

(1975) 03 DEL CK 0031

In the Delhi High Court

Case No : Letter Patent Appeal No. 48 of 1975

The Comptroller and Auditor General of India, New Delhi and
Others

APPELLANT

Vs

Samar Singh

RESPONDENT

Date of Decision : 10-03-1975

Acts Referred:

Citation : (1976) ILR Delhi 21 : (1976) LabIC 806 : (1976) RLR 150

Hon'ble Judges : T.V.R. Tatachari, J; M.R.A Ansari, J

Bench : Division Bench

Advocate : Harish Chandra, Anil Bhatnagar and Vijaya Rao, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This Letters Patent Appeal has been filed by (1) The Comptroller and Auditor General of India, (2) "The Accountant General, Commerce, Works and Miscellaneous, and (3) The Deputy Accountant General (Admn.) against the judgment of a learned single Judge of this Court. Shri H. L. Anand J., dated April 7, 1975, in Civil Writ Petition No. 904 of 1974, whereby the learned Judge allowed the Writ Petition and quashed an order, dated April 29, 1974, issued by the Deputy Accountant General (Admn.) terminating the services of the respondent herein, Shri Samar Singh.

(2) Shri Samar Singh, the respondent herein, filed the aforesaid Writ Petition in the following circumstances. He was appointed as an Auditor in the Office of the Deputy Director of Audit and Accounts, Posts and Telegraphs, Jaipur, with effect from August 19, 1970. He worked in that post till December 31, 1970, when he resigned from that post. He was, however, appointed as an Auditor in the Office of the Accountant General, Commerce, Works and Miscellaneous, New Delhi, with effect from January 1, 1971. Although he had worked as such for more than three years in his second appointment, he had not been declared as quasi-permanent. The respondent submitted in his Writ Petition that in computing the

period of three years for the purpose of declaration as quasipermanent Government servant, his previous service in Jaipur would also count, and that, in the circumstances, he could be deemed to have been declared as quasipermanent on the expiry of three years from the date of his appointment, viz. January 1, 1971. But, as appears from the Judgment of the learned single Judge, the said contention of the respondent was not pressed by him at the hearing of the Writ Petition, that the respondent sought the leave of the Court to raise the said question in separate proceedings and the same was allowed to him, and that the Writ Petition was argued on the basis that on the material date, the respondent was still a temporary Government servant. In the affidavit of Shri P. N. Malaviya, Senior Deputy Accountant (Admn.), which was filed by way of a reply to the Writ Petition, it was stated that on April 20, 1974, there was a "minor altercation" between the respondent and Shri S. P. Mathur, Audit Accounts Section of the Office where the respondent was working and that the latter submitted a complaint to the Accountant General, Commerce, Works and Miscellaneous, alleging that the respondent had threatened to kill him (Shri Mathur) with a revolver. It further appears from a note or order, dated April 29, 1974, recorded by Shri R. K. Dewan, Deputy Accountant General (Admn.), which was produced by the appellants at the hearing of the Writ Petition and was ordered to be placed on record by the learned single Judge, that two complaints had been recorded about the respondent from two Auditors, on which a preliminary inquiry was made in the course of which the allegation made in the complaints were found to be correct. The said note further indicates that the incident of April 20, 1974, had created a wide-spread indignation among the members of the staff, that the Non-Gazetted Staff Association held a General Body Meeting on April 22, 1974, wherein the alleged act of the respondent had been "condemned", and that the female staff of the office which constituted 20 per cent of the entire complement of staff were greatly agitated and they wanted deterrent action to be taken. The note was concluded with the observation "in view of the above. I have decided to discharge him straightway". The said note was followed by a formal order made on the same day by the aforesaid Deputy Accountant General, Shri R. K. Dewan, informing the respondent herein that in pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, his services were terminated forthwith.

