the date of the termination of services, i.e., 15th June, 1971. There was, Therefore, no question of returning any item. It was further urged that the respondents could not without the salary merely for the alleged non-return of these article. Further, the security was available with the respondents to meet the coat of these articles, if necessary.

16. It is next urged on behalf of the petitioner that the order is void because of the proposed disciplinary action in he show cause notice, dated 8th June, 1971, Annexure "E " I have examined this argument from two points of view. The &how cause notice was dated 8th June, 1971. and required an answer within three day. The order of termination is dated 3rd June, 1971. But was served on the petitioner on 15th June, 1971. Therefore, the show cause notice had been served on the petitioner before the order of termination was served and at a time when the disciplinary proceedings had already commenced. There are two possibilities, either the termination order hid been already issued, in which case no disciplinary action need have been taken again the petitioner, or the termination order was passed after the disciplinary proceedings had been started bat had been erroneously dated as 3rd June, 1971. I cannot imagine the disciplinary action being taken after the order and actually been conveyed. In, Therefore, follow that there were some disciplinary proceedings which had commenced before the order of termination was issued. It is urged by the learned Counsel for the petitioner that there id a stigma attaching to the petitioner because of the m inner in winch his services have been terminated. This submission is based on the view that the termination order has been Passed because of an implied finding that he is guilty of negligence in the performance of his duties. Thus there is an aspersion regarding the character of the petitioner, arising from the manner in which his services have been terminated, because disciplinary proceedings had already been commenced. As I have indicated, I have come to the conclusion

that there were so many disciplinary proceedings initiated before the services of the petitioner were terminated on 15th June, 1971. It. Therefore, follow that it was known that disciplinary proceedings had already been commenced against the petitioner, which might have led to a penalty being imposed, is stated in State of U.P. and Others Vs. Sughar Singh, , when referring to the case law on this point, certain propositions are applicable to a case such as the present. At page 429, proposition No. 3 is submitted from an earlier judgment of the Supreme Court, it is as follows:

If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

It is also stated in proposition No. 2 that the circumstances preceding the order of termination should be examined. In the present case, as no enquiry was actually started against the petitioner, I am of the view that it cannot really be said that the petitioner's services have been terminated as a penalty for misconduct. Rather, I am of the view that first, the authorities thought that some enquiry should be launched, but then decided to terminate the petitioner's services as he was a temporary servant. This impression is re-informed from the fact that there are no circumstances shown in the return to indicate why the order of termination dated 3rd June, 1971 was passed against the petitioner. In the circumstance, I do not accept the petitioner's case that this was a penalty.

17. The third proposition urged by the petitioner is that he was not the junior most person in the service of the Civil Aviation Department. It is said:

The petitioner has been discriminated as his other junior colleagues in the same service in the Civil Aviation Department who joined much later than him have been and are being kept and are continuing in service in spite of adverse entries in their service records while the services of the petitioner have been terminated...

In reply to this ground, there seems to be no specific denial on the facts. It is stated

(ix)...

(x) It is denied that no discrimination has shown against the petitioner as much as his services were terminated under Rule 5(1) of the C.C.S. (T.S.) Rules, 1965.

From this pleading, it has to be taken that the petitioner's claim that there were junior persons to him whose services had not been terminated has been admitted, because there is no denial of this fact.

18. In support of the petitioner's case, reference has been made to Shri K.M. Mittal v. Union of India. (1974) 2 S.L.R., 602, decided by the Court, wherein it was held that the principle of "last come first go" did apply to public servants. It

was held that without showing distinguishing features it was not open to retain a junior officer while terminating the services of senior officers. As no distinguishing features have been shown in this case to show why the petitioner's services have been terminated, this case fully applies to the petitioner. A similar view was taken in this Court in *Madan Singh Puran Singh v. Union of India* (1972) S.L.R. 67. wherein the principle of ("last come first go") was held to be applicable to such circumstances. A number of other judgments were cited in support of the view. It was held, in *Sri Devi Prasad Singh v. The Additional District Magistrate, Ghazipur* (1975) L I.C. 856, that;

as has been pointed out above, the respondent has not filed any counter-affidavit to explain as to why the petitioner's juniors have been retained and he has discharged...Thus the petitioner's contention that the order of termination has been passed in violation of Article 311(2) and Articles 14 and 16 of the Constitution has to be upheld.

A similar view was taken by a Division Bench of the Bombay High Court in *Pandurang Kashinath More Vs. Union of India*, , Referring to Article 16 of the Constitution, it was held that this granted equality in the matter of employment not only when the citizen was employed but also when his services were terminated. On the facts of that case, the Court found that the petitioner had been arbitrarily selected out of all employees in the same category and, Therefore, the termination of services of the petitioner was invalid being an infringement of Article 16 of the Constitution. On the facts, the position seems to be the same in this case. Thus, all these cases fully support the petitioner. In *State of Uttar Pradesh v. Sughar Singh* (supra), already referred to, the reversion of the employee in question was found to be invalid, because it was held to be either a penalty or to be an infringement of Article 16. The Court observed as follows:

The appellant in fact faces a dilemma. If it was not a case of punishment, it becomes difficult to explain why this discrimination was made against the respondent vis-a-vis at least 200 other officers who were junior to him in the substantive cadre. That would make the order liable to be struck down as violative of Article 16 of the Constitution. Reference may be made to *State of Mysore Vs. P.R. Kulkarni and Others*, etc., , where an order of reversion was struck down by this Court on the ground of "unjustifiable discrimination."

I think, that this passage fully illustrates the position of the petitioner. Either, the petitioner has been punished because of the disciplinary proceedings contemplated against him which has already resulted in a show cause notice to him before the order of termination of services was served on him, or he has been discriminated against because officers juniors to him in the same service continue to be in service whereas the petitioner's services have been terminated. All the cases I have just referred to, fully apply to the petitioner's case.

19. Thus, I would hold (a) that the order of termination of services was not in accordance with the terms on which the petitioner was employed, (b) that the petitioner's services were terminated either because he was discriminated against contrary to Article 16 of the Constitution, or alternatively, as observed by the Supreme Court in the judgment just referred to, he was punished in relation to the proposed disciplinary proceedings which were to be initiated against him.

20. Thus, for all these reasons, this petition has to be accepted and the order of termination of services has to be struck down. I would award the petitioner his costs.