

(2010) 02 DEL CK 0318

In the Delhi High Court

Case No : Writ Petition (C.) No. 9003 of 2007

Union of India

APPELLANT

Vs

Sh. Hem Raj

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Penal Code, 1860 (IPC) — Section 34, 467, 468, 471

Citation : (2010) 02 DEL CK 0318

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; Harvinder Oberoi, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 8th August, 2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.1411/2006 titled Hem Raj v. Union of India & Ors allowing the original application of the respondent and quashing the termination order dated 28th February, 2006 and granting all the consequential benefits to the respondent.

2. The services of the respondent were terminated under sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The respondent was engaged as a casual labour (Waterman) from 19th October, 1993 to 23rd November, 1994 after he was sponsored by employment exchange. His appointment was extended for further period and on 31st December, 1995 his status was changed to that of contract labour and he continued as such till September, 1996.

3. Pursuant to an O.A No.179/1996 filed by the respondent, he was appointed as a casual labour with temporary status with effect from 3rd July, 1997 and thereafter by order dated 28th December, 2005 he was appointed as casual worker Safaiwala a Group `D" post in Central Government.

4. On account of an FIR registered against the respondent by some unknown person, he was suspended by order dated 1st February, 2006, however, later on 27th February, 2006 the suspension of the petitioner was revoked and thereafter on 28th February, 2006 the services of the respondent were terminated. Aggrieved by the order of termination by order dated 28th February, 2006 after first suspending then revoking the suspension order, the petitioner filed an original application being 1411/2006.

5. The respondent asserted that his termination was based on his false implication in the FIR and, therefore, the order of termination is punitive in nature and not sustainable and the respondent has been suspended without the respondent being held guilty. The Tribunal while considering the pleas and contentions of the respondent lifted the veil to find out the actual reason for the termination of the respondent and concluded that there are allegations of criminal offence of preparing forged CBI identity cards and since the respondent misused his position while working with the CBI, on the basis of investigation an FIR was registered u/s 34/467/468 and 471 of IPC. In the challan filed by the CBI, the respondent was shown as an accused No.2. The allegation of respondent indulging in fake raids impersonating as Special Branch (CBI) official and cheating some persons by extorting Rs.14,000/ against the demand of Rs.2 lakhs was also made.

6. It was inferred by the Tribunal that chargesheet disclosed involvement of the applicant in various other manners too. Relying on *State of U.P. and Others Vs. Ashok Kumar*, ; *Hari Ram Maurya v. Union of India & Ors*, 2006(9) SCC 167 ; *Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Others*, ; *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors*, 1999 SCC (L&S) 596 it has been held by the Tribunal that the foundation of the termination of the respondent is the criminal complaint against him and it is not merely on account of the motive and considering the distinction between the motive and the foundation, it was inferred that the termination order is punitive and not sustainable without a proper enquiry against the respondent. The counsel for the petitioner rather admitted fairly before the Tribunal that since the respondent was named as a culprit by several witnesses who were examined in connection with the investigation in the FIR dated 24th February, 2006 hence respondent was not fit to continue in service with a premier investigating agency and also as the appointment letter of the respondent dated 8th September, 1997, stipulated that the services of the respondent could be dispensed with by giving a notice of one month in writing, therefore, the termination order dated 28th February, 2006 without conducting any enquiry was justified.

7. The Tribunal has held that the order of termination though does not stipulate the serious misconduct committed by the applicant but the foundation of the termination order is the alleged serious misconduct for which the respondent was suspended, however, the suspension was revoked and thereafter he has been

terminated without any enquiry and establishment of his alleged guilt. In the circumstances, the findings of the tribunal that the termination is not simplicitor, but punitive cannot be faulted. The Tribunal has noted in para 23 as under:-

23. Taking the totality of facts and circumstances of the present case into consideration, I come to the conclusion that the order of termination given to the applicant is definitely punitive. Action against the applicant under the CCA Rules having been taken by way of issuing the order of suspension and a charge-sheet against him having been filed in a trial court, after investigation having been conducted behind his back, the respondents cannot now contend that the applicant's alleged "serious misconduct" is not the "foundation" for the issue of the order of termination.

8. The learned counsel for the petitioner is unable to demonstrate or show how the order of termination is not punitive in nature. Rather the counsel for the petitioner before the Tribunal had admitted categorically that since the respondent was not found fit to continue in service and since the order of appointment also stipulated that he could be terminated by giving one month's notice, therefore, the services of the respondents were terminated. The admission made by the counsel for the petitioner has not been withdrawn and cannot be allowed to be withdrawn in the facts and circumstances of the case. The relevant portion of para 12 of the judgment of the Tribunal is as under:-

12. Shri Rajesh Katyal, learned counsel for the respondents, fairly admitted that the applicant was named as culprit by several witnesses, who were examined in connection with the investigation in the FIR dated 24.02.2006, and hence, he was not fit to continue in service with a premier Investigating Agency, such as, CBI. He also highlighted the contention of the respondents that the applicant's order of appointment dated 08.09.1997 (Annexure A-2) had clearly stated that the services of the applicant can be dispensed with by giving a notice of one month in writing.

13. In the circumstances, it cannot be held that the order of termination of the respondent is not punitive but it is simplicitor and the foundation of the order of termination is not based on the misconduct imputed against him.

14. The learned counsel for the petitioner has also relied on (1997) 10 SCC 682 State of UP and Ors. v. Rajendra Kumar Singh and Anr. and Secretary, Ministry of Works and Housing Govt. of India and Others Vs. Mohinder Singh Jagdev and Others, to contend that the order of the termination is sustainable. In State of U.P and Ors (Supra) authorities had received a complaint from the superior of a constable that he was keeping company with and demanding money from the anti social elements and on consideration of adverse service record his services were terminated by a non stigmatic order. The case relied on by the petitioner is distinguishable as in that case the adverse service record could be a motive for termination of the service by an order which was non stigmatic but in the case of the respondent even the counsel for the petitioner has admitted that he has been

terminated on account of his implication in the criminal case. In the circumstances, the inference of the Tribunal that the foundation of the order of termination is punitive cannot be faulted and on the basis of the above noted case petitioner cannot contend and justify the termination order dated 28th February, 2006 and allege that the order is not punitive. The other precedent cited by the petitioner, Secretary, Ministry of Works and Housing (Supra) is also distinguishable as the above judgment was about commencement of limitation for filing a suit against the wrongful termination of service. The Supreme Court had held that the period of limitation to file a suit for declaring the termination order to be unconstitutional commenced on the date of termination of the services and not on the date of the acquittal. Apparently on the basis of the ratio of the said case it cannot be held that the order of termination dated 28th February, 2006 of the respondent was not punitive and is distinguishable and the petitioner can be terminated without conducting any enquiry. This is no more res integra that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases. Consequently on the basis of ratio of the cases relied on by the petitioners, no inference against the respondent can be drawn nor it can be held that the decision of the Tribunal is contrary to law laid down by the Supreme Court.

15. In the circumstances there is no such illegality or irregularity in the order of the Tribunal dated 8th August, 2007 which shall require interference by this Court. The writ petition is, therefore, without any merit and it is dismissed.