(3) Aggrieved by the aforesaid order, the respondent herein submitted two representations, dated May 13, 1974, and May 21, 1974, to the Deputy Comptroller and Auditor General of India, New Delhi, but the same were rejected on June 27, 1974. Thereupon, the respondent filed the Writ Petition in this Court, praying that the order of termination, dated April 29, 1974, be quashed. The contention of the respondent was that although the said order appeared to be innocuous on the face of it, it was passed as a punitive measure, that having regard to the surrounding circumstances attendant on the passing of the order it was clear that it was one by way of punishment, that the order of termination had been passed as a result of the inquiry held by Shri R. K. Dewan (appellant 3)

assisted by one Shri N. S. Chopra, Accounts Officer, without giving any opportunity to the respondent to participate in the inquiry and cross-examine the witnesses, and that the said order of termination, Therefore, contravened Article 311(2) of the Constitution. The said contention of the respondent was accepted by the learned single Judge, and consequently the Writ Petition was allowed and the order of termination was cancelled. Hence, the present Letters Patent Appeal by the Comptroller and Auditor General of India and two others who were respondents in the Writ Petition.

(4) The question for determination in this Letters Patent Appeal is whether the order of termination of the services of the respondent dated April 29, 1974, though innocuous on the face of it, was passed as a punitive measure or punishment having regard to the surrounding circumstances preceding or attendant on the passing of the said order. As to when a seemingly innocuous order terminating the services of a temporary Government servant in accordance with the rules applicable to him can nevertheless be said to be punitive has been considered by the Supreme Court in a number of decisions, Viz. (1) Shrinivas Ganesh Vs. Union of India, ; (2) Parshotam Lal Dhingra Vs. Union of India (UOI), ; (3) The State of Bihar Vs. Gopi Kishore Prasad, ; (4) The State of Orissa and Another Vs. Ram Narayan Das, ; (5) S.R. Tewari Vs. District Board Agra and Another, ; (6) Champaklal Chimanlal Shah Vs. The Union of India (UOI), ; (7) Jagdish Mitter Vs. The Union of India (UOI), ; (8) State of Punjab and Another Vs. Shri Sukh Raj Bahadur, ; (9) K.H. Phadnis Vs. State of Maharashtra, ; (10) The State of Bihar and Others Vs. Shiva Bhikshuk Mishra, ; (11) Appar. Apar Singh v. The State of Punjab and others, 1971(2) S.L.R. 71; and (12) Samsher Singh Vs. State of Punjab and Another, .

(5) The learned single Judge considered the said decisions and summarised the propositions which emerge from those decisions as follows :-

"If the termination of service is founded on misconduct, negligence, inefficiency or other disqualification, it is punitive in nature and attracts Article 311(2) of the Constitution of India. If a right exists under a contract or service Rules to terminate the service, the motive operating on the mind of the Government will be irrelevant. The reason why motive is irrelevant is that it inheres in the state of mind and is, Therefore, not discernible. When it is founded on misconduct, it is objective and is manifest. In determining whether the order is punitive or not, it is the substance of the order and not the form that would be decisive. The inquiry need not be confined to the order itself and may extend to all the circumstances to discover its true nature and the Court would be entitled to see the entirety of the circumstances preceding or attendant on the impugned order. Whether an inquiry was held before the order or not may be material but is not conclusive and would not provide a sure test. The objective of the inquiry preceding the order may be indicative of the nature of the order."

(6) The above propositions to emerge from the various decisions. As pointed out by the learned single Judge, the test to determine whether the alleged

misconduct was the foundation for the impugned order and not a mere motive, the distinction between two and the line of demarcation between foundation and motive is to be found in the decision of the Supreme Court in the case of Shamsher Singh (12) (supra). A. N. Ray, C.J., after referring to relevant observations in the decision of the Supreme Court in Parshotam Lal Dhingra's(2) case (supra), observed that-

"THE reasoning why motive is said to be irrelevant is that it inheres in the state of mind which is not discernible. On the other hand, if termination is founded on misconduct it is objective and is manifest."

In a separate though concurring judgment Krishna Iyer J., agreed with the said observation of the learned Chief Justice as having down the true test. It is clear from the aforesaid observation of Ray C.J. that the alleged misconduct would be mere motive so long as "it inheres in the state of mind which is not discernible". But, it becomes the foundation for the order of termination when it ceases to be in the indiscernible state of mind and becomes objective and manifest. Generally speaking, there are two conceivable situations: (1) where no preliminary inquiry was conducted and (2) where such an inquiry was conducted.

(7) In the former case, the matter starts with either a complaint or aspersions made against the Government servant. So long as the disciplinary authority does not either believe or disbelieve the allegations in the complaint or the aspersions and does not come to any conclusion or decision thereon, and in that situation passes an innocuous order under Rule 5(1), the alleged misconduct can be said to inhere in the state of mind of the disciplinary authority which is not discernible. On the other hand, if it believes the allegations in the complaint or the aspersions and comes to a conclusion or decision that the Government servant was really guilty of the alleged misconduct, whether it reduces the said conclusion or decision into writing or not, the alleged misconduct can be said to have become objective and manifest and, Therefore, the passing of the order of termination after such conclusion or decision can be said to have been founded on the misconduct.

(8) In the latter case, the preliminary inquiry would normally be for the purpose of finding out whether the allegations in the complaint or the aspersions are prima facie true, and the inquiry officer records his conclusion. But, the conclusion of the Inquiry Officer may or may not be accepted by the disciplinary authority. The said authority considers the entire case in the light of the inquiry and the conclusion of the Inquiry Officer, and either accepts or rejects or finds itself unable to say whether there was a prima facie case against the Government servant or not. If the authority does not accept the conclusion of the Inquiry Officer, no further question arises. If the authority is unable to make up its mind one way or the other, the alleged misconduct can be said to "inhere in the state of mind which is not discernible". But, if the authority accepts the conclusion arrived at by the Inquiry Officer, the said conclusion becomes the conclusion or decision of the disciplinary authority whether it is reduced to

writing or not, and the subsequent order terminating the services of the Government servant, though innocuous on the face of it, has to be held to have been founded on the alleged misconduct. Thus, it is the conclusion or decision, or the absence of conclusion or decision by the disciplinary authority regarding the alleged misconduct of the Government servant that determines whether the misconduct was the foundation or a mere motive for the subsequent order of termination. This, in our opinion, is the test suggested by the learned Chief Justice in the case of Shamsheer Singh (12) (Supra).

(9) We shall now consider the nature of the impugned order in the present case applying the test mentioned above. It is common ground that the respondent on the material date, was a temporary Government servant. Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, empowers the Government to terminate the services of a temporary Government servant without giving any reason by giving him a notice of one month in writing and paying him the amount mentioned in the proviso to Rule 5(1). The impugned order purports to have been passed in exercise of the said right under Rule 5(1). It is, however, open to the respondent to show that the said impugned order, though innocuous on the face of it, was a direct sequel to the incident of April 20, 1974, and was made pursuant to the finding in the inquiry that the allegations in the complaints made against the petitioner were correct, and the note/order of April 20, 1974, recorded by the Deputy Accountant General (Admn.) which was followed by the impugned order. It is not disputed that complaints regarding the said incident were received, and a preliminary inquiry was made in the course of which a number of persons were examined with a view to find out if the allegations made against the respondent were correct, and that the said allegations were found to be correct. It is also not in dispute that after the result of the inquiry was known, the Deputy Accountant General (Admn.), Shri R. K. Dewan, who was the disciplinary authority, recorded the note or order, dated April 20, 1974. The said note or order is in the following terms :-

"We received two complaints from two Auditors about Shri Samar Singh, Auditor. A preliminary inquiry was made. The inquiry has shown that the allegations made therein are correct. In this connection, it is noted that the recent incident has created wide spread indignation among the members of the staff. The Non-Gazetted Staff Association held a General Body Meeting on the 22nd April, 1974, wherein they condemned the act of Shri Singh. It is also understood that the ladies working in the office which constitute about 20 per cent of the entire complement of staff are greatly agitated and want deterrent action to be taken. In view of the above, I have decided to discharge him straightaway."

(10) The contention of the respondent is that the above note or order shows "that the improper conduct alleged against him in the complaints and found to be correct in the inquiry was not a mere motive, but was the foundation of the impugned order." On the other hand, the contention on behalf of the appellants is that it was, if at all, merely the motive and not the foundation of the impugned

order. If it was the foundation, the impugned order has to be held to be a punitive one. The learned single Judge held that it was not a mere motive but was the foundation of the impugned order. The question is as to whether his view is correct.

(11) In our opinion, the answer has to be in the affirmative. There was the alleged incident on April 29, 1974, which was followed by complaints alleging misconduct on the part of the respondent. Admittedly, a preliminary inquiry was made and the allegations were found to be correct. There is nothing on the record to show who had conducted the inquiry. Mr. Harish Chandra, learned counsel for the appellants, was not in a position to say from the relevant file brought by him as to who made the inquiry. He also informed us that the file does not contain any written report by the officer who made the inquiry, and that there is only the note/order made by the Deputy Accountant General (Admn.), who was admittedly the disciplinary authority. However, according to the test, as explained by us above, if the preliminary inquiry had been made by an Inquiry Officer other than the Deputy Accountant General (Admn.), any conclusion by him even in a written report that the allegations of misconduct were correct would be immaterial, as, according to the said test, it would only be the motive and it is the conclusion or decision of the disciplinary authority that would constitute the foundation and not that of the inquiry officer. If the matter had stopped with the preliminary inquiry and the conclusion therein, and the order terminating the services of the respondent had followed, the conclusion in the said preliminary inquiry would have been just the motive and not the foundation for the order of termination. But, the conclusion in the inquiry was followed by the note/order, made by the Deputy Accountant General (Admn.) who is the disciplinary authority. The note/order mentioned expressly that "the inquiry has shown that the allegations made therein" (i.e. in the complaint) "are correct", that "the recent incident has created wide-spread indignation among the members of the staff", that the Non-Gazetted Staff Association held a General Body Meeting on 22nd April, 1974, wherein they condemned the act of Shri Samar Singh, that the ladies working in the office who constituted about 20 per cent of the entire complement of staff were greatly agitated and wanted "deterrent action to be taken", and "in view of the above", the disciplinary authority decided to discharge Shri Samar Singh. This note/order clearly shows that the disciplinary authority came to the conclusion that the allegations against Shri Samar Singh were correct, and then passed immediately the order of termination. The latter is no doubt in innocuous terms. But, in view of the sequence of the events and particularly the contents of the note/order which show that the disciplinary authority came to the conclusion or decision that the allegations of misconduct in the complaints were correct and passed the order of termination, it cannot but be said that the alleged misconduct was the foundation and not a mere motive for the order of termination. It was thus punitive in nature, and the provisions of Art. 311(2) are attracted. Since admittedly Shri Samar Singh was not given any opportunity to defend himself against the

allegations of misconduct, the order of termination is vitiated and is liable to be quashed.

(12) For the foregoing reasons, the Letters Patent Appeal fails and is dismissed with costs.

(13) The respondent Shri Samar Singh, has filed an application.C.M.P. No. 492 of 1975, in this Letters Patent Appeal stating that an important fact came to his notice on May 1, 1975, that Shri R. K. Dewan, appellant No. 3, who had passed the order of termination, was not an authority competent to terminate the services of the respondent and praying that he may be permitted to raise the above fact as an additional ground in support of the invalidity of the order of termination. The respondent did not question in his Writ Petition the competence of Shri R. K. Dewan to terminate his services. He cannot, Therefore, be permitted to raise the new fact or ground for the first time in this Letters Patent Appeal. The application, C.M.P. No. 492 of 1975, is dismissed, but without costs.